




BROWARD OFFICE OF THE INSPECTOR GENERAL

MEMORANDUM

To: Honorable Doug McKay, Mayor,
and Members, Southwest Ranches Town Council

From: John W. Scott, Inspector General 

Date: September 12, 2019

Subject: **OIG Closing Memorandum Re: *Errors in Billing Under Town of Southwest Ranches Franchise Agreements for Collection and Disposal of Bulk Waste after Hurricane Irma, Ref. OIG 18-006-A***

The purpose of this memorandum is to report that the Broward Office of the Inspector General (OIG) has concluded its review into billing for the collection and disposal of residential bulk waste in the Town of Southwest Ranches after Hurricane Irma. The OIG predicated its review on a tip that included allegations that neither the town's former solid waste vendor (the Former Vendor) nor its current one (the Current Vendor) collected residential bulk waste from September 2017 to approximately February 2018 but kept charging the town for the services.¹

The OIG did not find misconduct or gross mismanagement by any officials or employees of the town or its vendors but did substantiate that, for the four months following the hurricane, both vendors billed the town for services that they did not perform or only partially performed. Specifically, the Former Vendor billed the town \$22,788.06 for the collection and disposal of bulk waste that it did not actually perform, and the Current Vendor fully billed the town \$184,510.80 for collection and disposal it only partially performed.

Unfortunately, the town did not come to any agreement on this issue with the Former Vendor. Instead, the town has retained \$5,927.04 that it withheld from the Former Vendor to close this and other outstanding billing issues. Also based on our findings, the town has negotiated a non-financial settlement with the Current Vendor to settle its billing.

¹The OIG received this tip after we published both a report and memorandum regarding both vendors overbilling the contract rates to the town and its commercial users. The scope of work covered in both publications did not include verifying whether the vendor completed the monthly work.

The Town's Solid Waste Contracts

The Contract with the Former Vendor

The town competitively solicited solid waste, recyclables, and bulk waste collection and disposal services through request for proposal (RFP) 11-014 and entered into a contract with the Former Vendor for the collection and disposal of solid waste in May 2012. The term of the contract was five years, which commenced on October 1, 2012, and terminated on September 30, 2017. Relevant sections of the agreement follow.

Section 4 of the contract, Residential Collection Service, instructed:

B. Residential Bulk Waste Collection

- (1) The CONTRACTOR shall provide Residential Bulk Waste Collection, consisting of Yard Trash and Bulk Trash, to all Residential Service Units in the Service Area every other week, to occur on the first day of the week that a Residential Service Unit receives Solid Waste Collection service, unless otherwise approved in writing by the Contract Administrator. Collection is limited to twelve (12) cubic yards per set-out.

Section 31, Force Majeure, stated:

If either party is prevented from or delayed in performing its duties under this Contract by circumstances beyond its control, whether or not foreseeable, including, without limitation, . . . hurricanes, severe weather, floods, . . . acts of God, . . . ("Force Majeure"), then the affected party shall be excused from performance hereunder during the period of such disability. The party claiming Force Majeure shall promptly notify the other party in writing when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Contract to the contrary, the term "Force Majeure" does not include, and a party shall not be excused from performance under this Contract for, events relating to increased costs, including, without limitation, increased costs of fuel, labor, insurance, or other expenses of performing the services hereunder.

The Contract with the Current Vendor

The town competitively solicited solid waste, recyclables, and bulk waste collection and disposal services through RFP 17-003 and thereupon entered into a contract with the Current Vendor in June 2017. The term of the contract is five years, from October 1, 2017, to September 30, 2022. Relevant sections of the agreement follow.

Section 5 of the contract, Residential Bulk Waste Collection, reads:

B. Residential Bulk Waste Collection

- a. (1) The CONTRACTOR shall provide Residential Bulk Waste Collection, consisting of Yard Trash and Bulk Trash, to all Residential Service Units in the Service Area, which shall be divided into six (6) service zones, as approved by the Contract Administrator, with three (3) service zones alternating collection service every other week, to occur on the first day of the week that a Residential Service Unit receives Solid Waste Collection service, unless otherwise approved in writing by the Contract Administrator. Collection is limited to twelve (12) cubic yards per set-out. In a few locations where space is limited (such as cul-de-sacs), one or more Residential Customers may combine their Bulk Waste into a single large pile. The TOWN will work with the residents and CONTRACTOR to identify these locations.

