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August 10, 2011

**VIA CERTIFIED MAIL/
RETURN RECEIPT REQUESTED**

Inspector General Sheryl G. Steckler
Office of Inspector General
P.O. Box 16568
West Palm Beach, FL 33416

Re: OIG Case Number 2010-0010

Dear Inspector General Steckler,

Thank you for your letter of August 1, 2011. My client, Line-Tec, Inc., understands your decision to close the investigation started by your office in response to complaints from one of Line-Tec's business competitors. Line-Tec appreciates the continued opportunity to be an approved Small Business Entity and looks forward to working with the County as a valued business partner.

As small business owners who have built a solid reputation on good work and value to their customers, Line-Tec appreciates your work to maintain the highest standards for our County. It is such an important role because, as Hazel Oxendine, former Director of the Small Business Assistance Office said, "They [small businesses] comprise seventy-five percent of all businesses in Palm Beach County. They pay taxes, they employ people, and we want to help them continue to do so and stay - remain in Palm Beach County." (January 6, 2009 testimony transcript p. 25, lines 23-25, p. 26, lines 1-3)

For the last several years, my clients have participated in the Small Business program and have provided value to the taxpayers of Palm Beach County. As with many areas of practice, a general rule does not always fit specific circumstances. Recognizing this, the County has always taken the position that, "We have to take the totality of the business in its operations and look at them individually. When we are asked to investigate, we look at the business as a whole." (p 38, lines 23-25). It was after this type of review of Line-Tec, and a site inspection of its facility, that

Director Oxendine testified to the Court that her staff "conducted a thorough investigation. Plus, I reviewed their findings, I reviewed the file, and we had a conference about it and determined that Line-Tec is in fact properly certified." (p 38, lines 11-14)

When asked specifically in court "Do you believe Line-Tec is providing a commercially useful business function as a certified SBE to the County?" Director Oxendine responded succinctly "Yes, I do". (p. 40, lines 3-6)

At the conclusion of that hearing Judge Stern issued a written order that made the decision clear:

The Court finds categorically that the testimony of Ms. Oxendine was compelling: she is totally familiar with the activities of Line-Tec and with its performance under a history of contracts, and that Line-Tec categorically does provide a commercially useful business function, and that Line-Tec has been found, through an investigation properly conducted as required by the Code, to be properly certified as an SBE.

The Fourth District Court of Appeals promptly concurred with Judge Stern's ruling when it affirmed his decision in their per curiam opinion.

It was following that reaffirmation, and the approval of the courts, that my client was confronted with this investigation. If nothing else, your agency's investigation itself adds further support for your statements in OIG-PBC Management Review 2010-0008: "The SBE Ordinance lacks clarity which leads to confusion. The SBE program is subjectively administered resulting in questionable certifications/recertifications and decertifications."

Ms Oxendine's sworn testimony clearly shows that she felt some flexibility and subjectivity allowed for her agency to meet its true mission. Although a bright-line test makes for ease of enforcement, it abandons the expert judgment of those entrusted with that responsibility, costs the taxpayers expertise, and it casts aside decades of *Chevron* deference encouraged by the Supreme Court of the United States.

As your draft IG report shows, the letters that discussed Line-Tec were all authentic. As requested by Ms. Patricia Wilhem in her July 27, 2010 e-mail, letters were provided that support specific items Line-Tec could supply. "For the items your company has in stock (inventory) and can demonstrate that provides a commercially useful business function for Palm Beach County Procurement purposes, ie *has a written agreement to provide the item from a distributor or supplier and provides delivery (not drop shipping) (emphasis added)* the following codes can be given...:" As Ms. Wilhem recognizes in her request, suppliers may be a SBA vendor point of contact. As Ms. Wilhem appears to recognize, small business vendors who supply the County may procure product from all sorts of sources. Clearly, they do not personally travel abroad to fulfill bids on televisions from Sony or computers from Toshiba any more than they could provide large pipes or municipal works products directly from an out of state manufacturer.

Inspector General Sheryl G. Steckler
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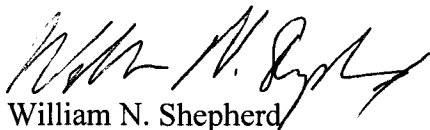
You also raise a question about how Line Tec handled its commercially protectable confidential information in a public records environment. As you know, trade secrets are an important part of any commercial venture. Florida Statutes §812.081 protects Florida businesses from the theft of trade secrets and specifically lists protected information to include commercial information which includes suppliers. In a price competitive environment, with competitors who make strong use of their rights to access public records, businesses must take steps to protect that information which gives them a competitive advantage. The Legislature realizes the importance of supplier information and protects it. As you correctly point out, there was no effort by Line-Tec to insert the names of false or fictitious suppliers.

Line-Tec has provided years of supply assistance to County staff in the procurement process. Line-Tec's knowledge of the industry comes with any contract because they are more than suppliers - they are installers, licensed plumbers, and licensed underground utility contractors. That practical knowledge is priceless in cases in which the county staff may have questions about which part to order for a specialized job.

We appreciate the work you and your Investigators have done in highlighting the areas for improvement in the SBE program. We look forward to working with the County in the future.

Sincerely,

HOLLAND & KNIGHT


William N. Shepherd

Enclosures:

Corcel Corp. v. Palm Beach County, 2007 CA 2275, Transcript from the January 6, 2009 hearing before the Honorable Kenneth D. Stern

Corcel Corp. v. Palm Beach County, 2007 CA 2275, Final Order Denying with Prejudice Plaintiff's Third Amended Petition for Writ of Mandamus, January 15, 2009

Corcel Corp. v. Palm Beach County, November 25, 2009 (4th DCA)

July 27, 2010 e-mail from Patricia Wilhelm to Line-Tec

1 IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
2 IN AND FOR PALM BEACH COUNTY, FLORIDA
3 CASE No. 502007CA002275XXXXMB (AE)

3 CORCEL CORP.,
4 A FLORIDA CORPORATION,

5 Petitioner,

-vs-

6 PALM BEACH COUNTY, A POLITICAL
7 SUBDIVISION OF THE STATE OF FLORIDA,

8 Respondent.

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HEARING BEFORE THE HONORABLE
KENNETH D. STERN

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Tuesday, January 6, 2009
Palm Beach County Courthouse
West Palm Beach, Florida 33401
10:30 a.m. - 12:17 p.m.

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Reported By:
Lisa M. Mazzei, RPR
Notary Public, State of Florida
Esquire Deposition Services LLC
West Palm Beach Office Job #65698

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1 APPEARANCES:

2 On behalf of the Petitioner:

3

4 V. JULIA LUYSTER, ESQUIRE
5 DAVID J. VALDINI & ASSOCIATES, P.A.
6 5353 N. Federal Highway
7 Suite 303
8 Fort Lauderdale, FL 33308
9 Phone: 954.776.8115

8 On behalf of the Respondent:

9

10 PAMELA GAIL EIDELBERG, ESQUIRE
11 TAMMY FIELDS, ESQUIRE
12 OFFICE OF THE COUNTY ATTORNEY
13 301 North Olive Avenue, Sixth Floor
14 West Palm Beach, Florida 33401-4791
15 Phone: 561.355.4397

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14

15 ALSO PRESENT:

16 Lisa Miller, Esq.
17 Hazel Oxendine
18 Ray Corona
19 Lorraine Hunt, Court Clerk

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P R O C E E D I N G S

- - -

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3 THE COURT: Thank you for your patience. As
4 you can see, we have had a lot of hearings, and I'm
5 trying to accommodate all of them in a meaningful
6 way, since I won't be here much longer, I will be
7 rotating out of this division, as you know.

