



"The Capital City of the Palm Beaches"

AUDIT COMMITTEE
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TO: Honorable Mayor
and
Members of the City Commission

FROM: Commissioner Ray Liberti, Audit Committee Chairperson

DATE: May 20, 2005

**SUBJECT: Transmittal of Internal Audit Report No. 2005-003
AUDIT OF S&S NATIONAL WASTE, INC.,
ROLL-OFF CONTAINER AND COMPACTOR FRANCHISEE**

Attached is the report on **Audit of S&S National Waste, Inc., Roll-Off Container and Compactor Franchisee**, approved by the Audit Committee at its regular meeting held today.

The audit found that S&S had not accurately remitted franchise fees since the fees were implemented in May 2002. City Code, Sec. 74-122, regulating roll-off container and compactor collection and disposal services, requires non-exclusive franchisees to pay monthly fees to the Finance Department in the amount of fifteen dollars (\$15) per pull. The term "pull" is not defined in these provisions and S&S contends they are in compliance since the definition of a pull is not specified in the City Code.

The report identifies the degree of underpayment and recommends collection or revocation of the franchise. It also includes recommendations for revisions to language in the Code as well as additional monitoring of remittances by franchisees.


Ray Liberti, Commissioner, Audit Committee Chairperson

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"The Capital City of the Palm Beaches"

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TO: Lois J. Frankel, Mayor

FROM: Imogene Isaacs, CIA, CGFM, Internal Auditor

DATE: May 20, 2005

SUBJECT: REPORT NO. 2005-003
AUDIT OF S&S NATIONAL WASTE, INC.,
ROLL-OFF CONTAINER AND COMPACTOR FRANCHISEE

INTRODUCTION

We have completed an Audit of S&S National Waste, Inc. (S&S), Roll-off Container and Compactor Franchisee. S&S is operating under a nonexclusive franchise to provide roll-off and compactor collection and disposal services as provided by City Code, Chapter 74, Article V. The audit was requested by the Finance Department and approved by the Audit Committee.

The purpose of the audit was to determine whether S&S complied with the terms and conditions of the franchise; specifically, that franchise fees were properly collected, accurately reported, and paid to the City of West Palm Beach (City).

CONCLUSIONS AND SUMMARY OF FINDINGS

We determined (1) that S&S, during the life of the franchise, did not pay accurate fees and (2) that the amount of underpaid franchise fees totaled \$39,892.50 through the October 2004 remittance plus \$7,507.31 interest through March 2005.

Examination of S&S invoices showed 2,659.5 more load units billed to customers than were reported to the City. This was due to the practice by S&S of remitting one franchise fee per invoice/site visit regardless of the number of containers emptied or loads billed. Two other City franchisees tested remit one fee per container emptied as we believe is intended by the City Code provisions.

To have fair and equitable competition, all franchisees must follow the same criteria. To do this, industry specific jargon and the basis for the fee should be clearly defined in the City Code and franchise documents to avoid misinterpretation. Furthermore, there needs to be better Finance review and monitoring of franchisees and inaccurate franchise fee payments need to be addressed and corrected as soon as they are noted.

Specific areas needing attention are presented under Findings, Recommendations, and Responses and are summarized below.

Finding No. 1: Underpayment of franchise fees by S&S should be promptly collected or the franchise revoked details the extent of the underpayment and the inconsistent application of their method for calculating fees due the City.

Finding No. 2: Roll-off Container and Compactor Franchise provisions in the City Code need to be clarified points out sections of the City Code where specific language is needed. It also underscores the need for issuance of formal franchise documents.

Finding No. 3: Additional monitoring of compliance with franchises could reduce instances of underpayments suggests periodic audit samples by Finance.

We thank Gary Porro, Cash Management Treasury Supervisor, Finance Department, and the staff at S&S National Waste, Inc., for their assistance and cooperation during the audit.

This audit was conducted by Scott Craig, CIA, Senior Assistant Internal Auditor.

SCOPE AND METHODOLOGY

The scope of the audit was from franchise origination in May 2002 through the October 2004 remittance covering September pick ups. We reviewed documentation maintained by the City for that period as well as that maintained by S&S. We also sampled documentation at two other franchisees to verify their franchise fee billing and remittance methods.

