



Joseph M. Centorino, Inspector General

TO: Honorable Mayor and Members of the City Commission
FROM: Joseph M. Centorino, Inspector General

DATE: November 7, 2024
AUDIT: Riteway Systems Inc. Permit Fee Revenues Audit
OIG No.: 24-26
PERIOD: January 1, 2019, through April 30, 2022

This report stems from an audit performed of the permit fees charged, collected, due, and remitted by Riteway Systems Inc. to the City Finance Department during the January 1, 2019, through April 30, 2022, audit period. The City of Miami Beach Office of the Inspector General (OIG) Sanitation Tax Auditor determined the contractor's compliance with selected provisions in the City Code, including obtaining annual business tax receipts (BTRs), filing required reports, and maintaining sufficient insurance coverage. The performance of City staff responsible for monitoring Riteway Systems Inc. and the processing of payments received from the contractor was also examined.

INTRODUCTION

A roll-off is defined as a container with a minimum capacity of ten cubic yards designed to be transported by a motorized vehicle. Contractors use these containers to collect and dispose of construction and demolition (C&D) debris and/or large quantities of trash and/or bulky waste, but not garbage or commercial refuse. Bulky waste represents large items of household refuse, such as appliances, furniture, accumulations from major tree cutbacks, large crates and like articles, while commercial refuse consists of all solid waste produced by commercial establishments.

In addition, City Code Section 90-2 defines grapple service as "the use of a claw-like device such as, but not limited to, bobcats, self-loaders, loaders, and backhoes, to pick up construction and demolition debris; large quantities of trash (e.g. rubbish); and bulky waste; but not garbage or commercial refuse, and place it into a truck for disposal."

The City licensing and permitting system, EnerGov, reported 27 roll-off contractors on September 30, 2023 with their 2022/23 fiscal year BTRs in "active" status, and two roll-off contractors in "pending" status. The City fiscal year covers October 1 through September 30, so the 2022/23 fiscal year would represent October 1, 2022, through September 30, 2023. The number of roll-off contractors frequently changes, either upward as new contractors abide by the City's guidelines and obtain their BTRs, or downward as contractors merge or stop conducting business in Miami Beach and do not renew their BTRs. "Pending" status means that the BTR is not yet valid or active and missing needed documentation and/or payment.

Roll-off contractors operating in Miami Beach are required to follow the terms outlined in the City Code, which include the monthly remittance of permit fees equal to the City Commission approved rate (18% from the beginning of the audit period through October 5, 2019, and 20% for the remainder of the audit period) multiplied by the total gross receipts for each contractor's City operations. City Code Section 90-221 defines gross receipts as the entire amount of fees collected by the contractor (whether wholly or partially collected) for solid waste collection and disposal within the City, excluding any taxes, and gross receipts from servicing roll-off and portable containers.

City Code Section 90-278(3) requires that each roll-off contractor provide the City Manager with a current list of the names and addresses of each account upon its initial application. Upon any application for renewal of its permit, each contractor must provide the frequency of service, the permit number and capacity of each roll-off container or dumpster for each account, and the address serviced by each roll-off container or dumpster. This list of accounts is typically furnished concurrently with the monthly report to the Finance Department. It is an essential document to verify the accuracy of the roll-off contractor's filings during the audit process.

Also, City Code Section 90-278(4) requires that monthly reports, accompanied by payment of any fees due, be submitted to the City Finance Department by contractors at the end of the month after the month in which the gross receipts were generated. For example, the monthly report and any associated roll-off fees owed for February 2024 are due by March 31, 2024. Any unpaid fees that are not timely received are subject to penalties of 10% per month up to a maximum of 50%, plus the highest legal rate of interest permitted by law on the amount of the fee, exclusive of penalties, from the date the permit fee first became delinquent until paid.

Lastly, City Code Section 90-196 details the required insurance coverage to be maintained by qualified licensed roll-off contractors, and Section 90-193 addresses the need to obtain permits for all accounts serviced in the City.

PURPOSE

The purpose of this audit was to determine whether tested contractor filings were complete and accurate; whether corresponding remittances were correctly calculated using the City Commission approved permit fee rate; whether filings and monies were timely received and correctly recorded by the City Finance Department; and whether the contractor was compliant with other designated City Code sections.

SCOPE

1. Determine whether the contractor maintained sufficient records to verify whether its tested permit fee billings were correct; and whether its corresponding Miami Beach gross receipts were accurately computed based on the monthly fees submitted to the City.
2. Determine whether the contractor timely submitted its tested monthly reports of gross receipts and remitted full payment of fees due to the City. If not, determine whether the appropriate penalties and interest charges were assessed pursuant to City Code Section 90-278(6)(a-d).
3. Determine whether the contractor timely obtained its required annual BTRs during the audit period.
4. Determine whether the contractor complied with tested reporting requirements listed in

City Code Section 90-278.