8 All right. We are calling up Corcel Corp. vs.
9 Palm Beach County. Welcome to all of you. And I
10 understand you are Ms. Miller.

11 MS. MILLER: Yes.

12 THE COURT: Nice to see you in person.

13 MS. MILLER: Nice to see you as well.

14 THE COURT: Welcome. Welcome to all of you,
15 of course.

16 MS. EIDELBERG: Pamela Eidelberg representing
17 the County.

18 MS. MILLER: Lisa Miller representing nonparty
19 Line-Tec, Inc.

20 THE COURT: Ms. Luyster.

21 MS. LUYSER: Julia Luyster representing
22 Corcel Corporation.

23 THE COURT: Good morning to you all.

24 Okay. Basically, we are here on the request
25 for an order to show cause. The initial showing

1 that needed to be made here is for Palm Beach
2 County to illustrate why mandamus should not be
3 issued in this case, requiring a new investigation.

4 Essentially, the position of Corcel is that
5 although there was an investigation conducted, in
6 Corcel's view, it did not take into account all
7 factors and did not comport with the obligations of
8 the County to conduct an investigation and was not
9 valid. That the -- Corcel is entitled to discovery
10 to illustrate or to give it the opportunity to
11 illustrate why there was not an adequate conducting
12 of an investigation.

13 ~~And the position of the County is, no, that~~
14 ~~there was -- an investigation was conducted as~~
15 ~~required, the appropriate factors were considered.~~
16 ~~And the judgment of the County after that~~
17 ~~investigation therefore should not be disturbed.~~

18 Have I accurately represented the positions of
19 the prospective parties?

20 MS. EIDELBERG: Yes. You have accurately
21 represented the Court's rule to show cause order.
22 And since the rule is against the County, I believe
23 it is the County's burden to go forward --

24 THE COURT: Yes.

25 MS. EIDELBERG: -- if the Court has allowed

1 us. I haven't prepared any formal opening. I just
2 wanted to make a few comments and then present
3 testimony.

4 MS. LUYSTER: And, Your Honor, before we
5 begin, a couple of points: One, the procedures.
6 We have provided a supplemental memorandum, which
7 we provided back in 2007, and again yesterday,
8 stating that the proper procedure in this case is
9 actually require the County to answer the
10 Complaint --

11 MS. EIDELBERG: Your Honor --

12 THE COURT: Hold on a second. One at a time.
13 Ms. Luyster, the proper procedure is to?

14 MS. LUYSTER: Require the County to answer
15 their Complaint. And the record reflects that the
16 County does not disagree with that procedure. It,
17 in fact, has many times stated on the record that
18 once the Court issues a show cause order that the
19 petition is to be treated in all respects as a
20 Complaint and it becomes -- requires the County to
21 formulate an answer.

22 In fact, Mr. Ottey is in the courtroom, and he
23 is counsel in the companion case in front of --

24 THE COURT: That is Judge French, I believe?

25 MS. LUYSTER: Yes, Your Honor. And --

1 THE COURT: That was with L&L?

2 MS. LUYSTER: Yes, Your Honor. And the
3 procedures that were followed in the show cause
4 order was entered. The County answered, we
5 conducted discovery, and we had a full-day bench
6 trial.

7 Which brings me to my second point. We
8 requested 14 witnesses to appear today because
9 Mr. Corona has been -- this is going on three
10 years -- attempting to bring this to fruition. And
11 there are 14 witnesses that we believe are
12 necessary to substantiate the allegations in the
13 petition, and this is our only chance at an
14 evidentiary hearing.

15 We attempted to subpoena four of those
16 witnesses, we got a subpoena on one. And I don't
17 see that individual is actually here. Although, I
18 did speak with him yesterday and he said he was
19 coming here at 9:30.

20 THE COURT: Let me ask you this. Let's assume
21 that your witnesses all did appear and were able to
22 testify in full as to the things you would like to
23 elicit. What would be established by their
24 testimony?

25 MS. LUYSTER: It would be established that --

1 well, everything that is in our petition. It would
2 be established that actually Line-Tec is acting as
3 a conduit for Ferguson, and the County has
4 knowingly engaged in that activity.

5 We would also like to invoke the rule because
6 there are three individuals from the County here
7 that we would be calling as witnesses and we would
8 like -- we know --

9 THE COURT: Well, we would have to acknowledge
10 that and we would keep any witnesses out, other
11 than for the designated representatives of the
12 County which will testify.

13 But let me address something that concerned me
14 in your memorandum. And it seems you are relying
15 heavily on the notion that because they bought
16 directly from some manufacturers, that what they
17 were doing in those cases was to create an
18 unnecessary step which increased costs, which
19 delayed time, which created the need for more
20 expense that created the danger of damaged
21 inventory or what have you, and that somehow this
22 is invalid.

23 I am briefly going to allow Ms. Eidelberg to
24 make the comments she wants to make, and then I
25 will address you, Ms. Luyster, the concern I have

1 and just ask you to clarify my perceptions so that
2 I am fair to both sides. Ms. Eidelberg.

3 MS. EIDELBERG: Judge, first of all, for the
4 record, the County objects to the -- Corcel's late
5 filing of an additional supplemental amendment
6 memorandum of law, which I actually received by fax
7 from my office yesterday afternoon that was
8 apparently filed on Friday, not faxed to me.

9 The Court very specifically in its order said
10 that each side has to submit an eight-page
11 memorandum of law. The County did that. Corcel
12 did that.

13 You told us what the issues were in your rule
14 to show cause. Each side did that. We don't get
15 to change the rules in the 11th or in this case,
16 the 13th hour. I hope the Court will not allow
17 that. That's number one.

18 Number two, every single time we have a
19 hearing before the Court, Ms. Luyster starts off
20 and distracts the issues before the Court so that
21 we end up using the lion's share of the time to
22 rehash over and over again, her theory of the case.

23 I am asking in all due respect to let me
24 proceed, to let me use my time to present real
25 evidence. Not what Ms. Luyster thinks. Not what

1 Ms. Eidelberg thinks. Not what Mr. Ottey thinks,
2 who is in a totally separate case that I co-tried
3 with him, and actually get some evidence on the
4 record before the Court has to leave.

5 We are going to follow what the Court's
6 parameters are in the rule to show cause. And I
7 had a few brief, brief remarks, and this always
8 happens. It's this time my burden.

9 In the other hearings that we had, it may have
10 been Ms. Luyster's burden to go forward first.
11 This time, it's clearly mine. And maybe she can
12 reserve or the Court can direct her, reserve all
13 those issues. I think the County, if ever given a
14 chance to present evidence, will focus the Court
15 and answer the Court's questions about this issue.

16 THE COURT: All right. Here's what I am going
17 to do. We'll take more time than is scheduled, and
18 we'll go to 11:30, if we need to, for present
19 purposes.

20 Would you briefly, Ms. Eidelberg, respond to
21 Ms. Luyster's contention that this Court really
22 can't do anything until you have filed an answer to
23 what is now deemed a complaint, and there has been
24 discovery. Would you just respond to that briefly.

25 MS. EIDELBERG: Yes. First of all, she is not

1 entitled to discovery at all, unless the Court
2 ordered it.

3 Under normal circumstances, they file a
4 petition. The petition must allege that they were
5 denied a ministerial or nondiscretionary right.

