

City of Miami

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



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September 23, 2016

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.
Report No. 16-09

Executive Summary

We have completed an audit of selected financial transactions and records of Progressive, formerly known as Progressive Waste Solutions of FL, Inc. (Progressive), primarily for the period February 1, 2015 through January 31, 2016. 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 audit period, Progressive reported total gross receipts of \$18,229,530 for services provided within the City and remitted franchise fees of \$4,862,114. As a result of our audit, we determined that Progressive underreported its gross receipts by \$202,940 and **owes the City an additional \$73,666 in franchise fees and non-payment penalties**. The cost of the audit is due under the Agreement and will become payable by Progressive when commercial container (non roll-off) recovered materials hauling tests are completed.

Overall, we have concluded that transactions that we audited were not in compliance with the Agreement and City Code, and improvement is needed. Details of our findings and recommendations are included on pages five through seven of the report.

We wish to express our appreciation for the cooperation and courtesies extended to us by Progressive personnel and the City's Solid Waste, Finance, Risk Management, and Information Technology Departments during the audit.

Sincerely,

Handwritten signature of 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
Fernando Casamayor, Assistant City Manager
Nzeribe Ihekwebaba, Assistant City Manager
Alberto Parjus, Assistant City Manager
Mario Nunez, Director, Solid Waste Department
Jose M. Fernandez, Director, Finance Department
Christopher Rose, Director, Office of Management and Budget
Erica Paschal, Assistant Director, Finance Department
Vanessa Giron, Fiscal Administrator, Solid Waste Department
Demetrio Constantiny, Accounts Receivable Supervisor, Finance Department
Damian Ribar, 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 Information Systems Auditor

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

**AUDIT OF PROGRESSIVE WASTE SOLUTIONS OF FL., INC.
FEBRUARY 1, 2015 THROUGH JANUARY 31, 2016
Report No. 16-09**

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SCOPE, OBJECTIVES, AND METHODOLOGY

The scope of the audit was to assess and report on whether Progressive complied with the terms of the Commercial Solid Waste Franchise Agreement (Agreement) and with applicable sections Chapter 22 of the City Code governing the operation of commercial solid waste collection services in the City. The audit primarily covered the period February 1, 2015 through January 31, 2016.

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 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.
- Note: results of audit tests concerning Progressive's recovered materials commercial container (non roll-off) hauling activity will be reported separately.

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.
- Calculation and verification of gross receipts and related fees.
- Tests of applicable transactions and records.
- Other audit procedures as deemed necessary.

BACKGROUND

On September 30, 2010, a resolution allowed the City to execute a Non-Exclusive Commercial Solid Waste Franchise Agreement (“Agreement”) with selected firms from October 1, 2010 through September 30, 2015, with three one-year renewal options through September 30, 2018. Progressive, formerly known as Progressive Waste Solutions of FL, Inc., was selected as one of the franchisees. On March 14, 2016, the City executed a new franchise agreement pursuant to request for qualifications No. 495344, however, the 2010 Agreement was in effect during the full period of this audit and was the basis for audit testing.

Pursuant to the Agreement and the City Code, the City shall assess and collect the following franchise fees:

- **Gross Receipts Franchise Fees**: The greater of \$500 or 24% of the Gross Receipts, as defined in the Agreement, generated from accounts within the City, due monthly.
- **Annual Franchise Fee**: \$8,000 the first year under the Agreement, increased by \$500 each subsequent year. For the period under audit, the amount of the fee was \$10,500.
- **Permit Per Account Fee**: \$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. 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.
- **Safety Inspection Fee**: Annual \$500 regulatory fee per vehicle used by the franchisee in the City.
- **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, 2015, all franchisees operating under the Agreement remitted approximately \$13.8 million 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 Agreement. A separate audit report will be issued for each of the franchisees audited.

The City's Solid Waste Department 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 from Progressive under the Agreement, we requested and reviewed Progressive's billing records in electronic format for its City customers from February 1, 2015 through January 31, 2016, and its list of Miami-Dade County customers. 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 City's Information Technology Department.

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

AUDIT FINDINGS AND OVERALL RECOMMENDATION

Based on our audit of Progressive, we have concluded that:

- Progressive misclassified revenue generated from solid waste services provided to City customers as “exempt materials” service and excluded this revenue from its gross receipts. For roll-off hauling activity, revenue of \$111,755 was misclassified, on which \$26,821 in franchise fees and \$5,226 in non-payment penalties are due. Test results for routed commercial recovered material container (non roll-off) hauling activity will be reported separately.
- Annual permit per account fees for 13 customers were not remitted, and as a result, permit fees of \$975 and non-payment penalties of \$176 are due. Also, Progressive remitted the PPAF payment for all other accounts two (2) months late. As a result, a late payment fee of \$14,297 is due.
- The annual franchise fee was paid late and as a result, a late payment fee of \$315 is due.
- Progressive underreported \$3,821 in revenue from accounts within the City, on which \$917 in franchise fees and \$198 in non-payment penalties are due.
- Progressive misidentified \$87,364 in revenue from City customers erroneously coded as located outside of the City, on which \$20,967 in franchise fees and \$3,774 in non-payment penalties are due.