This audit was performed in accordance with generally accepted government auditing standards. In performing this audit, we:

- reviewed City Code, Chapter 74, Article V, regulating roll-off and compactor container collection and disposal services and other portions of Chapter 74 as necessary;
- reviewed the S&S application;
- obtained City copies of remittances paid the City with lists of invoices and scheduled the history of payments from S&S;
- met with S&S representatives to determine their remittance process and the availability and accessibility of their records;
- reviewed S&S client billings to City customers and compared this data to that reported to the City;
- reviewed S&S incorporation records and filings available from the State of Florida;
- tested a sample of billing records for two other franchisees to determine the criteria they used in calculating franchise fees; and
- performed such other tests of procedures, practices, and records as deemed necessary.

BACKGROUND AND PERTINENT INFORMATION

City Code, Chapter 74, covers Solid Waste with Article V, Sec. 74-121 through Sec. 74-128, containing the provisions over roll-off container and compactor franchises. City Code, Sec. 74-122(b), requires franchise fees in the amount of fifteen dollars (\$15.00) per pull be paid each month.

The enabling ordinance, Ordinance 3523-02, passed April 15, 2002 and provided that franchises would initially be granted for a period of three years – the approval year and one-year renewals during the second and third years of the franchise.

A difference in interpretation between the City and S&S regarding the meaning of a “pull” under the franchise exists. We tried without success to find an industry accepted definition of a "pull" for a roll-off container, even querying the Solid Waste Association of North America. Our research leads us to believe that common usage indicates any time a container is emptied or trash or debris is picked up and removed, it is essentially a pull.

S&S employs a technique where each hauler empties several containers into their truck using a clamshell rather than removing the containers. S&S feels their truck load constitutes one pull subject to the \$15.00 fee. They also contend they are in compliance since the definition of a pull is not specified in the City Code.

FINDINGS, RECOMMENDATIONS, AND RESPONSES

Finding No. 1: Underpayment of franchise fees by S&S should be promptly collected or the franchise revoked

S&S had not accurately remitted franchise fees since the fees were implemented in May 2002. S&S underpaid franchise fees through the October 2004 remittance by \$39,892.50 plus \$7,507.31 interest due as of March 31, 2005 for a total of \$47,399.81. The City billed S&S for that amount on March 10, 2005 but subsequently granted a requested extension until June 30, 2005.

City Code, Sec. 74-122, regulating roll-off container and compactor collection and disposal services requires non-exclusive franchisees pay monthly fees to the Finance Department in the amount of fifteen dollars (\$15) per pull. The term “pull” is not defined in these provisions.

Notwithstanding, S&S invoices state “20 yards of C & D is equivalent to 1 load. 12 yards of heavy material ie: dirt, rock, sand and concrete is equivalent to 1 load.” They charge their customers by the load as stated but do not remit fees to the City using this same methodology.

In April 2004, the Treasury Division, Finance Department, obtained copies of invoices paid to S&S by a few of their customers as well as copies of some purchase orders for the services to verify remittances to the City by S&S were accurate. In May 2004, representatives from the Public Utilities Department and the Treasury Division met with S&S management to discuss their concerns regarding methods used in fee calculations. S&S management expressed they were in full compliance since a pull was not

specifically defined by the City. They were also of the opinion that only the dumping of their truck constituted a pull regardless of the number of containers emptied into it. The City disagreed.

S&S bills usually do not break out separately the franchise fee from the amount charged per load to the customer. We noted a few exceptions to this normal practice: On three invoices in June 2004 to BJ&K the Malibu Bay project was billed a \$15 franchise fee as a separate line item. Also, since May 28, 2004, each of the bills to Suffolk Construction for the One City Plaza project has a line item for franchise fee. None of S&S invoices to other customers have franchise fees listed separately. Our research finds common usage indicates any time a container is emptied or trash or debris is picked up and removed, it is a pull.

We compared records at S&S to remittance invoices submitted to Finance with payment. Records at S&S were not always consistent even with their expressed interpretation of a load. For example, there were three invoices that listed two trips with four loads each but only one franchise fee per invoice was submitted and another two invoices were split – a half load on one day and the other half load on a subsequent day; however, these were billed on one invoice.

From our review of records at S&S, we identified 2,659.5 load units billed to customers that were not reported to the City. Of this net difference, 378 invoices had not been reported to the City. Additionally, fourteen invoices for container or chute delivery and one invoice for a credit were reported to the City and franchise fees paid although no fees were due the City. Twenty-two invoices were reported and franchise fees paid twice. Also, thirteen invoices for projects (Ocean Boulevard Properties and People Without Walls Church) not within city limits were reported and fees paid. These were netted into the calculation of franchise fee underpayment.