6 I don't believe they did that. But
7 apparently, the Court in its review of the third
8 amended petition on December 8, 2008 issued a rule
9 to show cause, which must be in effect saying they
10 had this right to get an investigation. So --

11 THE COURT: Well, only that they have stated a
12 prima facia case and that you are now invited to
13 show why this really is not a prima facia case and
14 why they are not to be able to proceed, as
15 Ms. Luyster suggested we should. And that's why we
16 are here today.

17 MS. EIDELBERG: Right. And that you could
18 have issued a rule to show cause to say, I want you
19 to file a specific answer paragraph by paragraph.

20 But in truth, we have had so many hearings
21 before the Court and there have been so many
22 evidentiary hearings on tangent issues, that the
23 Court understands, and that's why I believe the
24 Court put in its order what it did, which is, look,
25 you did the hearing -- you did the investigation

1 already. Let's just see if it was done in
2 compliance with the law. And the burden is on me
3 to go forward.

4 But under normal circumstances, if they filed
5 a petition and the Court felt that it was alleged a
6 prima facie case, that there was a ministerial
7 right, you would then issue a rule to show cause
8 and we would file an answer.

9 At that point, the Court -- and I have case
10 law not to cite to you right this second, but the
11 case law says the court then can make a
12 determination and dismiss the petition just based
13 on those pleadings, and nothing more. Or the Court
14 can ask for an evidentiary hearing. Or the Court
15 can issue a rule -- or issue an order on discovery.
16 It's not an automatic thing at all. And the Court
17 has --

18 THE COURT: All right. So your position is
19 that what the Court has done comports with the
20 permissive procedures --

21 MS. EIDELBERG: Yes.

22 THE COURT: -- and that therefore we ought to
23 proceed.

24 MS. EIDELBERG: Yes.

25 THE COURT: I understand.

1 All right. What I am going to do is allow you
2 to present testimony. Please understand if we --
3 it's now a little before a quarter to 11:00. We
4 can go all the way through to 11:30.

5 I am going to ask you to try to limit your
6 whole presentation to 20 minutes. I'll give
7 Ms. Luyster an equal amount of time. And if she
8 has to deal in large part with proffers, I'll allow
9 that, given the limitations on time. But just
10 simply so that I can evaluate whether or not there
11 is a need for further proceedings or not.

12 MS. EIDELBERG: And I am going to object to
13 any proffers on her part to the extent that you
14 would be considered in a substantive. Because
15 number one, this has been going on for so long, she
16 could have subpoenaed whoever she wants to at all
17 the other hearings. But instead, we use all that
18 time for her argument. So there is no burden here.
19 It doesn't matter that this is going on.

20 In fact, the Court has already dismissed three
21 other petitions.

22 THE COURT: All right. What I am -- let's
23 proceed, as I suggested --

24 MS. EIDELBERG: Okay.

25 THE COURT: -- and I will give both of you

1 equal time. And then we could deal with whether
2 there is any procedural requirement to go further
3 or whether it is possible for me to rule at this
4 time. You may proceed.

5 MS. EIDELBERG: Okay. I am going to use my 20
6 minutes now or approximate 20 minutes; two minutes
7 I want to make a brief statement to focus the Court
8 on something.

9 THE COURT: Fine.

10 MS. EIDELBERG: The relevant code, and it was
11 attached to my memorandum of law, the relevant code
12 is a 2005 code. The current code is actually a
13 2008 code. It was revised in May or June by Palm
14 Beach County Board of County Commissions or
15 accepted by them at that point.

16 For our purposes, the most significant change
17 in the code, the new code is that the duty to
18 investigate is no longer ministerial in nature.
19 The language was changed from "OSBA shall" and
20 "shall" being the ministerial, nondiscretionary
21 word --

22 MS. LUYSTER: I would just object, Your Honor.

23 MS. EIDELBERG: This is my opening, Your
24 Honor.

25 THE COURT: What are you objecting to?

1 MS. LUYSTER: Because it's not the basis of
2 her memorandum in support of the show cause. Her
3 memorandum and basis in support of the show cause
4 involves the prior ordinance --

5 THE COURT: I am going to allow both of you to
6 say whatever you want to say, and I will decide
7 what is appropriate and what is not at the end of
8 all of it. Go ahead.

9 MS. EIDELBERG: So the 2008, the new one,
10 actually the major change in that is that it went
11 from it "shall" investigate these complaints to it
12 "may." And I direct your attention to -- which is
13 Page 8.

14 THE COURT: It's now permissive rather than
15 mandatory.

16 MS. EIDELBERG: Yes. Right.

17 THE COURT: Go ahead.

18 MS. EIDELBERG: So that if the Petitioner,
19 Corcel, is going to rely on anything in the current
20 code, which it does in its memorandum of law that
21 it was -- that it sent you as the eight-page
22 memorandum of law, then the entire current code
23 would obviously be applicable, which would vitiate
24 the third amended petition in its entirety, in
25 addition to being moot based on the fact that

1 OSBA's performance of what was arguably a
2 ministerial duty when the interpretation of "shall"
3 was, you must do this, is no longer there.

4 That said, this is part of my opening, on
5 March 18, 2008, right before the new code came into
6 effect, the County received a complaint. The
7 County OSBA, the Office of Small Business
8 Assistance, received a complaint from Corcel
9 Corporation about Line-Tec, a certified small
10 business enterprise or an SBE, alleging basically
11 two issues:

12 One, that they're a front for a larger company
13 called Ferguson. And, two, that their original
14 certification was had by fraud or deceit. That
15 they should never have been certified in the first
16 place.

17 OSBA investigated this complaint in accordance
18 with the Palm Beach County Code in effect at the
19 time. That's the 2005 code that I have attached to
20 my memorandum of law that the Court has.

21 In April and May of 2008, OSBA conducted an
22 investigation. The results of the investigation
23 are documented in a report dated May 30, 2008,
24 which the Court has previously been given and was
25 attached to as Exhibit B to my memorandum of law.

1 Palm Beach County now calls Hazel Oxendine as
2 its first witness.

3 THE COURT: All right. Are you going to be
4 introducing exhibits, either of you?

5 MS. EIDELBERG: I would like marked what I
6 just referenced, which are in the --

7 THE COURT: All right. We may call for a
8 deputy clerk, if in the event that we need one.

9 But please come up.

10 Thereupon,

11 (HAZEL OXENDINE)

12 having been first duly sworn or affirmed, was examined
13 and testified as follows:

14 MS. LUYSTER: Your Honor, we are invoking the
15 rule.

16 THE COURT: Oh, yes, we are invoking the rule.
17 Anyone who is not the official representative of
18 the County and who will be testifying, please wait
19 outside.

20 MS. EIDELBERG: Hazel is my only witness.

21 MS. LUYSTER: We may call those witnesses in
22 ours.

23 MS. EIDELBERG: They are not listed. They are
24 not --

25 MS. LUYSTER: We have asked Pam to produce

1 them, and she has produced them.

2 MS. EIDELBERG: I have not -- Your Honor --

3 THE COURT: I'm sorry. If it's not somebody
4 you produced, you are asking that if somebody you
5 want to call should not be able to sit in here?

6 MS. LUYSTER: Yes, Your Honor.

7 THE COURT: Who are you identifying as someone
8 you may want to call?

9 MS. LUYSTER: Tammy Fields and Ms. Williams
10 are both in the courtroom, and they are both
11 representatives of their --

12 MS. EIDELBERG: Your Honor.

13 MS. LUYSTER: And they are both listed as
14 individuals. We requested that Pam produce them
15 and she has brought them here today.