Section 22, Emergency Service Provisions, provides:

- A. In the event of a hurricane, tornado, major storm, natural disaster, or other such event, the Contract Administrator may grant the CONTRACTOR a variance from regular routes and schedules. Such variance from regular routes and schedule to ensure the safety of the CONTRACTOR's employees and members of the community shall not be unreasonably denied by the TOWN. However, CONTRACTOR shall make its best effort to resume regular Collection service as soon as possible. As soon as practicable after such event, the CONTRACTOR shall advise the Contract Administrator when it is anticipated that normal routes and schedules can be resumed. The Contract Administrator shall make an effort through the local news media to inform the public when regular Collection services may be resumed.

Section 32, Force Majeure, instructs:

If either party is prevented from or delayed in performing its duties under this Contract by circumstances beyond its control, whether or not foreseeable, including, without limitation, . . . hurricanes, severe weather, floods, . . . acts of God, or significant threats of such circumstances, . . . ("Force Majeure"), then the affected party shall be excused from performance hereunder during the period of such disability. The party claiming Force Majeure shall promptly notify the other party in writing when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Contract to the contrary, the term "Force Majeure" does not include, and a party shall not be excused from performance under this Contract for, events relating to increased costs, including, without limitation, increased costs of fuel, labor, insurance, or other expenses of performing the services hereunder.

Hurricane Irma

On September 10, 2017, Hurricane Irma made landfall in South Florida. The hurricane significantly impacted the area by causing power outages, vegetation destruction, and other effects. After the hurricane, a lengthy clean-up process began. This included municipalities in Broward County contracting with emergency debris removal companies and submitting claims to the Federal Emergency Management Agency (FEMA) in order to receive reimbursement for such costs of the disaster.

According to the town's financial administrator, in order for the town to qualify for FEMA reimbursement for the cost of removing hurricane debris,² it could not commingle other bulk waste with it. Therefore, after the storm, the town advised residents to not put out vegetative waste for the solid waste vendors. The town arranged for emergency debris companies to pick up vegetative waste, and it instructed the town's solid waste vendor to pick up non-vegetative waste only.

OIG's Review and Findings

As contractually required, both vendors had submitted monthly documents regarding the tons of bulk waste collected in the period. The OIG reviewed those documents and found that, from September 2017 through December 2017, both vendors reported little if any collection of bulk waste. Yet, during that same time, the Former Vendor charged \$22,788.06 and the Current Vendor charged \$184,510.80.

The town's financial administrator and town attorney advised the OIG that, although the Former Vendor did not collect bulk waste in September 2017 and the Current Vendor did not collect vegetative bulk waste from October 2017 through December 2017, the town did indeed pay full price, as follows:

The Former Vendor Overbilled the Town for Bulk Waste Services by \$22,788.06

The solid waste activity report that the Former Vendor itself provided the town stated that it did not collect any bulk waste in September 2017, and the town confirmed this fact. Yet, according to the invoice for services from September 1, 2017, to September 30, 2017, the vendor charged the town \$9,048.95 for bulk waste collection and \$13,739.11 for bulk waste disposal, for a total of \$22,788.06. The town paid this invoice in September 2018 as part of a settlement stemming from issues the OIG previously identified.³

In a letter to the town attorney dated October 24, 2018, the vendor claimed *force majeure* as the reason it did not pick up bulk waste in September 2017. We do not quarrel with this claim because, according to section 31 of the contract, *force majeure* excused the affected party from performance. But the clause did not state that the other party was nonetheless obligated to perform its part. That is, the contract did not provide for the town to pay the vendor for services it could not render. The vendor also argued that it did not owe the town

² Hurricane debris includes vegetative waste, such as downed trees.

