

City of Miami

THEODORE P. GUBA, CPA, CIA, CFE
INDEPENDENT AUDITOR GENERAL



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September 28, 2012

Honorable Members of the City Commission
City of Miami
3500 Pan American Drive
Coconut Grove, FL 33133-5504

Re: Audit of Compliance with Commercial Solid Waste Franchise Agreement - Waste Services USA, Inc.
Audit No. 12-016

Executive Summary

We have completed an audit of records and selected financial transactions of Waste Services USA, Inc. (WSUSA) primarily for the period from October 1, 2009 through September 30, 2011. The audit was performed to determine whether WSUSA complied with applicable sections of the City Code and the Commercial Solid Waste Franchise Agreement. Additionally, we examined the internal control policies and procedures in the City's Solid Waste Department (SWD) to determine whether they were adequate and effective in administering and overseeing the operation of commercial solid waste services in the City of Miami. During the period, WSUSA had total gross receipts of \$169,532 for services provided within the City of Miami and remitted franchise and other fees totaling \$40,283.

Overall, except for certain controls requiring strengthening, procedures and compliance with the Agreement were generally adequate. However, improvement is needed to ensure that: fees are remitted in a timely manner; all active accounts are included in the permit per account fee list; and, all accounts within the City of Miami are properly coded and reported. As a result of these deficiencies, an additional \$681 was owed and paid to the City by WSUSA. Details are included on pages four through six of the report.

We wish to express our appreciation for the cooperation and courtesies extended to us by the WSUSA accounting staff and the SWD management team while conducting the audit.

Sincerely,

A handwritten signature in cursive script that reads 'Theodore P. Guba'.

Theodore P. Guba, CPA, CIA, CFE
Independent Auditor General
Office of the Independent Auditor General

C: The Honorable Mayor Tomas Regalado
Johnny Martinez, City Manager
Dwight S. Danie, City Clerk, City Clerk's Office
Julie O. Bru, City Attorney, City Attorney's Office
Luis Cabrera, Assistant City Manager/Chief Operations
Janice Larned, Assistant City Manager/Chief Financial Officer, Finance Department
Stephen Petty, Director, Finance Department
Keith A. Carswell, Director, Solid Waste Department
Demetrio Constantiny, Accounts Receivable Supervisor, Finance Department
Carol Markus, Vice-President, WSUSA
Members of the Audit Advisory Committee
Audit Documentation File

Audit conducted by: Paulino Garcia, Staff Auditor

Audit reviewed by: Lewis Blake, CPA, CIA, Senior Staff Auditor

Robyn Sachs, CPA, CIA, CISA, CFE, CAMS, CISSP, Senior IT Auditor

**AUDIT OF COMPLIANCE WITH THE COMMERCIAL SOLID WASTE
FRANCHISE AGREEMENT - WASTE SERVICES USA, INC.
OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2011**

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SCOPE, OBJECTIVES AND METHODOLOGY

The scope of the audit was to assess and report on whether Waste Services USA, Inc. (WSUSA) and the City's Solid Waste Department (SWD) complied with the terms of the Commercial Solid Waste Franchise Agreement and with Chapter 22 of the City's Code, which govern the operation of commercial solid waste collection services in the City. The audit also included examinations of various transactions to determine whether they were processed in accordance with the generally accepted accounting principles. The audit covered the period October 1, 2009 through September 30, 2011, during which fees collected from WSUSA totaled \$40,283.

The primary objectives of the audit were:

- To ascertain whether all customer accounts located in the City were properly identified, coded, and assessed the appropriate fees.
- To determine whether all the applicable franchise fees as stipulated in the Agreement were properly computed and remitted timely to the City.
- To review the annual statement of gross receipts that was prepared by an independent Certified Public Accountant, and, to determine if it was submitted in a timely manner to the SWD.
- To ascertain whether the fees remitted to the City were properly recorded in the City's accounting system and deposited into the City's treasury.
- To verify whether the appropriate public liability insurance and bonds were obtained as required by the Agreement.
- To examine the internal control policies and procedures of WSUSA and the City's Solid Waste Department and determine whether they were adequate and effective in administering and overseeing the operation of commercial solid waste hauling services in the City.
- To follow-up on prior audit findings and determine the status of all unresolved and outstanding issues.

