



MIAMIBEACH

BUDGET AND PERFORMANCE IMPROVEMENT
Internal Audit Division

INTERNAL AUDIT REPORT

TO: Kathie G. Brooks, Interim City Manager

FROM: James J. Sutter, Internal Auditor

DATE: September 06, 2012

AUDIT: Choice Environmental Services, Inc. (Non-Exclusive Franchise Contractor)

PERIOD: July 2009 to June 2012

This report is the result of a regularly scheduled audit of the Franchise Service Agreement with Choice Environmental Services, Inc., (Choice) which includes any revenues reported for Franchise Waste, Public Right-of-Way and Roll-offs.

INTRODUCTION

Chapter 90, Article IV Solid Waste of the City Code provides for the City to have Non-Exclusive Franchise Waste Contractor Agreements and Service Agreements with three waste contractors: Choice Environmental Services, Waste Service of Florida and Waste Management. These contractors provide waste collection and recycling services for Commercial and Residential for multi-family residences with eight (8) or more units in the City of Miami Beach. According to the Non-Exclusive Franchise Waste Contractor Agreement, the waste contractor is granted the franchise and is required to undertake and perform each and every obligation set forth in this Agreement. The "Service Agreement" covers the provision of additional solid waste collection and disposal and recycling services at certain City owned facilities and properties. The Service Agreement is intended to have a term that will run concurrent with the terms of the Non-Exclusive Franchise Waste Contractor Agreement.

The franchise previously held by Davis Sanitation, Inc. has been assumed by Choice Environmental Services of Miami, Inc. The assignment was approved by the Mayor and City Commission on June 5, 2009, pursuant to Resolution No.2009-27084. On March 10, 2010, the Mayor and City Commission approved, on first reading, an amendment to the Solid Waste Ordinance, which provided, in part, for an extension of the allowable initial franchise term from 3 to 5 years. Choice's contract will expire on August 31, 2015.

The contractors have also requested, and the City has agreed, that as further and additional consideration for Contractor's agreement to amend the Service Agreement to include more additional public services and benefits such as: The Contractors shall provide the City with two (2) hazardous material pickup events, per year, at sites to be specified and approved by the City Manager. Upon its execution of this Amendment No. 1, and thereafter on October 1st of each year during the Term of the Service Agreement, each Contractor shall provide the City with an annual cash contribution, which sum shall be equivalent to the latest and most current purchase price of fifteen (15) of the urban style recycling containers utilized by the City. The Contractors shall prepare and distribute to all franchise accounts in the City a common brochure that explains recycling options and Miami-Dade County recycling requirements.

The Contractors shall reimburse the City for security services that are provided at each of the "Wasteful Weekend" sites held in the City each month. Each Contractor, with the exception of General Hauling Services, Inc.¹, shall pay to the City one half of a percent (.5%) of its gross revenues in the City, to be used by the City to establish a fund for implementation of sustainable initiatives in the City of Miami Beach (which initiatives shall be as approved by the City Commission, in its sole and reasonable discretion). The initial contribution shall increase in each of the next two (2) years of the Term, by an additional one half percent (.5%) each year (i.e. until a total contribution of one and a half percent of gross revenues is reached, and shall be due in the third year). The contribution will be payable and due at the time of, and in conjunction with, Contractors' franchise fee payments to the City.

Upon its execution of this Amendment No. 1, and thereafter on October 1st of each year during the Term, each Contractor shall pay their market share percentage of the \$75,000 that is due per year for support of educational programs in the City (in such time, place and manner as determined by the City Commission, in its sole and reasonable discretion).

The number of franchise waste contractors for solid waste collection and disposal shall remain at four (4) for the remainder of the initial term of the existing franchises; provided, however, that if the number drops to less than four (4) at any time during the term, then the City Commission may select a new franchisee (or franchisees) to bring the number back to four.

Section 90-221 City Code 1964, 14A-16 (a) requires each franchise waste contractor to pay the City a franchise fee consisting of a percentage of the licensee's total monthly gross receipts established by resolution of the City Commission. Effective October 1, 2007 as required pursuant to section 90-278 of the City Code, the franchise fee paid to the city by its franchise waste contractors was raised from 16% of the franchisee's total monthly gross receipts for waste removal in the city, to 18% of said gross receipts. However, the Public Right-of-way franchise fees remained the same (2%).

Sections 90-278 City Code 1964, 14A-7(c) requires each Roll-off waste contractor to pay the City a franchise fee consisting of a percentage of the licensee's total monthly gross receipts established by resolution of the City Commission. Effective October 1, 2008 the on-street and off-street permit fee for Roll-off waste containers serviced by licensed contractors was raised from 16% to 18%.

BACKGROUND

Previously, Internal Audit conducted an audit of Choice for period of June 2006 to March 2009. Our audit report dated June 29, 2009 produced an audit assessment of \$34,325.31 based on franchise fees collected on exempted recycling services. It was subsequently determined that majority of these fees were not collected by Choice and represented unpaid bills due to Choice and therefore were not due to the City.