³ See OIG Final Report Re: Errors in Billing Under Town of Southwest Ranches Franchise Agreements for Waste Collection and Disposal, Ref. OIG 18-006, issued on October 10, 2018.

a refund because “we charge for an annual aggregate bulk pick up amount” and it “not only picked up the annual aggregate amount as per the Agreement, [but also] the tons serviced . . . exceeded the Generation Factor⁴ for Bulk Waste listed in both the RFP and the Franchise Agreement.” (Footnote added). However, the contract neither provided for the Former Vendor to charge the town for an annual aggregate bulk pick up amount, suggested what that annual aggregate amount would be, nor provided for the town to pay for the vendor to pick up any bulk waste in excess of the generation factor.

In August 2019, the town attorney advised the OIG that the town disputed the Former Vendor’s claim that it should not reimburse the town for bulk waste services in September 2017. He also advised that, because the Former Vendor was not pursuing the \$5,927.04 the town was retaining, the town was going to transfer those funds to the general fund and close all remaining issues with the Former Vendor, including this one and those the OIG previously reported.⁵

*The Current Vendor Billed the Town the Full Contract Price of \$184,510.80 for Bulk Pickup During a Period of Reduced Service*⁶

For the months of October 2017 through December 2017, the town’s current waste vendor billed the town the full contract price of \$184,510.80 for the collection and disposal of bulk waste. This was despite the fact that, due to the above-described FEMA reimbursement issues that Hurricane Irma posed, the town had instructed the vendor to only pick up non-vegetative bulk waste in the aftermath of the storm. According to the three invoices for this time period, the Current Vendor billed the town a total of \$91,138.32 for bulk waste collection and \$93,372.48 for bulk waste disposal.

On December 4, 2018, the town provided the OIG with a draft of town resolution 2019-019, which resolved the post-Irma billing issues with the Current Vendor.⁷ The resolution approved the modification of the original contract.⁸ In consideration of the town’s full payment for bulk waste for the aforementioned three months, the vendor agreed not to assess any additional fees for residents whose household bulk waste exceeded twelve cubic yards when full service commenced in January 2018. The vendor also agreed to eliminate the original contract’s requirement to recalculate the residential generation factor.

⁴ The generation factor is the estimate of trash produced per household.

⁵ See Footnote 2. The town’s \$5,927.04 withholding is the sum of a \$3,822.78 commercial franchise fee remittance the town was withholding for overbillings to commercial customers that the town identified, and an additional \$2,104.26 net commercial franchise remittance related to overbillings to commercial customers that the OIG identified.

⁶ On September 20, 2018 the OIG issued a memorandum to the town regarding the Current Vendor’s overbilling of the town’s commercial customers. See OIG Closing Memorandum Re: Current Errors in Billing Under Town of Southwest Ranches Franchise Agreement for Waste Collection and Disposal, Ref. OIG 18-016, issued on September 20, 2018.

⁷ The town council passed and adopted the resolution on December 13, 2018.

⁸ On June 29, 2017, the town council passed and adopted resolution 2017-048 approving the original contract with the Current Vendor.

Conclusion

The OIG's review found overbilling in a limited review of invoices the town paid on its current and former solid waste contracts in the months following Hurricane Irma. The Former Vendor disputed that it should not have billed \$22,788.06 despite its own report stating that it did not collect any bulk waste in September 2017. To resolve this and other outstanding billing issues, the town opted to retain \$5,927.04 that it had withheld from the Former Vendor and to close all remaining issues with it. The Current Vendor and the town were able to come to a settlement over the \$184,510.80 that the town paid during a time of reduced service.

The OIG remains concerned with the town's management of its solid waste contracts and its internal review of invoices. Since our reporting on its solid waste vendors began last year, the town has made efforts to improve internal controls over its contracts, but we remind the town that it must never pay for services that were not rendered or pay in full for services that were only partially rendered.

The OIG appreciates the cooperation of the town and its staff during this review. OIG staff are available to discuss our findings and to continue to work with town officials as the town addresses the concerns raised here. We also remain available to assist in reviewing any contracts where the town may be concerned about possible overbillings.

cc: Andrew Berns, Town Administrator
Keith M. Poliakoff, Town Attorney