5. Determine whether the contractor maintained the required insurance coverage during the audit period pursuant to City Code Section 90-196.
6. Determine whether tested monthly roll-off fee payments remitted were accurately recorded in the City Financial System.

OIG OVERALL OPINION

Riteway Systems Inc. performed demolition type work in Miami Beach during the examined period involving the usage of various equipment to load C&D debris into dump trucks (grapple service). These transactions were deemed to be initially taxable by the OIG based on prior legal opinions received from the Office of the City Attorney, so the audit was performed and an assessment of \$1,342,643.97 was calculated. The subsequent adoption of Resolution No. 2023-32654 by the City Commission and the related receipt of a revised legal opinion from the Office of the City Attorney, resulted in the elimination of this assessment. Given the uncertainty surrounding the taxability of transactions, the OIG recommends the City Code be clarified so that all parties are readily aware which transactions are subject to permit fees and it will also help facilitate future enforcement.

ANALYSIS OF CONTRACTOR FURNISHED DOCUMENTATION

On October 5, 2021, the City Code Compliance Department issued Notices of Violation (NOVs) numbered SV2021-15838 and CC2021-11744 to Riteway Systems Inc. for failing to obtain the permit and business tax receipt respectively as required pursuant to City Code. Once the OIG Sanitation Tax Auditor became aware of these deficiencies and the contractor’s corresponding lack of filed Roll-Off Permit Fee returns to the City Finance Department, the OIG promptly mailed a Notice of Audit letter.

The OIG Sanitation Tax Auditor made multiple requests to the contractor over many months for the records needed to perform the audit. The contractor eventually responded and provided some documentation which included Sales Reports and customer invoices for the audit period. The audit was completed with the best available information furnished to the OIG Sanitation Tax Auditor.

The examined documentation confirmed that the contractor operated as a demolition company, removing C&D debris through the usage of dump trucks (grapple service), as it did not use roll-off containers. In total, it was calculated that Riteway Systems Inc. performed demolition services of \$6,887,038.73 during the January 1, 2019 through April 30, 2022 period. Assuming all the contractor furnished transactions were subject to Miami Beach permit fees, the table below lists the total gross receipts for each designated period and the corresponding amounts due based on the City Commission approved permit fee rates in effect.

PERIOD	GROSS RECEIPTS	PERMIT FEE RATE *	TOTAL DUE
01/01/19 – 10/05/19	\$1,738,188.84	18%	\$312,873.99
10/06/19 – 12/31/19	\$843,418.30	20%	\$168,683.66
01/01/20 – 12/31/20	\$1,741,532.17	20%	\$348,306.43
01/01/21 – 12/31/21	\$1,819,278.99	20%	\$363,855.80
01/01/22 – 04/30/22	\$744,620.43	20%	\$148,924.09
TOTAL	\$6,887,038.73		\$1,342,643.97

* City Commission approved permit fees equaled 18% from the beginning of the audit period, January 1, 2019, through October 5, 2019, and 20% from October 6, 2019, through the end of the audit period, April 30, 2022.

LEGAL GUIDANCE RECEIVED BY THE OIG

Based on another contractor's inquiry, Office of the City Attorney staff provided legal guidance on December 13, 2021, related to the permit fees owed by grapple service and roll-off contractors, indicating that the use of grapple service by a contractor to conduct construction and debris removal, even without the use of a traditional roll-off container, would fall within the City Code provisions for taxation.

On February 27, 2022, the Office of the City Attorney provided the OIG with legal guidance related to the taxability of grapple service, the use of roll-off containers by different types of contractors, and roll-off requirements linked to the removal of C&D. During the course of 2023, the OIG sought detailed and specific guidance from the Office of the City Attorney on several issues related to roll-off permits and fees.

Several discussions were subsequently held with Office of the City Attorney representatives related to the taxability of the removal of construction and demolition debris during the performance of demolition contracts pursuant to Section 90-280, Use restrictions, which provides as follows: *Rolloff, portable containers, or dumpsters are to be used for the **removal of construction and demolition debris** or for the removal of large quantities of bulky waste. Construction and demolition debris, and bulky waste, is never to be stored directly on the ground, as rolloff and portable containers must be used at all times. Rolloff and portable containers shall not be used for the removal of garbage or commercial waste.* [Emphasis added.]

