

City of Miami

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



Telephone (305) 416-2044
E-Mail: tguba@miamigov.com

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 Management, Inc. of Florida
Audit No. 12-017

Executive Summary

We have completed an audit of records and selected financial transactions of Waste Management, Inc. of Florida (WM) primarily for the period from October 1, 2010 through September 30, 2011. The audit was performed to determine whether WM 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, WM had total gross receipts of \$20,586,907 for services provided within the City of Miami and remitted franchise and other fees totaling \$5,237,233.

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; all accounts within the City of Miami are properly coded and reported; and all agreement stipulations are met. As a result of these deficiencies, an additional \$15,285 is owed to the City by WM. Details are included on pages four through seven of the report.

We wish to express our appreciation for the cooperation and courtesies extended to us by the WM 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
James F. Lambros, Area Controller, Waste Management, Inc.
Members of the Audit Advisory Committee
Audit Documentation File

Audit conducted by: Paulino Garcia, Staff Auditor
Audit reviewed by: Karuna Khilnani, CPA, CISA, 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 MANAGEMENT, INC. OF FLORIDA
OCTOBER 1, 2010 THROUGH SEPTEMBER 30, 2011**

TABLE OF CONTENTS

SCOPE, OBJECTIVES AND METHODOLOGY	1
BACKGROUND.....	2
FINDINGS AND RECOMMENDATIONS	4
<i>ADDITIONAL FEES DUE TO THE CITY</i>	4
1. ANNUAL FRANCHISE FEES.....	4
2. PERMIT PER ACCOUNT FEES.....	4
3. GROSS RECEIPTS FRANCHISE FEES	5
<i>CPA STATEMENT AND PERFORMANCE BOND</i>	5
EXHIBIT I	7

SCOPE, OBJECTIVES AND METHODOLOGY

The scope of the audit was to assess and report on whether Waste Management, Inc. of Florida (WM) 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, 2010 through September 30, 2011, during which fees collected from WM totaled \$5,237,233.

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 WM 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. WM 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 WM 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; all accounts within the City are properly coded and reported; and, all agreement stipulations are met.

As a result of these deficiencies, an additional \$15,285 is owed to the City by WM.

Details of our findings and recommendations follow:

ADDITIONAL FEES DUE TO THE CITY

Our audit of WM's accounting and billing records disclosed that an additional \$15,285 is due and payable to the City (see Exhibit I, page 7) from WM as discussed below:

1. ANNUAL FRANCHISE FEES

The Agreement stipulates that the "Franchisee agrees to remit to the City annually (due October 1st) the sum of \$8,000 (increased annually by \$500) for the right to provide "Commercial Solid 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, WM remitted its annual franchise fee one month late resulting in a late payment penalty fee of \$120 due to the City.

2. PERMIT PER ACCOUNT FEES

Franchisees must annually remit to the City \$75 for each account 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.

- Our review determined that WM overpaid in error 49 accounts totaling \$3,675. WM is entitled to a credit in this amount. However, WM remitted to the City the payment late, and as a result, a late payment penalty fee of \$4,397 is due to the City.

The total net amount due from the above exception is \$722.

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 WM's billing records disclosed that it did not remit to the City the franchise fees pertaining to MultiMaster Accounts totaling \$1,046. With late fees of \$282, the amount due is \$1,328.
- Our review of WM's Maintenance/Leases disclosed that franchise fees for nine lease accounts were not reported and paid to the City. As a result, franchise fees of \$11,400, and a late payment penalty fee \$1,445 are due to the city, totaling \$12,845.
- WM failed to remit to the City \$232 in franchise fees for one account awarded by Miami Dade County; the late payment penalty fee is \$38, for a total of \$270.

RECOMMENDATION

We recommend that the City's Finance Department bill and collect the \$15,286 total additional fees due from WM.

AUDITEE RESPONSE

WM has acknowledged the amounts due (\$15,286) as described above and summarized on Exhibit I. Finance will bill and collect the amount due.

CPA STATEMENT AND PERFORMANCE BOND

The Agreement requires the Franchisee to deliver to the SWD Director on or before 90 days (December 31) following the close of each fiscal year a statement of its annual gross receipts for the preceding fiscal year. Such statement must be prepared by a CPA.

- Our audit determined that the certified annual gross receipts statement submitted to the City by WM was dated January 30, 2012 (30 days late).

The Agreement also stipulates that the Franchisee maintain for the term of this Agreement a Performance Bond executed by a surety company duly authorized to do business in the State of Florida. The amount of the Bond shall be equal to the Franchisee's previous 12 month franchise fees paid to the City (including the annual franchise fee, monthly 24% franchise fee, annual per account fee, and any other franchise fees paid to the City) or a minimum of \$25,000 whichever is greater, as a security for the faithful performance of the Agreement.

- Our review disclosed that WM has remitted to the City during fiscal year 2010-2011 franchise and other fees totaling \$5,237,233. However the latest bond obtained was for \$4,559,619; therefore, it should be increased by \$677,614 to comply with the Agreement.

RECOMMENDATION

We recommend that WM enhance its internal control procedures in order to comply with all of the Agreement stipulations.

AUDITEE RESPONSE

WM concurred with the findings and recommendation.

EXHIBIT I

WASTE MANAGEMENT, INC. OF FLORIDA SCHEDULE OF ADDITIONAL FEES DUE TO THE CITY OCTOBER 1, 2010 THROUGH SEPTEMBER 30, 2011		
DESCRIPTION	ITEMIZED AMOUNT	TOTAL FEES DUE
	\$	\$
<u>Annual Franchise Fee - Page 4</u>		
Late Fee Penalty on Late Remittance		120
<u>Permit Per Account Fee - Page 4</u>		
Overpayment	(3,675)	
Late Fee Penalty on Late Remittance	4,397	722
<u>24% Franchise Fees- Page 5</u>		
Multimaster Accounts	1,046	
Late Payment Penalty Fee	282	1,328
Maintenance Leases Accounts	11,400	
Late Payment Penalty Fee	1,445	12,845
Miscoded Account	232	
Late Payment Penalty Fee	\$ 38	270
TOTAL DUE TO THE CITY		\$ 15,285