

City of Miami

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INDEPENDENT AUDITOR GENERAL



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March 4, 2014

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

Re: Audit of Progressive Waste Solutions of FL, Inc.
Audit No. 14-004

Executive Summary

We have completed an audit of selected financial transactions and records of Progressive Waste Solutions of FL, Inc. ("Progressive"), formerly known as Waste Services of FL, Inc., primarily for the period March 1, 2008 through February 28, 2013. The audit was performed to determine whether Progressive complied with applicable sections of the City Code and the Commercial Solid Waste Franchise Agreement ("Agreement").

During the five year audit period, Progressive reported total gross receipts of \$66,126,289 for services provided within the City and remitted franchise fees of \$15,348,936. As a result of our audit, we determined that Progressive underreported its gross receipts by \$1,009,107 and **owes the City an additional \$372,023** in franchise fees, non-payment penalties, and audit costs. Details of our findings and recommendations are included on pages four through seven of the report.

Overall, we have concluded that controls and procedures require strengthening to ensure compliance with the Agreement. Transactions that we audited were not in compliance with the Agreement and City Code, and improvement is needed to ensure that fees are remitted timely, revenue for all accounts located within City limits is reported, applicable franchise fees are remitted, and solid waste accounts are not misclassified as recovered materials, but are reported to the City.

We wish to express our appreciation for the cooperation and courtesies extended to us by the Progressive staff and the City's Solid Waste Department 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 Tomás P. Regalado
Daniel J. Alfonso, City Manager
Victoria Mendez, City Attorney
Todd Hannon, City Clerk
Alice Bravo, Chief of Infrastructure/Assistant City Manager
Luis Cabrera, Chief Operations/Assistant City Manager
Henry J. Hunnefeld, Assistant City Attorney
Keith Carswell, Director, Solid Waste Department
Jose M. Fernandez, Director, Finance Department
Erica Paschal, Assistant Director, Finance Department
Christopher Rose, Director, Office of Management and Budget
Vanessa Giron, Fiscal Administrator, Solid Waste Department
Demetrio Constantiny, Accounts Receivable Supervisor, Finance Department
Damian Ribar, District Manager, Progressive Waste Solutions of FL, Inc.
Kristin Stock, District Revenue Manager, Progressive Waste Solutions of FL, Inc.
Members of the Audit Advisory Committee
Audit Documentation File

Audit conducted by: Robyn Sachs, CPA, CIA, CISA, CFE, CISSP, Senior IS Auditor
Paulino Garcia, Staff Auditor

Work papers reviewed by: Karuna Khilnani, CPA, CISA, Senior Staff Auditor

**AUDIT OF PROGRESSIVE WASTE SOLUTIONS OF FL, INC.
(f/k/a WASTE SERVICES OF FL, INC.)
MARCH 1, 2008 THROUGH FEBRUARY 28, 2013**

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SCOPE, OBJECTIVES, AND METHODOLOGY

The scope of the audit was to assess and report on whether Progressive Waste Solutions of FL, Inc. (Progressive) complied with the terms of the Agreement and with Chapter 22 of the City Code, which govern the operation of commercial solid waste collection services in the City. The audit primarily covered the period March 1, 2008 through February 28, 2013.

The primary objectives of the audit were:

- To determine whether Progressive properly identified and classified the accounts it serviced within the City.
- To ascertain whether all applicable franchise fees, as stipulated in the Agreement, were properly computed and remitted to the City.
- To review the annual statement of gross receipts that was prepared by an independent Certified Public Accountant (“CPA”), and, to determine if it was submitted to the Solid Waste Department (SWD) within 90 days after the end of the fiscal year.
- 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 follow up on prior audit findings and determine the status of all unresolved and outstanding issues.
- To recommend corrective actions to reduce the risk of reoccurrence of the same issues discovered during this audit.

We conducted this 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.
- Review of applicable provisions within the City Code, Commercial Solid Waste Franchise Agreement, and State of Florida legislation.
- Review of Progressive’s billing records, in electronic format, for City recycling and solid waste hauling activity.
- Observation of Progressive’s field operations and service locations.
- Calculation and verification of gross receipts and related fees.
- Tests of applicable transactions and records.
- Other audit procedures as deemed necessary.

