



CITY AUDITOR'S OFFICE

TO: Mayor and Council Members
FROM: Margaret Krym, CIA, CGAP, City Auditor 
DATE: February 13, 2013
SUBJECT: Waste Pro Franchise Fee Calculation Review

The FY2012 Audit Plan included the Waste Pro Franchise Fee Calculation Review. We engaged the Telluric Current Consultants to assist us by performing agreed upon procedures intended to identify any potential underpayments (overpayments) in the franchise fee received from Waste Pro. We have attached a copy of the final report prepared by Telluric Current Consultants.

In addition to the information provided in the report by Telluric Current Consultant's, we have documented the following: Between June of 2011 and June of 2012, Waste Pro increased their commercial enterprise roster from 1,874 to 1,984 or 110 accounts. They also increased average commercial customer franchise fee billings by six percent from \$190,982 in 2011 to \$202,297 in 2012.

This project began in response to a request for assistance from the Financial Services Department and the Financial Services Department staff did the majority of the reconciliation work required to bring this project to completion and to address any concerns that were raised during the process.

We will be happy to respond to any questions or concerns. You may contact me at 239-242-3380.

C: John Szerlag, City Manager
Dolores Menendez, City Attorney
Rebecca van Deutekom, City Clerk
Victoria Bateman, Financial Services Director
Sheena Milliken, Management/Budget Administrator
Audit Committee

Telluric Current Consulting

Bringing equilibrium to understanding and managing change...

Date: Wednesday, February 6, 2013

Re: Waste Pro Attestation Audit

Ms. Margaret Krym, City Auditor
City of Cape Coral
Cape Coral, FL 33915

Dear Margaret,

Thank you for the opportunity to assist the City of Cape Coral and its residents through performance of the above referenced audit services. Attached you will find the Final Report which contains the required memorandum including an executive summary, full report and supporting materials. Additionally, the full report contains a section documenting the recommended process management could employ to ensure franchise fees are adequate in the future.

Please feel free to contact me with any additional questions.

Best Regards,

Jay

Joseph "Jay" Johnston Jr., Principal
Telluric Current Consulting

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Executive Summary

The City of Cape Coral (the City) entered into a contract with Waste Pro of Florida, Inc (Waste Pro) to provide waste removal services to residents and commercial enterprises. The City's residents paid for this service through payments made on their annual tax bill as a non-ad valorem special assessment. The contract provided a franchise and exclusive right to Waste Pro to provide waste management services to commercial enterprises and bill for them directly. For having received this exclusivity, Waste Pro agreed to reimburse to the City a franchise fee.

The City's contract with Waste Pro was effective October 1, 2010 and continues through September 30, 2015, with an automatic 5-year renewal to September 30, 2020, and a possible additional 5-year renewal to September 30, 2025 if mutually agreed by both parties.

Franchise Fees, were collected to compensate the City of Cape Coral for the grant of exclusive collection service and the cost of administration, supervision and inspection rendered for the effective performance of this Agreement. Waste Pro was required to pay, to the City of Cape Coral, a fee of eight and one half percent (8.5%) of all franchised revenues received arising out of any services, or operations covered by the franchise agreement conducted in the service area, excluding disposal and commercial recycling. Franchise fees were payable within thirty (30) days of the last day of each month. A late charge of one percent (1%) of the monies due for the franchise fee was to be calculated monthly until payment was received.

During the initial review of the above source materials, this auditor identified two (2) commercial enterprises, from the City's commercial businesses database as developed through The Department of Community Development Licensing Division located within the City, for which there were no corresponding payments received by the City from Waste Pro. Department of Financial Services staff initiated meetings with representatives from Waste Pro to resolve the discrepancy and establish a mechanism for ensuring the proper fee amounts were collected and paid.

Subsequent to the above mentioned meeting, Waste Pro produced detailed reports identifying all commercial enterprises documented in their records for which the franchise fees had been collected and paid. Through a joint effort between the City and Waste Pro, many additional business enterprises were identified and Waste Pro contacted each company to initiate the proper billing and collection process. Over the course of several months, Waste Pro increased the commercial enterprise roster and associated fee payments to the City commensurate with the prior Waste Management (the prior contractor providing service to the City) levels.

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Full Report

An agreed-upon procedures engagement is one in which a practitioner is engaged by a client to issue a report of findings based on specific procedures performed on a subject matter. The client engages the practitioner to assist specified parties in evaluating the subject matter as a result of a need or needs of the specified parties. Because the specified parties require that findings be independently derived, the services of a practitioner are obtained to perform procedures and report his or her findings. The specified parties and the practitioner agree upon the procedures to be performed by the practitioner that the specified parties believe are appropriate. The practitioner does not perform an examination or a review, and does not provide an opinion or negative assurance. Instead, the practitioner's report on agreed-upon procedures is in the form of procedures and findings.

This agreed-upon procedures audit was conducted in accordance with generally accepted government auditing standards. These standards require that we perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings based on our audit objectives.