16 MS. EIDELBERG: I have not produced them --

17 THE COURT: All right. Hold on a second.
18 Ma'am, did you want to say something?

19 MS. FIELDS: Yes.

20 THE COURT: You are, first of all?

21 MS. FIELDS: I am a senior assistant County
22 Attorney for Palm Beach County. I represent Palm
23 Beach County. I'm not sure how I could be a
24 witness, if --

25 THE COURT: All right. If you are one of the

1 attorneys for the County and here in connection
2 with this case, even if you are called as a
3 witness, I will allow you to stay here --

4 MS. FIELDS: Thank you, Your Honor.

5 THE COURT: -- for those obligations.

6 Who else was it?

7 MS. EIDELBERG: Ms. Williams, Tanoy Williams
8 is not listed on all of those subpoenas. And just
9 for the record, I did not --

10 THE COURT: You don't intend to call her?

11 MS. EIDELBERG: I do not intend to call her.
12 I intend to call Ms. Oxendine. She is the director
13 of OSBA. We only have 45 minutes.

14 THE COURT: Okay. And, Ms. Luyster, are you
15 saying you have indicated you want to call
16 Ms. Williams?

17 MS. LUYSER: Yes, Your Honor.

18 MS. EIDELBERG: She was not subpoenaed. She
19 was not served. I don't even think she is
20 listed --

21 THE COURT: If she is here in response to a
22 request, I am going to ask Ms. Williams to wait
23 outside.

24 MS. EIDELBERG: She isn't.

25 THE COURT: There is no point in creating what

1 Services where I was the financial advisor to small
2 businesses nationwide. UBS was located in Boca Raton,
3 Florida.

4 And prior to that, I was employed by the
5 Federal Deposit Insurance Corporation as a manager of a
6 minority and women business program in Washington, D.C.
7 That was also a nationwide program.

8 Q. Okay. And how long were you employed with
9 FDIC?

10 A. Eight years.

11 Q. And how long were you employed with UBS
12 Financial?

13 A. Two years.

14 Q. How long have you been employed as the
15 director of the Office of Small Business Assistance?

16 A. Five years.

17 Q. Please describe the purpose and functions of
18 OSBA, the Office of Small Business Assistance.

19 A. OSBA provides small business development
20 assistance to Palm Beach County small businesses. We
21 help them start their small business. We provide
22 training for them. We provide referrals for financial
23 assistance, and we also certify Palm Beach County small
24 businesses.

25 Q. Okay. How many people are on the OSBA staff?

1 A. Seven. I have seven staff members.

2 MS. EIDELBERG: And for the court reporter,
3 when I say "OSBA," I'm saying O-S-B-A as...

4 BY MS. EIDELBERG

5 Q. You have seven people.

6 Could you please tell the Court who they are
7 and what their titles are?

8 A. Allen Gray is the OSBA manager. Pamela Hart
9 is the program coordinator.

10 THE COURT: Pamela who?

11 THE WITNESS: Pamela Hart, H-A-R-T.

12 THE COURT: Program coordinator?

13 THE WITNESS: She is a program coordinator.

14 Patricia Wilhelm is a certification person there.

15 As is Vicki Hobbs, who also performs certification
16 duties.

17 THE COURT: Vicky, I'm sorry?

18 THE WITNESS: Vicky Hobbs, H-O-B-B-S.

19 THE COURT: And she is also a certification
20 specialist?

21 THE WITNESS: Yes, she is. Tanoy Williams
22 does compliance work for the County. And Tyshon
23 Grimsley is my secretary.

24 BY MS. EIDELBERG

25 Q. And is there also -- you said seven. Tonya, I

1 think --

2 A. Oh, yeah. I'm sorry. Tonya. Tonya Johnson
3 provides outreach for OSBA.

4 Q. How many SBEs, Small Business Enterprises,
5 SBEs are currently certified by OSBA?

6 A. 600, 675 -- 675.

7 Q. How long is a certification good for?

8 A. Three years.

9 Q. Is there a Palm Beach County ordinance
10 governing your office?

11 A. Yes. It's part of the Palm Beach County Code.
12 It begins with definitions.

13 Q. Okay. Would that be 2-80.21 and it runs
14 through 2-80. -- I think 35, if I remember correctly?

15 A. Yes.

16 Q. Okay. And the title of that section, would
17 that be the Small Business Enterprise program?

18 A. Yes.

19 Q. Now, which references, if you recall offhand,
20 govern certain small business certification, a process
21 of certifying a small business? Which section of
22 2-80.30?

23 A. Small business certification Sections A and B.

24 Q. Okay.

25 THE COURT: I'm sorry 80.30(a) and (b)?

1 THE WITNESS: Yes.

2 THE COURT: Thank you.

3 MS. EIDELBERG: And just for the Court's
4 reference, in the attachment, that would be on Page
5 66 of the attachment, if you have that handy, the
6 Code.

7 THE COURT: Thank you.

8 BY MS. EIDELBERG

9 Q. Which section references D certification of a
10 small business?

11 A. That would be 80.I decertification.

12 Q. So 30 Subsection I.

13 A. Yes.

14 Q. So certification is A and B, and
15 decertification is Section I.

16 A. Yes.

17 MS. EIDELBERG: And for the Court, that would
18 be on Pages 8 and 9 of the attachment.

19 THE COURT: Thank you.

20 BY MS. EIDELBERG

21 Q. When was the small business enterprise code
22 last amended?

23 A. Oh. Mid 2008, May or June.

24 Q. Of 2008?

25 A. Yeah.

1 Q. Previously, when was the code amended?

2 A. It was late -- about November 2005, late 2005.

3 Q. Am I correct then that Corcel's litigation
4 against the County regarding Line-Tec in this matter is
5 governed by the prior code from 2005?

6 A. Yes.

7 MS. EIDELBERG: Okay. And although, Judge, we
8 don't have the clerk here, I would want to
9 introduce the code in, and I could always take care
10 of that housekeeping matter with the Court's
11 permission after the hearing.

12 THE COURT: All right. Thank you.

13 MS. EIDELBERG: Okay. But that would be our
14 Exhibit 1 and the Court already has a copy of that.

15 BY MS. EIDELBERG

16 Q. Now, are all of the SBEs or Small Business
17 Enterprises that your office services and assists, are
18 they all certified?

19 A. No. Not at all.

20 Q. What is the significance of being a certified
21 SBE?

22 A. It levels the playing field for SBEs when they
23 bid for opportunities to receive contracts from the
24 County. We give them additional consideration, award
25 them -- we'll pay 10 percent more on a small business

1 bid than we would on a large contractor's bid.

2 Q. First of all, when you say "level the playing
3 field," would it be accurate to say that it makes them
4 more competitive or able to compete against larger
5 businesses?

6 A. Yes.

7 Q. Is that another way of saying it?

8 A. That's exactly right. They are more able to
9 compete with the larger businesses.

10 Q. And how is it that the program, the OSBA
11 program, how does it make them more competitive?

12 A. If we receive two bids and one is \$100,000 and
13 it's a prime contractor bid, a large contractor's bid
14 and an SBE bid is \$110,000 for the same contract, it
15 will be awarded to the certified small business.

16 Q. Okay. So all other things being equal, you
17 would, the County is willing to pay 10 percent more
18 because it is a small business and you are trying to
19 help foster and develop small businesses as a County
20 goal?

21 A. Yes.

22 Q. Now, why does the County do this?

23 A. The County recognizes that small businesses
24 are economically viable; need to remain economically
25 viable in Palm Beach County. They comprise 75 percent

1 of all businesses in Palm Beach County. They pay taxes,
2 they employ people, and we want to help them continue to
3 do so and stay -- remain in Palm Beach County.