We conducted this performance audit in accordance with *Generally Accepted Government Auditing Standards*. Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence in order to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The audit methodology included the following:

- Interviews and inquiries of appropriate personnel
- Reviews of written policies and procedures in order to gain an understanding of the internal controls
- Observations of current practices and processing techniques
- Tests of applicable transactions and records
- Other audit procedures as deemed necessary

BACKGROUND

On July 22, 2004, the City executed a Commercial Solid Waste Franchise Agreement with 25 firms that allowed them to operate commercial solid waste hauling services in the City for the period starting October 1, 2004 through September 30, 2009, with a three year renewal option period through September 30, 2012. On September 23, 2010, a resolution allowed the City to execute a new Non-Exclusive Commercial Solid Waste Agreement with selected firms for the period starting October 1, 2010 through September 30, 2015, with three - one year option periods through September 30, 2018.

Pursuant to the Agreement, the following franchise fees shall be assessed and collected:

- Gross Receipts Franchise Fees - during the period October 1, 2004 through September 30, 2010, the franchisee was required to remit to the City the greater of \$500 or 22% of the gross receipts generated. Effective October 1, 2010, the rate increased to 24%.
- Annual Franchise Fee - franchisees must annually remit the sum of \$8,000 (increased annually by \$500) for the right to provide commercial solid waste handling services within the city limits.
- Annual Specialized Waste Handling Service Fee - franchisees must annually remit the sum of \$4,000 (increased annually by \$500) for the right to provide "Specialized Waste Handling Services" within the City. These services include the collection and disposal of solid waste such as white goods (appliances), waste tires, used oil, lead-acid batteries, construction and demolition debris, ash residue, biomedical and biological waste.
- Permit Per Account Fee (PPAF) - franchisees must annually remit \$75 to the City for each account and each roll-off account (booked as of October 1st each fiscal year) including each container and/or roll-off utilized by the franchisee in the course of providing solid waste services. In addition, franchisees must remit \$75 for each new commercial account and new roll-off container acquired after October 1st. Franchisees may only pass on an amount not to exceed \$38 of paid Permit Per Account Fee to each contracted customer.
- Failure to remit the required fees mentioned above by the prescribed due dates results in a one and one-half percent late payment penalty fee per month on any balance due to the City.
- Safety Inspection Fee - franchisees must pay to the City an annual \$500 per vehicle inspection fee, which is a regulatory fee for the municipal inspection of the vehicles being used by the franchisees to operate within City boundaries.

Other terms of the Agreement include the following:

- Certified Statement of Gross Receipts - on or before 90 days following the close of each fiscal year (September 30th), franchisees must deliver to the City, a certified statement of its annual gross receipts and charge-offs generated during the preceding year from accounts within the City, prepared by an independent Certified Public Accountant.

- Insurance and Bonds - franchisees must maintain a public liability policy in the minimum amount of \$1,000,000; automobile liability insurance policy with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage liability, and coverage for workers' compensation. Franchisees must maintain a Performance Bond equal to their previous 12 month franchise fees paid to the City, or a minimum of \$25,000, whichever is greater, as a security for the performance of the Agreement.

During the fiscal year ended September 30, 2011, franchisees remitted a total of \$11,414,501 to the City. WSUSA is one of the franchisees selected for audit in order to determine compliance with the provisions of the Franchise Agreement. A separate audit report will be issued for each of the franchisees audited.

The SWD ensures that commercial solid waste service accounts, and applicable fees/transactions, are properly assessed and paid to the City. The SWD also monitors the operations of the franchisees. This audit report describes whether WSUSA and the SWD complied with the terms of the Agreement and applicable Sections of the City Code.