The City Auditor's Office requested Internal Audit Services in the form of Agreed Upon Procedures. Those agreed upon objectives and procedures are described below:

Objectives:

- Identify any potential underpayments (overpayments) in the franchise fee calculation received from Waste Pro for the period October 2010 to May 2011.
- Recommend a process that Management might employ to ensure that when the City receives payment the franchise fee calculations are accurate, documented and submitted with the check.

Methodology:

- Gain an understanding of the City's contractual rights to franchise fees from Waste Pro.
- Compare those rights to the vendor's performance reports and payments (or proposed payments) to us for the period October 2010 through May 2011.
- Evaluate whether the amount of payments to us is appropriate and in compliance with the contract.
- Identify any potential understatement in the payments.

Background

The City of Cape Coral (the City) entered into a contract with Waste Pro of Florida, Inc (Waste Pro) to provide waste removal services to Cape Coral residents and Cape Coral commercial customers. Cape Coral residents paid for this service through payments made on their annual tax bill as a non-ad valorem special assessment. The contract provided a franchise and exclusive

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right to Waste Pro to provide waste management services to commercial customers and bill for them directly. For having received this exclusivity, Waste Pro agreed to reimburse to the City a franchise fee.

In preparation for the City of Cape Coral Waste Pro Attestation Audit, this auditor reviewed:

- 1) The City's contract with Waste Pro;
- 2) The City's final RFP for solicitation of the Waste Pro contract;
- 3) An extract of the City's commercial businesses database as developed through The Department of Community Development Licensing Division;
- 4) City and Waste Pro spreadsheets detailing:
 - a. Actual payments made to the City by Waste Management (the vendor holding a contract with the City prior to Waste Pro)
 - b. Actual payments made to the City by Waste Pro, and
 - c. Waste Pro's reports detailing their billing and collection from commercial enterprises with the City.

The City's contract with Waste Pro was effective October 1, 2010 and continues through September 30, 2015, with an automatic 5-year renewal to September 30, 2020, and a possible additional 5-year renewal to September 30, 2025 if mutually agreed by both parties.

The City's RFP and contract with Waste Pro provided for an 8.5% fee, to be paid to the City by Waste Pro, in consideration for the exclusive right to provide waste management services to commercial enterprises operating within the City.

Commercial Collection Service included, but was not limited to, commercial or institutional property including all hotels, motels, commercial (wholesale/retail), manufacturing, industrial and institutional enterprises of all types. Large Scale Multifamily Residential Service to miscellaneous residential dwellings or condominiums consisting of 5 or more units where a commercial Can or Container may be suitable, including parks containing trailers and recreational vehicles, shall be billed by the Contractor as a commercial account and shall receive recycling and special pick-up service as part of their required solid waste collection fee; any recyclable materials collected shall be directed to the City's designated facility and any revenues derived from such shall be to the City's account

Commercial Trash included any and all accumulations of paper, rags, excelsior or other packing materials, wood, paper or cardboard boxes or containers, sweepings, and any other accumulation not included under the definition of garbage, generated by the operation of stores, offices, and other business places. Commercial trash shall include furniture, appliances, car parts, tires and all other accumulations not included within the definition of garbage, and shall be included in the uniform level of service, if properly prepared in a manner consistent with the present level of service.

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During the initial review of the above source materials, this auditor identified two (2) commercial enterprises, from the City's commercial businesses database as developed through The Department of Community Development Licensing Division located within the City, for which there were no corresponding payments received by the City from Waste Pro. Department of Financial Services staff and this auditor initiated meetings with representatives from Waste Pro to resolve the discrepancy and establish a mechanism for ensuring the proper fee amounts were collected and paid.

Subsequent to the above mentioned meeting, Waste Pro produced detailed reports identifying all commercial enterprises documented in their records for which the franchise fees had been collected and paid. Through a joint effort between the City and Waste Pro, many additional business enterprises were identified and Waste Pro contacted each company to initiate the proper billing and collection process. Over the course of several months, Waste Pro increased the commercial enterprise roster and associated fee payments to the City commensurate with the prior Waste management (the prior contractor providing service to the City) levels.

New Verification Process

Over the months subsequent to the initial meeting between Waste Pro and the City, a new process emerged to verify the accuracy of franchise fee payment amounts and ensure future payments would be appropriate.

By utilizing Waste Management's last report of commercial customers and billing amounts, Waste Pro personnel have added or reclassified enterprises within the City to commercial accounts and begun charging the proper amounts for waste management services. These changes produced an increase in the monthly franchise fee payments to the City commensurate with the previous Waste Management levels and established a baseline.

Additionally, Waste Pro developed a reporting mechanism to provide the Department of Financial Services with detailed billing information to support each prior month's franchise fee payment.

On an ongoing basis, the City can utilize the extract capability of data from the City's commercial businesses database available through The Department of Community Development Licensing Division to project changes in monthly revenue expectations. This combined with

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Waste Pro's detailed billing report should provide sufficient information to judge the appropriateness of each monthly payment.

Finally, through the collaboration established between the City and Waste Pro during this audit, any discrepancies in payment expectations can be reconciled on a monthly basis.