4 Q. Okay. And just so that I am clear and that
5 the Court is clear, did you just give us a general
6 example of a price benefit when you said \$100,000 by a
7 large bid by a large company versus a small company, the
8 County would actually pay up to \$110,000.

9 Is that the 10 percent benefit that you were
10 talking about --

11 A. Yes.

12 Q. -- or price?

13 A. Yes, all things being equal.

14 Q. Okay. And again, to relate that example to
15 this case, would it be accurate to say that if Ferguson,
16 a large distributor of many things, including pipe, bid
17 \$100,000 on a county project, and Line-Tec or Corcel as
18 a small business enterprise, a certified small business
19 enterprise bid \$110,000, all things being equal, one of
20 the small SBEs would get the contract?

21 A. Yes.

22 Q. Okay. Now, is the process the same when the
23 SBE is used as a subcontractor for a prime as it is when
24 it's acting as its own prime and just submitting a bid
25 on its own?

1 A. Yes. Yeah, it is.

2 Q. Okay. If I were to -- well, what -- did you
3 mention earlier about a goal or a 15 percent goal? I'm
4 not --

5 A. I didn't. But the County encourages larger
6 businesses to use the small businesses. And the way we
7 encourage the larger businesses is that we will transfer
8 the additional consideration in a bidding -- in a bid
9 process, if they bid with a small business for a
10 contract at a minimum of 15 percent to subcontract the
11 business to a small business, the County will award
12 additional points to that bid. And that helps the small
13 businesses do business with the large contractors.

14 Q. So in other words, to encourage large
15 businesses to utilize the small businesses, you will
16 actually give a large business, the 10 percent override,
17 for lack of a better term, if there are small businesses
18 on its team or as a subcontractor?

19 A. Yes. If they put in a bid and they have at
20 least 15 percent designated for a small business as a
21 subcontractor, the County will award additional points
22 when we are evaluating, when the County is evaluating
23 that bid, it will award additional points to the prime
24 contractor.

25 Q. And by awarding additional points to the prime

1 contractor, it makes the prime contractor more
2 competitive?

3 A. More competitive.

4 Q. Okay. Now, if I were to put what you just
5 said in the context of this case --

6 A. Hm-hmm.

7 Q. -- would an example of what you said be that
8 when AKA Services got a big contract with the County
9 several months ago, and Line-Tec, among other small
10 businesses was on its team, it received extra points for
11 having Line-Tec and those other businesses on its team?

12 A. Yes.

13 Q. And to compare that to let's say Rickman,
14 which competed as a prime for this big project, used
15 Corcel and other small businesses on its team, it got
16 certain points?

17 A. Yes.

18 Q. But all things being equal at that point, AKA
19 was the lowest bidder and got the job -- AKA Services
20 was the lowest bid and received the job over Rickman?

21 A. Yes.

22 Q. Now, if Line-Tec had not been a certified SBE,
23 does that mean AKA would not have been awarded that
24 contract?

25 A. Yes. But if they had bid with other certified

1 SBEs, they would have been as competitive. Or if they
2 have bid more than 10 percent lower than the next lowest
3 bid, they would have won the contract without any SBE
4 utilization.

5 Q. And from your experience, does that happen on
6 occasion?

7 A. It happens, yes.

8 Q. Is OSBA involved in the solicitation of the
9 bids or the advertisement of available work in the
10 County?

11 A. No.

12 Q. Who is in charge of that process, the
13 solicitation of bids?

14 A. Well, in the purchasing department, if a
15 contract is going to be valued more than \$50,000, they
16 receive all of the bids. They do the solicitation, they
17 do the advertising, and they receive all the bids and
18 they evaluate the bids.

19 After they evaluate the bids, they send them
20 to us to verify whether or not a listed SBE is certified
21 by the County.

22 Q. So purchasing does the initial evaluation and
23 then it's just sent to your office for that limited role
24 to confirm that a listed SBE is a certified SBE?

25 A. Yes.

1 Q. Okay. And then if the purchasing department
2 is not in charge of the solicitation, is there another
3 process or are there other departments that sometimes
4 get involved?

5 A. Yes. Other departments -- we have a
6 decentralized process. Other departments are
7 responsible for their individual contracting activities.

8 Q. For less than 50,000?

9 A. For more than 50,000, for less than 50,000.
10 When they go out for bid, they do the
11 specifications, they send out the bid documents, they
12 receive them, they evaluate them, and they pare it down
13 to the most competitive three.

14 After they have done that, we receive the list
15 of bidders and we evaluate them for any listed SBEs to
16 verify that they are certified by the County.

17 Q. Okay. So what role then does OSBA have in the
18 contract award recommendation? Does it have a role
19 in --

20 A. None.

21 Q. None. So it's limited to just verifying that
22 a listed SBE on a particular solicitation is in fact a
23 certified SBE and entitled to the preference or credits
24 or points?

25 A. Yes.

1 Q. Okay. Now, when does OSBA -- I was going to
2 ask you when does OSBA get involved. But you really
3 already answered that.

4 Is it accurate then to say that a certified
5 SBE can bid as a prime on its own for work that may be
6 advertised, as well as a subcontractor on a larger
7 project?

8 A. Yes.

9 Q. So an SBE can bid either independently or as
10 part of a team --

11 A. As a subcontractor.

12 Q. -- or part of a subcontractor?

13 A. Yes.

14 Q. And would the examples that you went over work
15 the same way in the bidding process? Same preferences
16 if the -- again, I'm sorry that if I am repeating
17 myself. I think you really answered this already. But
18 if the SBE is on as a subcontractor, then a larger
19 business, who is making the solicitation or making the
20 bid would get the benefit of certain preferences?

21 A. If he has -- if he has at least 15 percent
22 subcontracting for the SBE, yes.

23 Q. Okay. Now, is Line-Tec, Inc. a certified
24 small business enterprise, a certified SBE?

25 A. Yes.

1 Q. What are they certified for, if you have --

2 A. I need to look at my notes for that.

3 Q. Okay.

4 A. They have six areas where they are certified
5 in. They are certified for underground utilities, fire
6 hydrants, construction material, valves and pipe
7 fittings, polyvinyl chloride pipe and ductile iron pipe.

8 Q. And polyvinyl chloride pipe, that is PVC pipe?

9 A. Yes, it is.

10 Q. Now, did your office conduct an investigation
11 on Line-Tec concerning a complaint filed by Corcel
12 Corporation on March 18, 2008?

13 A. Yes.

14 Q. Do you have personal knowledge about the
15 complaint and the investigation?

16 A. Yes.

17 Q. Could you summarize the nature of Corcel
18 Corporation's complaint?

19 A. They filed a complaint and they accused
20 Line-Tec of being certified based on false
21 representations. That was one.

22 Q. So that's one thing.

23 A. And the second area they filed on was, they
24 accuse Line-Tec of acting as a front for Ferguson, which
25 is a larger company that does the same sort of services,

1 that offer the same sort of services.

2 Q. Now, did you direct your staff to investigate
3 Corcel's complaint?

4 A. Yes.

5 Q. Okay. And did you receive a report from your
6 staff?

7 A. Yes.

8 Q. And is that report dated May 30, 2008?

9 A. Yes.

10 MS. EIDELBERG: Judge, if I may just take a
11 minute, we could clean up the housekeeping, since
12 the clerk is here. I only have two exhibits.

13 THE COURT: Yes. We now have a deputy clerk
14 and Lorraine Hunt is here as our deputy clerk to
15 receive and mark exhibits. Thank you.

