

# City of Miami

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



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

September 30, 2014

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

Re: Audit of Waste Management Inc. of Florida  
Audit No. 14-003

## Executive Summary

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

During the five-year audit period, WM reported total gross receipts of \$93,879,905 for services provided within the City and remitted franchise fee and other fees of \$21,634,802. As a result of our audit, we determined that WM underreported its gross receipts by \$778,195 and **owes the City an additional \$322,965** in franchise fees, non-payment penalties, and audit costs. Details of our findings and recommendation are included on pages four through seven of this 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 that 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 WM staff and the 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

cc: The Honorable Mayor Tomás P. Regalado  
Daniel Alfonso, City Manager  
Victoria Mendez, City Attorney  
Todd Hannon, City Clerk  
Alice Bravo, Chief of Infrastructure/Deputy City Manager  
Fernando Casamayor, Chief Financial Officer/Assistant City Manager  
Nzeribe Ihekweba, Chief of Operations/Assistant City Manager  
Mario Nunez, Director, Solid Waste Department  
Jose 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  
Donnie Horne, Senior Staff Analyst, Solid Waste Department  
Demetrio Constantiny, Accounts Receivable Supervisor, Finance Department  
James Lambros, South Florida Area Controller, Waste Management Inc. of Florida  
Members of the Audit Advisory Committee  
Audit Documentation File

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

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

**AUDIT OF WASTE MANAGEMENT INC. OF FLORIDA**

**MARCH 1, 2008 THROUGH FEBRUARY 28, 2013**

**TABLE OF CONTENTS**

SCOPE, OBJECTIVES, AND METHODOLOGY .....1

BACKGROUND.....2

AUDIT FINDINGS AND OVERALL RECOMMENDATION .....4

    FINDING 1:    CITY OF MIAMI CUSTOMER ACCOUNTS WERE MISCODED AS EXISTING  
    OUTSIDE THE BOUNDARIES OF THE CITY .....4

    FINDING 2:    ROLL-OFF SOLID WASTE SERVICES WERE MISCLASSIFIED AS EXEMPT  
    MATERIALS AND EXCLUDED FROM GROSS RECEIPTS AND FRANCHISE FEE PAYMENTS .....5

    FINDING 3:    REVENUE COLLECTED FROM CITY CUSTOMERS FOR ROLL-OFF SERVICES  
    WAS NOT REPORTED .....5

    FINDING 4:    COMMERCIAL CONTAINER SOLID WASTE SERVICES WERE MISCLASSIFIED AS  
    EXEMPT MATERIALS AND EXCLUDED FROM GROSS RECEIPTS AND FRANCHISE FEE  
    PAYMENTS .....5

    FINDING 5:    REVENUE COLLECTED FROM CITY CUSTOMERS FOR COMMERCIAL  
    CONTAINER SERVICES WAS NOT REPORTED.....6

    FINDING 6:    THE ANNUAL FRANCHISE FEE WAS PAID LATE.....6

    FINDING 7:    TWO LEASE ACCOUNTS WERE NOT REPORTED .....6

    FINDING 8:    AUDIT FEE .....6

OVERALL RECOMMENDATION:.....7

EXHIBIT I: Schedule of Unreported Revenue and Additional Fees Due to the City.....8

## **SCOPE, OBJECTIVES, AND METHODOLOGY**

The scope of the audit was to assess and report on whether Waste Management Inc. of Florida (WM) 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 WM 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 WM's billing records, in electronic format, for City recycling and solid waste hauling activity.
- Observation of WM'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. Waste Management Inc. of Florida (WM) 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 1<sup>st</sup> 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 1<sup>st</sup> must obtain permits valid for 90-day intervals at the prevailing per-account rate, and new accounts acquired after October 1<sup>st</sup> 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.

All franchisees operating under the Agreement remitted \$12,401,386 and \$12,134,949 in franchise fees to the City in fiscal years ended 2013 and 2012, respectively. WM 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 WM'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 WM'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 WM'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 WM as exempt materials-only service.

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

## **AUDIT FINDINGS AND OVERALL RECOMMENDATION**

Based on our audit of Waste Management Inc. of Florida (WM), we have concluded that:

- WM miscoded \$37,305 of revenue generated from City of Miami customers. As a result, franchise fees of \$8,650 and non-payment penalties of \$4,976 are due.
- WM misclassified \$153,305 of revenue generated from solid waste roll-off services provided to City customers as “exempt materials” service and excluded this revenue from its gross receipts. As a result, franchise fees of \$36,079 and non-payment penalties of \$19,274 are due.
- WM underreported \$62,447 of revenue on several roll-off customer accounts within the City, on which \$14,932 in franchise fees and \$6,895 in non-payment penalties are due.
- WM misclassified \$294,939 of revenue generated from solid waste container services provided to City customers as “exempt materials” service and excluded this revenue from its gross receipts. As a result, franchise fees of \$67,436 and non-payment penalties of \$50,166 are due.
- WM did not report \$228,112 of revenue generated from City solid waste container customers and excluded this revenue from its gross receipts. As a result, franchise fees of \$42,166 and non-payment penalties of \$40,134 are due.
- WM remitted the fiscal year 2011-2012 annual franchise fee of \$8,500 one month late and as a result, a late fee of \$128 is due.
- WM did not report the revenue earned from two lease accounts located within the City. On the revenue of \$2,088, franchise fees of \$501 and late fees of \$147 are due.