On March 10, 2023, and April 11, 2023, meetings were conducted with various representatives from the Office of the City Attorney and City Administration, whereby it was concluded that City Code Chapter 90 needs updating and clarification. In the course of these discussions, imposition of the City's sanitation tax on the removal of C&D by demolition contractors without the use of roll-off containers was also deemed by the City Administration to be infeasible given the current wording in the City Code.

On June 28, 2023, Resolution No. 2023-32654 was approved by the City Commission limiting the application of roll-off fee requirements in C&D removal to a contractor's use of a 10-yard or more metal container without wheels. This effectively removed the usage of grapple service to collect and dispose of C&D as used by Riteway Systems Inc., from being included in taxable permit fee transactions, despite the City Attorney's Office's prior interpretation that included them. This limitation, based on the equipment used rather than on the nature of the transaction, is expected to significantly decrease the future collection of roll-off fees by the Sanitation Department. Additional guidance will be needed from the Office of the City Attorney.

At the request of the OIG for an interpretation of Resolution No. 2023-32654, the Office of the City Attorney provided an email on September 1, 2023, opining that it applied to all OIG audits not yet finalized. Consequently, its limiting terms were extended to both current and prospective audits of all contractors, including those using wheeled containers, dump trucks and grapple services and previously considered by the Office of the City Attorney to be covered by existing City Code provisions. As a result of the adoption of Resolution No. 2023-32654 and the received legal opinion, the OIG believes the following results are likely to occur:

- Contractors who do not use "conventional" roll-off containers to remove construction and demolition debris and/or bulky waste will have an unearned competitive advantage, at least in the short term, due to their exclusion from the roll-off container definition.

- More contractors may be expected to transition to non-taxable means to collect construction and demolition debris and/or bulky waste instead of conventional roll-offs to avoid having to remit any related permit fees to the City.
- Fewer BTRs related to roll-off activities will be required, thereby decreasing City regulation and oversight of the process.
- The Sanitation Division, which is funded primarily through service fees, will lose revenue, its customer-based fees may have to be increased to offset the lost revenue, or currently filled Sanitation employee positions may be downgraded and/or lost.

RESULTS/CONCLUSION

A July 23, 2024, examination of the Munis system, the City enterprise resource planning system, indicated that the Special Master waived the fines related to the issuance of NOVs numbered SV2021-15838 and CC2021-11744. In addition, the OIG concluded that Riteway Systems Inc. was compliant with the City Code requirements and no assessment will be levied against the contractor based on the adoption of Resolution No. 2023-32654 and the corresponding legal opinions received.

Included on the July 26, 2024 Finance and Economic Resiliency Committee (FERC) was the following agenda item sponsored by Commissioner Tanya K. Bhatt, "Discuss a proposed amendment to Sections 90-276 - 90-278 of the City Code, clarifying the circumstances under which a roll-off permit (and payment of the percentage of gross receipts) is required from those individuals and entities engaged in demolition and/or removal of construction debris and/or bulky waste in the City, and providing limited exceptions from obtaining a roll-off permit." After a presentation by the Interim Public Works Department Director and a robust discussion by the FERC members present, this item was unanimously approved and will be heard at the September 11, 2024, City Commission meeting with a favorable recommendation to approve the modified ordinance. If subsequently adopted by the City Commission, contractors such as Riteway Systems Inc. that perform demolition services within Miami Beach, will have to prospectively timely report and remit permit fees on its related gross receipts.

The audit examined compliance with permit fee requirements for demolition work from January 1, 2019, to April 30, 2022. Initially, Riteway faced violations for failing to acquire permits and business tax receipts, but subsequent documentation revealed compliance with fees for services using dump trucks rather than traditional roll-off containers. City Commission resolution No. 2023-32654 redefined the applicability of permit fees, excluding transactions involving portable containers like dump trucks, which Riteway uses. This shift negated an earlier assessment of \$1.34 million against Riteway, as their operations were deemed non-taxable under the new guidelines. The OIG recommended City Code clarification to prevent future ambiguities about permit fee obligations.

The draft report was provided to the affected parties on August 19, 2024 for their review and comments, in accordance with Section 2-256(h) of the City of Miami Beach Code, which includes a requirement that, "whenever the Inspector General concludes a report or recommendation which contains findings as to the person or entity being reported on, or who is the subject of the recommendation, the Inspector General shall provide the affected person or entity a copy of the report or recommendation, and such person or entity shall have thirty (30) working days to submit a written explanation or rebuttal of the findings before the report or recommendation is finalized, and such timely submitted written explanation or rebuttal shall be attached to the finalized report or recommendation."

The OIG did not receive any comments from the affected parties.

Respectfully submitted,



Joseph M. Centorino, Inspector General

11/07/2024
Date

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Norman Blaiotta, Chief Auditor

11/8/2024 | 10:15 AM EST

Date

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