We sampled two other franchisees and reviewed their billing and remittance methods. One prepared a separate invoice for each container emptied and the other billed and remitted for each 20 yards or proportionate share thereof. Both operators were conducting business within the spirit of the City Code provisions.

Based on the definition of a load and the method of billing by S&S, we concluded S&S owes the City \$47,399.81. This represents underpaid franchise fees through the October 2004 remittance of \$39,892.50 plus \$7,507.31 interest due as of March 31, 2005. The City needs to take action to collect the monies due and revoke the franchise if not paid by the due date, June 30, 2005.

Recommendations and Responses

We recommend:

- A. the Public Utilities Director revoke the franchise for S&S if payment is not received by June 30, 2005.

Management Response: I agree with the recommendation and if payment is not received by June 30, I will take action to revoke the franchise by July 31, 2005.

- B. the Finance Director, with the assistance of the City Attorney, pursue collection from S&S if payment is not received by June 30, 2005.

Management Response: As with all receivables, if this receivable is not received by the due date, the Finance Department will work with the City Attorney to pursue collection.

Finding No. 2: Roll-off Container and Compactor Franchise provisions in the City Code need to be clarified

The absence of clear definitions in regulations over roll-off container and compactor collection and disposal services has resulted in dispute over and inconsistency in the amount of franchise fees paid the City.

City Code, Sec. 74-122, requires each franchisee to provide monthly a true and correct statement of the number of pulls made during the previous month and payment of fees in the amount of fifteen dollars (\$15) per pull. It also requires a listing of customers including the “frequency of service/number of pulls made weekly per account...” A “pull” is not formally defined.

S&S contends a pull occurs when the transporting truck (usually 40 yard capacity) disposes of debris regardless of the number of containers (usually 20 yard capacity) emptied to load the transporting truck. Based on that definition, they remit one franchise fee for each site visit or invoice even though they charge their customers by each twenty yard load. Of the two other franchisees reviewed, one prepared a separate invoice for each container emptied and the other billed and remitted for each 20 yards or proportionate share thereof. As you can see, the absence of a definition of “pull” has actually resulted in three different ways of remitting franchise fees to the City.

General usage seems to be that every time a container is emptied and waste is hauled off and disposed of constitutes a pull. City Code, Sec. 74.1, Definitions, defines roll-off container and compactor service as “the collection and disposal of garbage, refuse, yard and garden wastes and construction debris with the use of a large container over eight cubic yards, including commercial container and compactors, portable by truck.” The key phrase in this definition is “the collection and disposal,” but it does not address quantity.

Not only does a “pull” need to be defined but the unit of measure needs to be universally understood. There is a big difference in capacity of containers and loads and can result in a big difference in fees paid, i.e. 20 yards versus 40 yards. We believe the franchise fee should be set for each cubic yard or for each 20 cubic yards or portion thereof. To avoid customer misunderstanding, we also believe the franchisee should be required to disclose the franchise fee as a line item on their customer invoices.

We also noticed that City Code, Sec. 74-121, indicates the franchise is for nonrecyclable materials; this language should be changed since more and more construction debris is being recycled.

Compounding the problems, formal franchise agreements could not be located at the three franchisees’ places of business we visited and the City file for S&S just had the approved application without indication that a franchise was issued. Franchise documents should be issued upon approval and at each annual renewal.

We concluded the use of industry specific jargon without a clear definition invites challenge, reasonable or not, and should be avoided. For fair and equitable competition, all non-exclusive franchisees must follow the same criteria – collect and remit the required franchise fee based on a specified quantity calculation each time a container is emptied or trash or debris is picked up and removed. Language in the regulations and franchise documents should be revised to clearly spell out what constitutes a “pull” and the quantity for the fee calculation. Furthermore, after the initial three-year period of the franchises has expired or is close to expiring, franchisees should be required to reapply and be provided actual franchise documents upon approval.

Recommendations and Responses

We recommend the Public Utilities Director:

- A. work with the City Attorney to revise the City Code governing roll-off container and compactor franchise by:

1. defining “pull” to include any time a container is emptied or trash or debris is picked up and removed;
2. tying the franchise fee to a defined, identifiable unit of measure or portion thereof;
3. specifying that the franchise fee must be disclosed as a line item on the customer invoice; and
4. eliminating the phrase “nonrecyclable materials” in the nature of businesses requiring a franchise;

Management Response: I agree with the recommendation and will work with the Deputy City Attorney to incorporate the necessary changes. The revision will be accomplished by September 30, 2005.