In lieu of Choice remitting to the City the franchise fees for the exempt recycling service, Choice credited their customer charged in error and provided Internal Audit with proper documentation of proof of credit. We confirmed with the third party receiving the credit and were satisfied of Choice's corrective action. Therefore, we revised our previously audit assessment to zero.

OVERALL OPINION

According to the City's Residential Service Agreement Contributions with Choice (Section 11.4 & 11.5), Choice remitted cash contribution for the support of the International Baccalaureate Program and the funding for the City to purchase litter cans. Hence, based on the Service Agreement Exhibit-B1 that states additional services and public benefits must be provided, Choice has complied by paying for Hazardous Waste pick-up, Recycling containers, Security guard and Educational support.

Choice has obtained their required annual City business tax receipt and the required insurance in adherence with Section 90-223 of the City Code and the signed agreement. However, Choice has not fully complied with the City Codes as it relates to reporting certain requirements for Waste Hauler contractors. The following items were noted during our audit:

- Gross receipts relating to environmental fees in the amount of \$51,813.44 were not reported to the City. Resulting in \$10,362.66 of franchise fees and \$988.00 interest due to the City.
- Choice failed to remit the correct gross receipts amounts and the correct percentages of the Sustainable Initiatives. Therefore Choice owes the City the amount of \$ 24,540.61.
- Choice did not remit the payment for March 2012 Roll-off monthly fee return in the amount of \$2,762.78. Upon notification, payment was made during the audit.
- Choice failed to remit the 2% Right-of Way for April 2012 in the amount of \$2,591.73. Upon notification, this was paid during the audit.
- Choice did not comply with City Code sections requiring monthly report of recyclable material and deliver to the Finance Department a statement of annual gross receipts generated from accounts within the city certified by an independent certified public accountant reflecting annual list of accounts.
- Choice did not comply with the following sections of the Terms of Service Agreement by not providing the City with the collection route schedule from October 2009 to March 2012.

PURPOSE

The purpose of this audit is to determine whether the franchise waste contractor complied to the franchise agreement and reported all gross receipts to the City, were correctly calculated, received timely and accurately recorded by the City, and the contractor was in compliance with designated sections of the City Code and related Ordinances.

SCOPE

1. Review the private waste contractor's books and records to confirm that their billings were correct; their gross receipts were correctly calculated and support the monthly franchise fee and public right-of-way payments submitted to the City.
2. Confirm that the private waste contractor timely sent the City the required reports in adherence with the terms listed in the City Code.

3. Confirm that the private waste contractor is timely sending the required Monthly Report of Gross Receipts along with their remittance to the City.
4. Confirm that the private waste contractor timely obtained their required annual City business tax receipt.
5. Confirm that the private waste contractor timely submitted their annual Certified Public Accountant (CPA) Statements of Gross Receipts to the City, and that amounts reported therein agree with corresponding totals reported on the waste contractor's Monthly Reports of Gross Receipts.
6. Confirm that the private waste contractor has obtained the required insurance in adherence with Section 90-223 of the City Code and the signed service agreement.
7. Confirm that all monthly franchise and public right-of-way fee payments were timely and correctly recorded in the City's Financial System.
8. Confirm that the private contractors are complying to the provision with the waste hauler contractor including additional services and public benefits for support of Educational programs, Hazardous waste pick up, Recycling containers, Security guard and Sustainable Initiatives.

FINDINGS, RECOMMENDATIONS AND MANAGEMENT RESPONSE

1. Finding – *Unreported Gross Receipts*
 - a. City Code Section 90 - 221 defines gross receipts as *"the entire amount of the fees collected by the licensee, exclusive of taxes as provided by law, whether wholly or partially collected, within the city, for solid waste removal and disposal"*. Therefore, all monies collected by the roll-off waste contractor from Miami Beach service addresses, including finance fees, dumpster, late fees, environmental fees and fuel surcharges should be included in reported gross receipts. Out of \$5,180,972.22 audited gross receipts, Choice paid the City of Miami Beach \$1,019,359.58 in franchise fees for \$5,129,158.78 in reported gross receipts. Additionally, Choice collected environmental fees for the amount of \$51,813.44 and failed to report these revenues from March 2010 to April 2011 to the City. This resulted in franchise fees due in the amount of \$10,362.66 with corresponding interest of \$988.00. According to Choice's record, they enhanced their database transaction code and have been paying the City of Miami Beach the environmental fees from May 2011 to present.
 - b. Amendment No.1 (Exhibit "B-1" Additional Services and Public Benefits to be provided): Upon execution of this Amendment No.1 by the parties hereto, and thereafter throughout the Term of the Service Agreement, Contractors shall provide the City with the following additional services and public benefits (which services and benefits shall be in addition to being currently provided by Contractors pursuant to the Exhibit "B" of the Service Agreement). (5) *"Each Contractor, with the exception of General Hauling Services, Inc.¹, shall pay to the City one half of a percent (.5%) of its gross revenues in the City, to be used by the City to establish a fund for implementation of sustainable initiatives in the City of Miami Beach (which initiatives shall be as approved by the City Commission, in its sole and reasonable discretion). The initial contribution shall increase in each of the next two (2) years of the Term, by an additional one half percent (.5%) each year (i.e. until a total contribution of one and a half percent of gross revenues is reached, and shall be due in the third year). The contribution will be payable and due at the time of and in conjunction with, Contractors' franchise fee payments to the City"*. Choice did not pay the City of Miami Beach the Sustainable Initiatives fees for a period of 10 months and failed to apply the correct amount of percentages. Therefore, they did not fully comply