16 MS. EIDELBERG: Just give me one moment. I
17 have --

18 THE COURT: Absolutely.

19 MS. EIDELBERG: I am going, with the Court's
20 permission, just -- these are copies that I have
21 already previously supplied. They are attached as
22 the memorandum. So Ms. Luyster has already seen
23 this.

24 And Exhibit 1 for Palm Beach County would be
25 the County Code Section 2-80 Part C --

1 THE CLERK: Okay.

2 MS. EIDELBERG: -- Small Business Enterprise
3 Program.

4 And then my second exhibit is a memorandum
5 regarding -- dated May 30, 2008 regarding an
6 investigation and site visit concerning Line-Tec.

7 THE COURT: I'm sorry. That was the report?

8 MS. EIDELBERG: Yes. That's the report. That
9 would be Exhibit 2.

10 (Respondent's Exhibit Nos. 1 & 2 were received
11 into evidence.)

12 MS. LUYSTER: That's the site visit summary?
13 Is that the one?

14 MS. EIDELBERG: It's a three-page May 30th
15 report site visit.

16 MS. LUYSTER: I have two pages. Oh, wait,
17 there is a cover page.

18 THE COURT: And Exhibit 1 again was?

19 MS. EIDELBERG: The Palm Beach County Code --

20 THE COURT: Okay.

21 MS. EIDELBERG: -- Section -- the relevant
22 code. The 2005 Palm Beach County Code for Small
23 Business Enterprise Section C --

24 THE COURT: Twenty-one point whatever was --

25 MS. EIDELBERG: Right.

1 THE COURT: -- previously mentioned.

2 MS. EIDELBERG: Right.

3 THE COURT: Okay. All right. That is
4 2-80.30, both the certification and decertification
5 provision; is that correct?

6 MS. EIDELBERG: Yes.

7 THE COURT: Thank you.

8 MS. EIDELBERG: And I'm just going to, with
9 the Court's permission, hand a copy of the
10 investigative site report to Ms. Oxendine, since I
11 took hers to mark as an exhibit.

12 THE COURT: That will be fine.

13 BY MS. EIDELBERG

14 Q. Okay. Now, with respect to Exhibit No. 2,
15 which you have a copy of in front of you, the May 30,
16 2008 report or memorandum, what did the report
17 recommend?

18 A. It recommended that no further action be
19 taken. It said that the Corcel complaint was unfounded,
20 based on the investigation.

21 Q. And did you follow the staff's recommendation
22 that no further action was warranted?

23 A. Yes.

24 Q. Why? Why did you follow the recommendation?

25 A. Well, my staff did the investigation. After

1 they investigated, we sat together, we reviewed their
2 findings. I looked at the file. We reviewed the file,
3 reviewed all of the photos that were taken during the
4 investigation and concluded that Corcel [sic] is a small
5 business and will remain certified -- I mean, not
6 Corcel, Line-Tec is a small business that is a viable
7 small business and will remain certified by Palm Beach
8 County.

9 Q. Let me ask you this. In terms of your staff
10 making these recommendations, what training, if any,
11 does your staff go through to work at OSBA?

12 A. They are required to undergo one year of
13 training that was developed by the United States Small
14 Business Administration at FAU. And they are required
15 to continue that education throughout their career as
16 small business development specialists.

17 They are certified by United States Small
18 Business Administration as small business development
19 specialists, every one of them.

20 Q. And for the record, FAU would be a university,
21 Florida Atlantic University in Palm Beach County?

22 A. Yes.

23 Q. And you are saying that your staff, each one
24 of them are required to attend 12 months of training at
25 the university to go through this program and become

1 certified?

2 A. Yeah. Once they have completed the 12-month
3 program, they are certified as small business
4 development specialists and then they must continue
5 their education throughout their career.

6 Q. Okay. And do they have any -- just generally
7 tell the Court what would be the experience or
8 educational levels of your staff, if you know offhand?

9 A. What I wanted to mention also that four
10 members of my staff have additional training on top of
11 that, and that's compliance training that they must
12 undergo to perform compliance reviews of vendors.

13 They are experienced. Most of them have been
14 doing this for an average of 10 years, 10 to 15 years.
15 They started out at the minority business program. And
16 as the program transitioned, they continued with the
17 small business program in Palm Beach County.

18 THE COURT: I am going to ask you to conclude
19 your direct exam in two and a half minutes so
20 that Ms. Luyster can cross and that any other
21 witnesses may be heard. I will allow leading from
22 both sides to a significant extent, in order to
23 save time.

24 MS. EIDELBERG: Okay.

25

1 BY MS. EIDELBERG

2 Q. Were you familiar with Line-Tec's file prior
3 to receiving the investigative report?

4 A. I'm sorry?

5 Q. You know what, let me backtrack. I'm sorry.

6 You decided to follow the recommendation of
7 the compliance specialists, the people who investigated.
8 You decided to follow the recommendation of your staff?

9 A. Yes.

10 Q. And why is that?

11 A. Because they conducted a thorough
12 investigation. Plus, I reviewed their findings, I
13 reviewed the file, and we had a conference about it and
14 determined that Line-Tec is in fact properly certified.

15 Q. Okay. With respect to a formal investigation,
16 as opposed to a review and verification concerning an
17 application, what is the standard protocol for your
18 staff when it receives information that calls into
19 question the certification of a business?

20 A. Well, standard protocol -- there is no
21 standard protocol because each business is unique in its
22 own self. We have to take the totality of the business
23 in its operations and look at them individually. When
24 we are asked to investigate, we look at the business as
25 a whole.

1 Q. Okay.

2 A. We have -- this isn't normal. We haven't had
3 many complaints against other small businesses.

4 In the five years that I have been there, we
5 have only had three, three requests from vendors to
6 investigate other vendors. Two of those were from
7 Corcel.

8 Q. Against its competitors?

9 A. Against its competitors.

10 Q. With respect to the investigation that your
11 staff did concerning Corcel's complaint, are you
12 satisfied that the investigation was conducted in
13 accordance with the law?

14 A. Yes, I am.

15 Q. And under -- what law are you referring to?

16 A. I am referring to the County Code Small
17 Business Enterprise Program. I am also --

18 Q. Would that be Section I--

19 A. Yes.

20 Q. -- 30(i)?

21 A. Yes. Section I under "decertification."

22 Q. And are you satisfied that Line-Tec is a
23 legitimate small business in compliance with the A and
24 the B that you referenced earlier --

25 A. Yes, I am.

1 Q. -- 80-30 (a) and (b).

2 A. Yes, I am.

3 Q. Do you believe Line-Tec is providing a
4 commercially useful business function as a certified SBE
5 to the County?

6 A. Yes, I do.

7 Q. Okay. Does any factor -- does any one factor
8 take precedence over any other factor with respect to
9 the seven that are outlined or the factors that are
10 outlined under "certification" and "decertification"?

11 A. No. We use the ordinance as -- for guidance.
12 And the ordinance tells us under "B" in determining
13 whether a business performs a commercial use of business
14 function, we have to include and consider, and it's not
15 limited to only whether or not the business adds value
16 to the project. It goes on about other things.

17 And based on our ordinance, it's our
18 prerogative to determine whether a business is a viable
19 business for certification under our program. And based
20 on our experience, that's exactly what we do.

21 Q. Okay. So in other words, the ordinance that
22 you are referring to the section is, it says,
23 "consideration will be included, but not limited to
24 whether a business adds value."