BACKGROUND

On July 22, 2004, the City executed a Non-Exclusive Commercial Solid Waste Franchise Agreement (“2004 Agreement”) with 25 firms which provided each firm the privilege to operate commercial solid waste hauling services in the City from October 1, 2004 through September 30, 2009, with a three-year renewal option through September 30, 2012. On September 30, 2010, a resolution allowed the City to execute a new Non-Exclusive Commercial Solid Waste Franchise Agreement (“2010 Agreement”) with selected firms from October 1, 2010 through September 30, 2015, with three one-year renewal options through September 30, 2018. Progressive Waste Solutions of FL, Inc. (Progressive) was selected as one of the franchisees.

Pursuant to the Agreements and the City Code, the following franchise fees shall be assessed and collected:

- **Gross Receipts Franchise Fees**: The greater of \$500 or 24% of the Gross Receipts generated from accounts within the City. Under the 2004 Agreement, the rate was 22%.
- **Annual Franchise Fee**: \$8,000 the first year under the Agreement, increased by \$500 each subsequent year. Under the 2004 Agreement, the fee started at \$5,000 and was increased by \$500 each year.
- **Permit Per Account Fee (“PPAF”)**: \$75 for each solid waste hauling account and roll-off container active as of October 1st of each fiscal year, of which the franchisee may pass on \$38 to the customer. Under the 2004 Agreement, this fee was \$50 and \$24 was permitted to be passed on to the customer. Temporary roll-off containers placed in service after October 1st must obtain permits valid for 90-day intervals at the prevailing per-account rate, and new accounts acquired after October 1st are subject to the per-account fee.
 - Section 4.13 of the 2004 Agreement specifies that except for the portion of the PPAF allowed to be passed on to the customers, none of the requirements under any of the articles of the Agreements shall result in an increase of pricing to the customer.
- **Safety Inspection Fee**: Annual \$500 regulatory fee per vehicle used by the franchisee in the City, assessed per Florida Statute Section 166.221.
- **Late Payment Penalty**: All late payments of the above-listed fees will cause the franchisee a one and one half percent (1.5%) penalty per month on the balance payable to the City.

Other terms of the Agreement require the following:

- **Insurance**: Franchisee must maintain a public liability policy in the minimum amount of \$1,000,000; automobile liability insurance policy covering franchisee’s operations with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage liability. Franchisee’s certificate shall also include workers’ compensation coverage. The City shall be listed as an additional insured for liability.
- **Performance Bond**: Franchisee agrees to maintain, for the term of the Agreement, a Performance Bond, executed by a surety company duly authorized to do business in the

State of Florida, which shall be counter-signed by an agent for the company. The amount of the bond shall be the greater of \$25,000 or the franchisee's previous 12 months' franchise fees paid to the City.

During the fiscal year ended September 30, 2013, all franchisees operating under the Agreement remitted \$12,401,386 in franchise fees to the City. Progressive is one of the franchisees selected for an audit to determine its compliance with the provisions of the Agreements. A separate audit report will be issued for each of the franchisees audited.

The City's SWD monitors the operations of franchisees and ensures that franchisees remit the applicable fees to the City and comply with the Agreement.

In order to determine whether the City received all franchise fees due under the Agreements, we requested and reviewed Progressive's billing records in electronic format for its City customers, and the list of its Miami-Dade County customers, from March 1, 2008 through February 28, 2013. Our Office independently reviewed Progressive's countywide customer list to determine which accounts were located within the geographic boundaries of the City. Resources used by the OIAG to determine an account's service location included Progressive's account records, the Miami-Dade County Property Appraiser website, Google Maps, and information provided by the City's Geographical Information Service (GIS) sub-group of the Information Technology Department (ITD). Our Office also conducted field audits to customer locations with members of the SWD to verify if trash was placed in containers classified by Progressive as exempt materials-only service.

This audit report describes whether Progressive and the SWD complied with the Agreements and applicable sections of the City Code.