Internal Audit Report
 Choice, Inc. (Non-Exclusive Franchise Waste Contractor)
 September 06, 2012

with the City Code. As a result, Choice owes the City of Miami Beach the amount of \$24,540.61 in Sustainable fees.

- c. Roll-off monthly returns for February 2011 to July 2011 were filed late, therefore late fees of \$250.00 and interest of \$150.50 are due.
- d. Choice did not remit payment in the amount of \$2,762.78 with the monthly Roll-off fee return for March 2012. Upon notification, payment was made during the audit.
- e. Choice did not file a return for the 2% Right -of Way for April 2012 which resulted in the amount of \$2,591.72 due to the City. Upon notification, this was paid during the audit.

FRANCHISE WASTE & PUBLIC RIGHT-OF-WAY & ROLL-OFF

	2009 (Jul-Dec.)	2010 (Jan-Dec.)	2011 (Jan-Dec.)	2012 (Jan-Jun.)	TOTAL
Audited Gross Receipts	\$770,369.21	\$1,729,770.25	\$1,795,233.08	\$885,599.68	\$5,180,972.22
Less Reported Gross Receipt	770,369.21	1,692,760.65	1,780,429.24	885,599.68	5,129,158.78
Unreported Revenues	0.00	37,009.60	14,803.84	0.00	51,813.44
Franchise fees (a)	0.00	7,401.90	2,960.76	0.00	10,362.66
Interest on Franchise fees (a)	0.00	0.00	988.00	0.00	988.00
Sustainable Initiatives fees (b)	0.00	5,772.60	10,727.80	8,040.21	24,540.61
Roll off Late fees and Interest (c)	0.00	0.00	400.50	0.00	400.50
Total Due	0.00	\$13,174.50	\$15,077.06	\$8,040.21	\$36,291.77

Recommendation(s)

Choice must report all gross receipts as per the City code. This includes but is not limited to environmental fees, finance charges, dump fees, extra month fees, fuel surcharges, dry run, overload, relocation and waiting time charges.

2. Finding – Required Reporting

Choice did not submit the following documents in accordance with the listed City Code sections during the audit period:

- a. Section 90-308 Monthly Report, *“Each recycling contractor shall deliver monthly to the city manager an accurate report regarding the nature and disposition and volume of Recyclable Materials collected by it from each account within the limits of the city. Upon request by the City Manager, each contractor shall also furnish the city with verifiable information regarding the method and place of final disposal or distribution of said materials.”* Choice did not deliver to the City Manager the required monthly report of recyclable materials as required by the City Code. Going forward, a list that states address, size, number of containers or toppers and frequency serviced must be delivered monthly.

- b. Section 90-223 Monthly Report, *“Licensed contractors shall on or before 60 days following the close of its fiscal year deliver to the finance department a statement of its annual gross receipts generated from accounts within the city certified by an independent certified public accountant reflecting gross receipts within the city for the preceding fiscal year”* Effective October 1, 2008 the ordinance requires that contractors having an annual gross receipts reported to the City over \$200,000.00 shall, on or before 60 days following the close of their fiscal year, deliver to the Finance Department a statement of annual gross receipts generated from accounts within the city certified by an independent certified public accountant reflecting gross receipts within the city for the preceding fiscal year. Choice must comply with the designated sections of the City Codes by submitting a certified statement of gross receipts.

Recommendation(s)

Choice must submit to the City Manager the required monthly report of recyclable materials and submit a statement of annual gross receipts generated from accounts within the city certified by an independent certified public accountant reflecting gross receipts within the 2010 and 2011 fiscal years.

4. Finding – Terms of Service Agreement

Choice did not submit the following documents in accordance with the listed City Code sections during the audit period:

Sections 6.8” Contractor shall provide the City with schedules for all collection routes and keep such information current. If any change in the collection routes occurs, then the City shall be immediately notified in writing”. Choice has not provided the City with the schedules for all collection routes. If any change in the collection routes occurs, then the City shall be immediately notified in writing.

Recommendation(s)

Choice must provide the City with the schedules for all collection routes. If any change in the collection routes occurs, then the City shall be immediately notified in writing.

EXIT CONFERENCE

Audit findings were e-mailed on August 24, 2012 to Choice. They provided documentation for an additional two payments which were reflected in our findings above.

JJS: CD

Audit performed by Carmin Dufour

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