25 A. Yes.

1 Q. So that's your starting point.

2 A. Yes.

3 Q. But then your staff's experience and training
4 and judgment and discretion comes in on to how to
5 evaluate the particular facts for the particular
6 investigation; is that accurate?

7 A. That's accurate.

8 Q. Okay. Now, do you recall writing a letter on
9 September 26, 2005 concerning your decision to decertify
10 L & L Worldwide?

11 A. Yes.

12 Q. Would it be accurate to say that that letter
13 and the statements you made in it concerning L & L's
14 practices of drop-shipping or purchasing from
15 distributors rather than from manufacturers was unique
16 to L & L's investigation?

17 A. Yes.

18 Q. Did that letter and anything in that letter
19 change the ordinance or add anything to the protocol
20 that is outlined in the ordinance for how to conduct an
21 investigation when a complaint would come in?

22 A. No.

23 Q. In your opinion, does the L & L Worldwide
24 decertification have anything to do with Line-Tec and
25 its business?

1 A. Nothing at all. L & L Worldwide was a
2 business that worked from their home, storage was in a
3 shed in the backyard. A hundred percent of everything
4 was phone called and drop-shipped.

5 Line-Tec is a viable business located in Palm
6 Beach County employing people who work every day. They
7 have supplies there, they deliver, they warrant. They
8 provide a commercially useful business function for Palm
9 Beach County.

10 MS. EIDELBERG: And my last question, Your
11 Honor, is -- to Ms. Oxendine.

12 BY MS. EIDELBERG

13 Q. Why is it important that the small businesses
14 are legitimate small businesses for the program that you
15 serve?

16 A. If these businesses were not legitimate, there
17 would be no integrity to this program whatsoever. We
18 are here to assist small businesses in Palm Beach County
19 so that they will remain an economic viable entity for
20 Palm Beach County. And if we allowed bogus businesses
21 into the program, that would not be true.

22 This is why, when I came to become a director
23 of this company, I required that my staff get trained in
24 order to better serve the small business community. I
25 required that they continue to train to do that.

1 We offer training for our small businesses.
2 They are required to have training to be certified by
3 us.

4 If we allow bogus businesses into this
5 program, then we are not serving the small business
6 community in Palm Beach County. That is not what we
7 want to do.

8 MS. EIDELBERG: Judge, in light of your
9 direction, any remaining time I might have, I will
10 save for redirect.

11 THE COURT: All right. Ms. Luyster.

12 MS. LUYSTER: Your Honor, I don't have any
13 cross at this time. I would like to call Ray
14 Corona, since we have such limited time --

15 THE COURT: I will ask a few questions and
16 then I will allow you to do that.

17 Could you tell me, first of all, one of the
18 issues that's been raised here is the question of
19 purchasing from Ferguson, for example, and other
20 question of whether purchases are made directly
21 from a manufacturer, and whether this can or cannot
22 be a legitimate part of a qualified small business
23 enterprises activity.

24 Is it always wrong for someone dealing with
25 the County to order from the manufacturer, receive

1 the item, and then reship it to the County, or are
2 there times when it's appropriate?

3 THE WITNESS: I am going to focus on pipe
4 here, because I think that is what you are asking
5 about. There are times when there might be pipe
6 that has to be specially made for the County that
7 can be drop-shipped to the County.

8 THE COURT: From the manufacturer?

9 THE WITNESS: Yeah. But we look -- Judge, we
10 look to commercial useful business function in the
11 small business. We look to them to be actually
12 operating a small business.

13 When we are comparing them to other
14 businesses, which we really can't do because each
15 business is unique in its own self, the reference
16 to that -- that letter to L & L Worldwide, which I
17 think is what you are referring to --

18 THE COURT: I'm not.

19 THE WITNESS: -- was unique to --

20 THE COURT: I am asking you whether it is
21 possible for -- you mentioned, for example, L & L
22 did nothing more than make phone calls to suppliers
23 and then have them drop-ship --

24 THE WITNESS: Hm-hmm.

25 THE COURT: -- and that therefore, they were

1 not independently performing a viable function.

2 THE WITNESS: Exactly.

3 THE COURT: Now, by contrast, do you see
4 Line-Tec in a very different light?

5 THE WITNESS: I do.

6 THE COURT: All right. And is it all right or
7 not all right for Line-Tec on some occasions to
8 order from the manufacturer and then reship to the
9 County?

10 THE WITNESS: Yes. Because that's not the
11 basis of their business. They -- for the most
12 part, they stock, they store, they warrant, they
13 deliver the product to Palm Beach County.

14 THE COURT: So then they are more like
15 shippers or jobbers or distributors who have a
16 ready supply of various kinds of components that
17 you can quickly order whenever you need it.

18 THE WITNESS: Yes, they do.

19 THE COURT: So that makes your job simpler.

20 THE WITNESS: Yes, it does.

21 THE COURT: Okay. That was the one question I
22 had.

23 So the mere fact that on rare occasions that
24 they -- or maybe not rare, but on occasion, they go
25 to the manufacturer that may be a custom order or

1 your name.

2 A. Ray Corona.

3 THE COURT: I'm sorry. Could you spell both
4 your first and last name.

5 THE WITNESS: R-A-Y C-O-R-O-N-A.

6 BY MS. LUYSTER

7 Q. And your relationship to Corcel Corporation?

8 A. I am vice president.

9 Q. And how long have you been vice president?

10 A. For -- since February 1993.

11 Q. Okay. And Corcel brought the petition in this
12 case that we are here about today?

13 A. Yes.

14 Q. At one point, Ms. Eidelberg asked the Court
15 during one of our many hearings in the past to put an
16 end to Corcel's wasting of the County's time with
17 frivolous complaints that the Office of Small Business
18 office spent about 50 to 60 percent of its time
19 responding to Corcel's complaints. That would be at an
20 August 15th hearing, Page 52 of the transcript.

21 Can you summarize the complaints the Corcel's
22 made to the OSBA and the results of those complaints
23 briefly?

24 A. Corcel has made four complaints to the Office
25 of Small Business Assistance, and only four complaints

1 that they -- we have never made a complaint that has not
2 been determined by OSBA themselves that the complaint
3 was incorrect.

4 We first complained about Allied, that they --
5 a company called Allied. This company had as a manager
6 for the local office, someone posed themselves as a -- as
7 their manager, while at the same time, he was really the
8 manager of one of the big two -- HD Supply. One of the
9 big two firms.

10 It was as a result of Corcel's complaint, and
11 we have documents to this, that Allied was a -- then
12 Allied, the County followed up and made an
13 investigation, and they learned that they had falsified,
14 Allied had falsified the payroll records on behalf of
15 this big firm, one of the big two, which is HD Supply,
16 the other one being Ferguson. So Allied was the
17 Line-Tec of HD Supply.

18 The other was a company called Independent
19 Pipe & Supply. This company was also a -- a complaint
20 that Corcel made, saying that this company was really --
21 the principal of this company was operating out of a big
22 contractor's office. She was really a -- the principal
23 controller and worked for this big contractor, and that
24 she was acting as a conduit for the contractor and for
25 Ferguson, as a matter of fact.

1 In this particular case, other small -- small
2 business also made a complaint that preceded and
3 succeeded Corcel's complaint --

4 THE COURT: Preceded and succeeded your
5 complaint about --

6 THE WITNESS: Right. They --

7 THE COURT: About whom?

8 THE WITNESS: About Independent Pipe & Supply.

9 THE COURT: Okay. Thank you.

10 THE WITNESS: We brought some new issues as
11 far as where she worked and so on, and we were the
12 first ones to bring that to light to the County.