AUDIT FINDINGS AND OVERALL RECOMMENDATIONS

Based on our audit of Progressive Waste Solutions of FL, Inc. (Progressive), we have concluded that:

- Progressive excluded \$514,135 of “administrative fee” revenue from its computation of franchise fees related to nearly all of its City customers, on which \$112,907 in franchise fees and \$28,131 in non-payment penalties are due.
- Progressive misidentified \$143,610 in revenue from City customers erroneously coded as located outside of the City, on which \$39,345 in franchise fees and \$16,123 in non-payment penalties are due.
- Progressive underreported \$245,159 in revenue on several large customer accounts within the City, on which \$59,084 in franchise fees and \$26,080 in non-payment penalties are due.
- Progressive misclassified \$106,203 in revenue generated from solid waste services provided to City customers as “exempt materials” service and excluded this revenue from its gross receipts. As a result, franchise fees of \$24,731 and non-payment penalties of \$11,265 are due to the City.

Overall, Progressive’s controls and procedures require strengthening to ensure compliance with the Agreements. Improvement is needed to ensure that fees are remitted timely, revenue for all non-exempt accounts located within City limits is reported and applicable franchise fees are remitted.

As a result of these deficiencies, Progressive underreported its City revenue by \$1,009,407, and owes the City an additional \$364,400 in franchise fees, nonpayment penalties, and audit costs as of the date of completion of our audit work on December 5, 2013. Due to further discussions with Progressive, the agreed-upon payment date was delayed until February 27, 2014. As a result, additional penalties of \$7,623 are owed, for a total amount due of \$372,023.

Details of our findings and recommendations follow:

FINDING 1: ADMINISTRATIVE FEES WERE EXCLUDED FROM GROSS RECEIPTS AND FRANCHISE FEE PAYMENTS

Progressive did not include the “administrative fees” it collected from City of Miami customers as part of its Gross Receipts and therefore did not pay monthly franchise fees on said administrative fees to the City. Generally, a \$5 administrative fee was assessed on each monthly invoice rendered to customers.

According to Section 5.2 of the 2004 and 2010 Franchise Agreements, the franchisee agrees to remit monthly to the City, a percentage of its Gross Receipts, generated from accounts within the City limits, as a franchisee fee. Also, the Agreements state that Gross Receipts includes all monies collected from customers for services rendered. The only services rendered by Progressive were waste collection/removal. As a result, the administrative fees should have been included in Gross Receipts, and included in the calculation of monthly franchise fees paid to the City.

Progressive billed \$514,135 in administrative fees generated from solid waste services rendered to City of Miami customers from March 1, 2008 until February 28, 2012, but did not report this revenue nor remit any franchise fees on the amount. As a result, \$112,907 in franchise fees, and \$28,131 in late payment penalties apply (totaling \$141,038) and are due to the City.

It should be noted that from March 1, 2012 forward Progressive remitted monthly franchise fees on the administrative fees it collected from City of Miami customers.

FINDING 2: CITY OF MIAMI CUSTOMER ACCOUNTS WERE MISCODED AS EXISTING OUTSIDE THE BOUNDARIES OF THE CITY

According to Section 5.2 of the 2004 and 2010 Franchise Agreements, the franchisee agrees to remit monthly to the City, a percentage of its Gross Receipts, generated from accounts within the City limits.

Our review of Progressive’s Dade County customer listing showed that there were customers located within the City of Miami that Progressive had coded as non-City of Miami, at various points during the audit period. As a result of the miscoded accounts, revenue of \$143,610 was not reported to the City. Consequently, \$33,820 in unpaid monthly franchise fees and penalties of \$13,745 are due (totaling \$47,565) to the City.

In addition, on the miscoded accounts, annual permit per-account fees (PPAF) of \$4,400 and penalties of \$1,961 (totaling \$6,361) as well as roll-off permit fees of \$1,125 and penalties of \$417 (totaling \$1,542) are due to the City.

FINDING 3: REVENUE COLLECTED FROM CITY CUSTOMERS WAS UNREPORTED

According to Section 5.2 of the 2004 and 2010 Franchise Agreements, the franchisee agrees to remit monthly to the City, a percentage of its Gross Receipts, generated from accounts within the City limits, or \$500, whichever is greater.