FINDINGS AND RECOMMENDATIONS

Based on our audit, we have concluded that except for certain controls requiring strengthening, procedures and compliance with the Agreement and the City Code were generally adequate. However, we noted that improvement is needed to ensure that fees are remitted timely; all active accounts are included in the permit per account fee list; and, all accounts within the City of Miami (City) are properly coded and reported.

As a result of these deficiencies, an additional \$681 is owed to the City by WSUSA.

Details of our findings and recommendations follow:

ADDITIONAL FEES DUE TO THE CITY

Our audit of WSUSA's accounting and billing records disclosed that an additional \$681 is due and payable to the City (See Exhibit I) from WSUSA as discussed below:

1. ANNUAL SPECIALIZED WASTE HANDLING SERVICE FEES

The Agreement stipulates that the "Franchisee agrees to remit to the City annually (due October 1st) the sum of \$4,000 (increased annually by \$500) for the right to provide ONLY Specialized Waste Handling Services within the City limits." Failure to remit the required annual fee by the due date results in a late payment penalty fee of one and one-half percent per month on the balance due to the City.

- Our review disclosed that during fiscal year 2010-2011, WSUSA remitted its annual franchise fee one month late resulting in a late payment penalty fee of \$60 due to the City.

2. PERMIT PER ACCOUNT FEES

Franchisees must annually remit to the City \$75 for each account (\$50 under the prior agreement) and each roll-off account effective October 1st of every new fiscal year, including each container and/or roll-off utilized by Franchisee in the course of providing solid waste services. All late payments of this fee will result in a one and one half percent penalty per month on the balance due.

- During fiscal year 2009-2010, WSUSA did not report two accounts requiring a PPAF of \$100 (\$50 per account x 2). Including the late fee for 30 months at 1½% monthly (\$45) brings the total to \$145.
- During fiscal year 2010-2011, WSUSA remitted a PPAF of \$600 for eight accounts three months late resulting in a late payment fee of \$27.
- During fiscal year 2010-2011, WSUSA did not report three accounts requiring a PPAF of \$225 (\$75 per account x 3). Including the late fee for 18 months at 1½% per month brings the total due to \$286.

The total due from the above exceptions is \$458.

3. GROSS RECEIPTS FRANCHISE FEES

The Agreement requires the Franchisee to remit monthly to the City 24% of its Gross Receipts generated from accounts within the City limits, or \$500, whichever is greater. Failure to remit payments on time results in a one and one-half percent late payment penalty fee per month on the balance due.

- Our review of Waste Services USA, Inc.'s billing records disclosed that it did not remit to the City the franchise fees generated from two customer accounts totaling \$128 plus late fees of \$35 (\$163).

RECOMMENDATION

We recommend that the total additional fees due to the City (\$681) be billed to WSUSA and collected.

AUDITEE RESPONSE

WSUSA has acknowledged the amounts due (\$681) as described above and summarized on Exhibit I. The City's Finance Department has billed WSUSA accordingly. WSUSA paid this amount to the City on July 25, 2012.

EXHIBIT I

WASTE SERVICES USA, INC.				
SCHEDULE OF ADDITIONAL FEES DUE TO THE CITY				
OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2011				
DESCRIPTION			ITEMIZED AMOUNT	TOTAL FEES DUE
			\$	\$
<u>Annual Specialized Waste Handling Service Fee - Page 4</u>				
Late Fee Penalty on Late Remittance				60
<u>Permit Per Account Fee - Page 4</u>				
Accounts Not Reported			325	
Late Fee on Accounts Not Reported			133	458
<u>Miscoded Accounts - Page 5</u>				
Franchise Fees on two Miscoded Accounts			128	
Late Fee Penalty on Miscoded Accounts			\$ 35	163
TOTAL DUE TO THE CITY				\$ 681