Overall, Progressive’s controls and procedures require strengthening to ensure compliance with the Agreement. 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 \$202,940, and **owes the City an additional \$73,666** in franchise fees and nonpayment penalties.

Details of our findings and recommendations follow on pages five through seven.

FINDING 1: SOLID WASTE SERVICES WERE MISCLASSIFIED AS EXEMPT MATERIALS AND EXCLUDED FROM GROSS RECEIPTS AND FRANCHISE FEE PAYMENTS

According to the Agreement, 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. Florida Statute 403.703 defines recovered materials as “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.” The Statute further state recovered materials are not considered source separated when they “contain more than 10 percent solid waste by volume or weight.”

Through review of disposal reports for recovered materials of roll-off hauling activities, we determined that revenue of \$111,755 was related to solid waste activity, not recycling of exempt materials. As a result of this misclassification of roll-off activity, \$26,821 in franchise fees and nonpayment penalties of \$5,226 are due (totaling \$32,047). Results of similar tests of hauling activity concerning recovered materials commercial containers (non roll-off) will be reported separately from this audit report.

FINDING 2: ANNUAL PERMIT PER ACCOUNT FEES WERE PAID LATE AND UNREMITTED FOR 13 CUSTOMERS

Section 5.6 of the Agreement states “franchisee agrees to remit annually a Permit Per Account Fee in the amount of seventy-five (\$75.00) (due October 1) for each account and each roll-off effective October 1st of every new fiscal year to those accounts and roll-offs booked as of October 1st of every new fiscal year with whom they contract for the provision of commercial or roll-off solid waste service. [...] All late payments of this fee will cause the franchisee a one and one half percent (1.5%) penalty per month on the balance due.”

Our audit found that Progressive did not remit the annual permit per account fee (PPAF) for 13 customers. As a result, \$975 in permit fees and \$176 in nonpayment penalties (totaling \$1,151) are due. Additionally, Progressive remitted the PPAF payment for all other accounts two (2) months late. As a result, a late payment fee of \$14,297 is due.

FINDING 3: THE ANNUAL FRANCHISE FEE WAS PAID LATE

Section 5.4 of the Agreement states “Franchisee agrees to remit to the City annually (due October 1) the sum of \$8,000 for the right to be a franchisee for Commercial Solid Waste Services within the City; said fee shall increase annually by \$500. 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.”

The amount of the Annual Franchise Fee due during our period was \$10,500; we found that Progressive paid this fee two (2) months late. As a result, a late fee of \$315 is due.

FINDING 4: REVENUE COLLECTED FROM CITY CUSTOMERS WAS UNREPORTED

According to Section 5.2 of the Agreement, 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 \$3,821 of its revenue from customers coded as City of Miami. On the unreported revenue, \$917 in unpaid monthly franchise fees and penalties of \$198 are due (totaling \$1,115) to the City.

FINDING 5: CITY OF MIAMI CUSTOMER ACCOUNTS WERE MISCODED AS EXISTING OUTSIDE THE BOUNDARIES OF THE CITY

According to Section 5.2 of the Agreement, 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 Miami-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 \$87,364 was not reported to the City. Consequently, \$20,967 in unpaid monthly franchise fees and penalties of \$3,774 are due (totaling \$24,741) to the City.

FINDING 6: 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 underreported Gross Receipts by \$202,940 resulting in additional franchise fees including penalties, due to the City of \$73,666. The audit fee is due to the City and will become payable when commercial container (non roll-off) recovered materials hauling tests are completed.

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 on page seven (**\$73,666**).

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

**AUDIT OF PROGRESSIVE WASTE SOLUTIONS OF FL, INC.
FEBRUARY 1, 2015 THROUGH JANUARY 31, 2016
Audit No. 16-09**

<u>Finding</u>	<u>Description</u>	<u>Revenue</u>	<u>Total Due</u>	<u>Fees Due</u>	<u>Penalty Due</u>
1	Misclassified Roll-Offs (Note 1)	\$ 111,755	\$ 32,047	\$ 26,821	\$ 5,226
2	Late Payment of Permit Per Account Fee	-	14,297	-	14,297
2	Unremitted Annual Permit Per Account Fee	-	1,151	975	176
3	Late Payment of Annual Franchise Fee	-	315	-	315
4	Unreported Revenue	3,821	1,115	917	198
5	Miscoded Accounts	87,364	24,741	20,967	3,774
6	Audit Cost	-	Note 2	-	-
Total:		\$ 202,940	\$ 73,666	\$ 49,680	\$ 23,986

Notes:

- 1) Test results for commercial container (non roll-off) recovered materials hauling activity for this audit period will be reported separately.
- 2) The Audit Cost is due pursuant to Paragraph 6.2 of the 2010 Non-Exclusive Commercial Solid Waste Franchise Agreement. The Audit Cost will be assessed for the scope of work above and work pertaining to commercial container (non roll-off) recovered materials hauling activity. The Audit Cost will become payable by the auditee when the commercial container recovered materials hauling tests are completed.