Our comparison of Progressive’s database extract to what it reported as City of Miami Gross Receipts (which were used as the basis for its payment of monthly franchise fees) showed that

Progressive did not report \$245,159 of its revenue from customers coded as City of Miami. On the unreported revenue, \$57,834 in unpaid monthly franchise fees and penalties of \$25,496 are due (totaling \$83,330).

In addition, on the unreported commercial accounts, annual permit per-account fees (PPAF) of \$875 plus penalties of \$461 (totaling \$1,336) as well as roll-off permit fees of \$375 and penalties of \$123 (totaling \$498) are due to the City.

FINDING 4: SOLID WASTE SERVICES WERE MISCLASSIFIED AS EXEMPT MATERIALS AND EXCLUDED FROM GROSS RECEIPTS AND FRANCHISE FEE PAYMENTS

According to the Franchise Agreements, franchise fees are due on gross receipts generated from solid waste services provided to City customers with the exception of services rendered for recovered materials as described in Florida Statute 403.703 (24). Per the statute, “recovered materials’ means metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but the term does not include materials destined for any use that constitutes disposal. Recovered materials as described in this subsection are not solid waste.”

Through review of disposal reports, onsite inspection, and observation of container and compactor services classified by the auditee as recovered materials service, we determined that \$106,203 of gross receipts were related to solid waste service, not recycling. As a result of this misclassification, franchise fees of \$24,731 and nonpayment penalties of \$11,265 are due (totaling \$35,996).

FINDING 5: AUDIT FEE

Article VI, Section 6.2 of the Agreement stipulates that “if a City audit reveals that Franchisee under reported gross receipts, and results in additional revenue due the City in the amount of \$20,000 (per fiscal year) or more, Franchisee agrees to pay the cost of said audit.

Our review disclosed that Progressive under reported gross receipts by \$1,009,107 resulting in additional franchise fees including penalties, due to the City of \$325,289. Therefore, the audit fee of \$46,734 is due to the City.

OVERALL RECOMMENDATION:

We recommend that the Finance Department bill and Progressive immediately remit the total additional fees and penalties due to the City as outlined on Exhibit I page seven (\$372,023).

EXHIBIT I: SCHEDULE OF UNREPORTED REVENUE AND ADDITIONAL FEES DUE TO THE CITY

**Progressive Waste Solutions of Florida, Inc. (Audit #14-004)
March 1, 2008 through February 28, 2013**

<u>Description</u>	<u>Unreported Revenue</u>	<u>Total Due City</u>	<u>Franchise Fees Due</u>	<u>Nonpayment Penalty</u>
Franchise Fees due on Admin Fees	\$514,135	\$141,038	\$112,907	\$28,131
Franchise Fees due on Miscoded Accounts	143,610	47,565	33,820	13,745
Annual Account Fee due on Miscoded Accounts		6,361	4,400	1,961
Roll-Off Permit fees due on Miscoded Accounts		1,542	1,125	417
Subtotal: Miscoded Accounts	\$143,610	\$55,468	\$39,345	\$16,123
Franchise Fees due on Unreported Accounts	245,159	83,330	57,834	25,496
Annual Account Fee due on Unreported Accounts		1,336	875	461
Roll-Off Permit fees due on Unreported Accounts		498	375	123
Subtotal: Unreported Accounts	\$245,159	\$85,164	\$59,084	\$26,080
Franchise Fees due on Misclassified Containers	236	65	57	8
Franchise Fees due on Misclassified Compactors	105,967	35,931	24,674	11,257
Subtotal: Misclassified Accounts	\$106,203	\$35,996	\$24,731	\$11,265
Audit Fee		\$46,734		
Penalty: December 5, 2013 - February 27, 2014*		\$7,623		
Total:	\$1,009,107	\$372,023	\$236,067	\$81,599

* Note: Audit work was completed on December 5, 2013, however, due to further discussions requested by Progressive, the payment date was delayed until February 27, 2014. As a result, additional nonpayment penalties of \$7,623 accrued and are due.