Overall, WM’s controls and procedures require strengthening to ensure compliance with the Franchise Agreement. Improvement is needed to ensure revenue for all non-exempt activity is reported and all applicable franchise fees are remitted to the City and fees are remitted in a timely manner.

As a result of these deficiencies, WM underreported its City revenue by \$778,195 and owes the City an additional \$322,965 in franchise fees, nonpayment penalties, and audit costs. (See Exhibit 1, page 8)

Details of our findings and recommendation follow:

### **FINDING 1: 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 Commercial Solid Waste Franchise Agreements, the franchisee agrees to remit monthly to the City of Miami (City), a percentage of its Gross Receipts, generated from accounts within the City limits.

Our review of Waste Management's (WM) Miami-Dade County customer listing showed that there were customers located within the City that WM had coded as non-City accounts. As a result of the miscoded accounts, revenue of \$37,305 was not reported to the City. Consequently, franchise fees of \$8,650 and penalties of \$4,976 are due (totaling \$13,626).

**FINDING 2: ROLL-OFF 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 roll-off disposal reports, we determined that \$153,305 of gross receipts was related to solid waste service, not recycling. As a result of this misclassification, franchise fees of \$36,079 and non-payment penalties of \$19,274 are due (totaling \$55,353).

**FINDING 3: REVENUE COLLECTED FROM CITY CUSTOMERS FOR ROLL-OFF SERVICES WAS NOT REPORTED**

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 WM's City billing database extract to what WM reported as City of Miami Gross Receipts (which were used as the basis for its payment of monthly franchise fees) showed that WM did not report \$62,447 of its revenue from roll-off customers coded as City of Miami. On the unreported revenue, franchise fees of \$14,932 and penalties of \$6,895 are due (totaling \$21,827).

**FINDING 4: COMMERCIAL CONTAINER 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, we determined that \$294,939 of commercial container gross receipts were related to solid waste service, not recycling. As a result of this misclassification, franchise fees of \$67,436 and non-payment penalties of \$50,166 are due (totaling \$117,602).

**FINDING 5: REVENUE COLLECTED FROM CITY CUSTOMERS FOR COMMERCIAL CONTAINER SERVICES WAS NOT REPORTED**

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 WM's City billing database extract to what WM reported as City of Miami Gross Receipts (which were used as the basis for its payment of monthly franchise fees) showed that WM did not report \$228,112 of its revenue from commercial container customers coded as City of Miami. On the unreported revenue, franchise fees of \$42,166 and penalties of \$40,134 are due (totaling \$82,300).

**FINDING 6: THE ANNUAL FRANCHISE FEE WAS PAID LATE**

Article V, Section 5.4 of the Agreement requires the franchisee to remit to the City annually (due October 1) the sum of \$8,000 (increased by \$500 for year after fiscal year 2010) for the right to be a franchisee for Commercial Solid Waste Services within the City. Failure to remit the required annual franchise fee by the due date will cause the franchisee a one and one half percent (1.5%) penalty per month on the balance due.

Our audit disclosed that WM remitted its annual franchise fee for the fiscal year 2011-2012, one month late. As a result of the late remittance, a late payment penalty fee of \$128 is due.

**FINDING 7: TWO LEASE ACCOUNTS WERE NOT REPORTED**

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 review disclosed that WM did not report the revenue for two City lease accounts. On revenues of \$2,088, franchise fees of \$501 and late fees of \$147 are due (total \$648).

**FINDING 8: 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 WM underreported gross receipts by \$778,195 resulting in additional franchise fees including penalties, due to the City of \$291,484. Therefore, the audit fee of \$31,482 is due to the City.

**OVERALL RECOMMENDATION:**

We recommend that the City of Miami Finance Department bill, and WM immediately remit, the total additional fees and penalties due to the City (\$322,965) as outlined in Exhibit I on the following page.

**MANAGEMENT RESPONSE:**

The Finance Department will bill Waste Management for the full amount due (\$322,965).

**EXHIBIT I: Schedule of Unreported Revenue and Additional Fees Due to the City**

**Waste Management Inc. of Florida (Audit #14-003)  
March 1, 2008 through February 28, 2013**

<b>#</b>	<b>Description</b>	<b>Unreported Revenue</b>	<b>Total Due</b>	<b>Franchise Fees Due</b>	<b>Late Payment Charge</b>
1	Miscoded Accounts	\$37,305	\$13,626	\$8,650	\$4,976
2	Misclassified Roll-Offs (Not Exempt)	153,305	55,353	36,079	19,274
3	Unreported Roll-Offs	62,447	21,827	14,932	6,895
4	Misclassified Containers (Not Exempt)	294,939	117,602	67,436	50,166
5	Unreported Containers	228,112	82,300	42,166	40,134
6	Annual Franchise Fee	-	128	-	128
7	Lease Accounts	2,088	648	501	147

<b>Subtotal:</b>	<u>\$778,195</u>	<u>\$291,484</u>	<u>\$169,764</u>	<u>\$121,720</u>
------------------	------------------	------------------	------------------	------------------

<b>Audit Cost:</b>	\$31,482
--------------------	----------

<b>Total Due:</b>	<u><b>\$322,965</b></u>
-------------------	-------------------------