- B. require all franchisees to reapply at the end of their three year term and ensure formal franchises are issued for those franchises approved.

Management Response: I will work with the Deputy City Attorney to develop a formal franchise agreement that will be issued to each franchisee. I will also review existing franchises and make a decision on whether to require re-application by September 30, 2005.

Finding No. 3: Additional monitoring of compliance with franchises could reduce instances of underpayments

As set out in Finding No. 1, S&S had not paid franchise fees in accordance with the City Code since franchise inception in May 2002.

The reason this continued for nearly three years is that neither Public Utilities nor the Treasury Division had a system to verify proper remittance. City Code, Sec. 74-122 (e), provides, in regard to accurate payment of fees, that “Each franchisee shall allow city auditors, during regular business hours, and after reasonable notice, to audit, inspect and examine the franchisee’s fiscal books, records and tax returns, insofar as they relate to city accounts, to confirm the franchisee’s compliance with this section.”

The term “city auditor” is generic in this context and therefore would mean any City representative or employee assigned the task of verifying a franchisee’s compliance – not just the City’s Internal Auditor.

A review of a sample of franchisees periodically would alert the City to problems and allow them to be corrected early. These need not consist of more than once or twice a year comparing a selected franchisee's records to submissions made to the City. Inspecting one or two of the franchisee's customer files for a randomly selected month or two would be sufficient. This would require no more than two to four hours (for each franchise tested) once or twice a year but could go a long way toward ensuring compliance.

Recommendation and Response


We recommend the Finance Director initiate periodic tests, on a sample basis, of franchisee fee payments.

Management Response: We concur and will perform periodic tests of franchisee submissions.

MEMO



Public Utilities
Administration and Fiscal Services

To: Imogene Isaacs, Internal Auditor
From: Ken Rearden, P.E., Public Utilities Director 
Date: May 11, 2005
RE: Response to Audit of S&S National Waste, Inc.
Roll-Off Container and Compactor Franchise

Below please find my response to the recommendations from the Audit of S&S National Waste, Inc., Roll-Off Container and Compactor Franchise.

Finding No. 1: Recommendation 1.A. The Public Utilities Director should revoke the franchise for S&S if payment is not received by June 30, 2005.

I agree with the recommendation and if payment is not received by June 30, I will take action to revoke the franchise by July 31, 2005.

Finding No. 2: Recommendation 2.A. The Public Utilities Director should work with the City Attorney to revise the City Code governing roll-off container and compactor franchise by:

1. *defining "pull" to include any time a container is emptied or trash or debris is picked up and removed;*
2. *tying the franchise fee to a defined, identifiable unit of measure or portion thereof;*
3. *specifying that the franchise fee must be disclosed as a line item on the customer invoice; and*
4. *eliminating the phrase "nonrecyclable materials" in the nature of businesses requiring a franchise.*

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I agree with the recommendation and will work with the Deputy City Attorney to incorporate the necessary changes. The revision will be accomplished by September 30, 2005.

Finding No. 2: Recommendation 2.B. The Public Utilities Director should require all franchisees to reapply at the end of their three year term and ensure formal franchise agreements are issued for those franchises approved.

I will work with the Deputy City Attorney to develop a formal franchise agreement that will be issued to each franchisee. I will also review existing franchises and make a decision on whether to require re-application by September 30, 2005.

C: Ed Mitchell, City Administrator
Nancy Urcheck, Deputy City Attorney
Pete Spatara, Assistant Director of Public Utilities
Richard Williams, Fiscal Services Manager

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MEMO



Finance/Administration

To: Imogene Isaacs, Internal Auditor
From: Lee Anna J. Claridge, Assistant Finance Director *fac*
Thru: Thomas G. Harris, Finance Director *edf*
Date: May 19, 2005
RE: Response to Draft Report : Audit of S&S National Waste, Inc.–Roll-off
Container and Compactor Franchisee

The Audit of S&S National Waste, Inc. contains two recommendations for the Finance Director.

Finding No. 1: Recommendation B:

The Finance Director, with the assistance of the City Attorney, pursue collection from S&S if payment is not received by June 30, 2005.

As with all receivables, if this receivable is not received by the due date, the Finance Department will work with the City Attorney to pursue collection.

Finding No. 3: Recommendation:

We recommend that the Finance Director initiate periodic tests, on a sample basis, of franchise fee payments.

We concur and will perform periodic tests of franchisee submissions.

Cc: Ed Mitchell, City Administrator
Dorritt Miller, Deputy City Administrator