13 THE COURT: I thought you said there were
14 other complaints about them made before yours.

15 THE WITNESS: There were complaints dealing
16 with other aspects --

17 THE COURT: Okay.

18 THE WITNESS: -- of their improprieties.

19 THE COURT: Okay. Thank you.

20 THE WITNESS: And Independent, as it turned
21 out, the purchasing director in concurrence with
22 Director Oxendine made a finding that they were
23 acting as a conduit for Ferguson, and disqualified
24 them on a multimillion dollar transaction. I think
25 the bid on that 04150, a bid for substantial

1 quantities of ductile iron pipe. I'm sorry, for
2 PVC pipe that we were offering.

3 The other -- or the third complaint that we
4 made was L & L Worldwide. And in spite --

5 THE COURT: Did you say L & L Worldwide?

6 THE WITNESS: L & L Worldwide. And the
7 government counsel said -- the County counsel said
8 that a -- in one of the -- the last hearing, that
9 they -- their decertification had nothing to do
10 with Corcel's complaint. That's mistaken. We
11 complained, we have the written complaint. We have
12 I just found in July of 2006 in -- as far as L & L,
13 on September 26, 2006 for the very first time, OSBA
14 made a finding that they were acting as a conduit
15 for a number of distributors. L & L is not like
16 Allied or like Line-Tec. They did not
17 discriminate. There would be a conflict for either
18 Ferguson or for HD.

19 THE COURT: Okay. Thank you.

20 THE WITNESS: In the L & L case, after
21 October --

22 THE COURT: You know what. I'm sorry. I may
23 be using up Ms. Luyster's time unnecessarily.

24 THE WITNESS: Okay.

25 THE COURT: If she wants you to expand on

1 that, please do so.

2 THE WITNESS: Okay. I just wanted to go a
3 little further because there was the allegation
4 that they had nothing to do with Corcel.

5 THE COURT: Thank you for clarifying that. I
6 acknowledged that it was responsive to your
7 complaint.

8 THE WITNESS: And the fourth instance was
9 Line-Tec. I think I deserve to be complimented, as
10 Judge French did in the hearing, the final hearing,
11 saying that Corcel should be complimented for
12 bringing these improprieties out to light, instead
13 of being treated -- ill-treated by the County.

14 BY MS. LUYSTER

15 Q. Let's talk about this case, Line-Tec.

16 A. Okay.

17 Q. How long has Corcel been doing business with
18 the County as an eligible small business?

19 A. Since the mid '90s.

20 Q. So you are very familiar with the code and the
21 ordinance that Pam Eidelberg has introduced into
22 evidence today?

23 A. Very much so.

24 Q. And you are very familiar with the site
25 inspection or the report that they claim is the result

1 of a site inspection that Ms. Eidelberg also talked --

2 A. Yes.

3 Q. -- with Ms. Oxendine about.

4 Okay. Let's talk about that, specifically.

5 The report states that the Office of Small Business took
6 about 25 photographs.

7 Did you have an opportunity to review those
8 photographs?

9 A. I did.

10 Q. And what did those photographs indicate that
11 Line-Tec was stocking?

12 A. Line-Tec was stocking the same type of
13 products that they did before being engaged in the
14 distribution business as a conduit for Ferguson.

15 Line-Tec appears to be a very legitimate
16 contractor, underground utility contractor. Indeed,
17 that's what their letterhead says, and that's what they
18 do.

19 If you look at the inventory and if you look
20 at -- as I did, for their operation --

21 MS. EIDELBERG: Your Honor, excuse me for
22 interrupting. Just for the record, all of this
23 that he is saying is clearly hearsay. If he has
24 the documents or the file --

25 THE COURT: He is talking about having looked

1 at the report that you introduced and the photos
2 connected with it.

3 MS. EIDELBERG: Well, I did introduce photos,
4 and the Court should see the photos because --

5 THE COURT: Well, they were submitted along
6 with the memorandum, were they not?

7 MS. LUYSTER: The photos have been submitted
8 as evidence in this case with the --

9 THE COURT: The objection is overruled.
10 Please proceed.

11 BY MS. LUYSTER

12 Q. Go ahead.

13 A. Yes.

14 MS. EIDELBERG: I have the photos, is what I
15 am saying, if the Court wants them.

16 THE COURT: Thank you.

17 THE WITNESS: The photographs are consistent
18 with a company -- with a contractor.

19 BY MS. LUYSTER

20 Q. What about the ductile iron pipe.

21 A. Not with a distributor.

22 Q. How many of pieces of ductile iron pipe does
23 it have?

24 A. Three pieces.

25 Q. Is that sufficient to supply the County with

1 the County's needs for ductile iron pipe?

2 A. No, it is not. Not only that. But,
3 for example, L & L, which is -- they determine
4 themselves, and correctly so, that they were only acting
5 as a conduit and only had a window dressing inventory,
6 had six --

7 THE COURT: That's L & L.

8 MS. EIDELBERG: Your Honor, and also it's just
9 an objection. That's opinion testimony that is
10 improper predicate of what is sufficient for the
11 County's needs.

12 THE COURT: All right. That is duly noted.
13 Thank you.

14 BY MS. LUYSTER

15 Q. How about valves or butterfly valves --

16 THE WITNESS: I'm sorry. Your Honor, may I
17 clarify something?

18 THE COURT: If you need to --

19 THE WITNESS: Yes. My point is that the
20 investigation of Line-Tec was not done as the
21 other -- as the other investigations were done
22 routinely by the department. So --

23 BY MS. LUYSTER

24 Q. In what ways was the investigation --

25 THE WITNESS: So it's germane to the inquiry

1 here.

2 THE COURT: Ms. Luyster has a follow-up
3 question.

4 BY MS. LUYSTER

5 Q. In what ways, in your opinion, was the
6 Line-Tec investigation not conducted the way other
7 investigations were conducted, including an
8 investigation of Corcel?

9 A. Well, the primary issue here, and only in my
10 complaint and also on the normal investigations of
11 firms, a standard question and a starting line of
12 inquiry is from whom does the company buy their goods
13 from.

14 Every single invoice, every single document in
15 the file of Line-Tec indicates that for resale,
16 everything that they have purchased has been from
17 Ferguson.

18 Q. And I don't want to redirect you, I want you
19 to continue to answer the question, but that inquiry
20 comes directly from the code, from the ordinance,
21 correct?

22 A. That's correct. That's correct.

23 Q. That's one of the questions that determines
24 whether a business performs a commercially useful
25 business ordinance, correct?

1 A. That's right. Yes.

2 THE COURT: Let me interrupt, if I may. What
3 is Ferguson? Is it a manufacturer? Is it a
4 distributor --

5 THE WITNESS: It's a distributor.

6 THE COURT: All right. And just generally to
7 your knowledge, what is Ferguson a distributor of?

8 THE WITNESS: The same type of material that
9 L & L sells, that Corcel sells, and the same type
10 of materials that I object to Line-Tec selling.

11 We have no objection to Line-Tec's operation
12 as a contractor. Our objection is when they
13 entered the field of distributorship.

14 THE COURT: Why do you object to that?

15 THE WITNESS: Because they are a conduit for
16 this big firm Ferguson and is cheating not only
17 Corcel and the other distributors --

18 THE COURT: Why is it cheating Corcel?

19 THE WITNESS: Because instead of having a 10
20 percent bid preference or an inducement for the
21 contractors to use legitimate small business such
22 as Corcel and hundreds of others, they are taking
23 the easy way out and it's easy for the County --

24 THE COURT: You are saying it's really
25 Ferguson.

1 THE WITNESS: It's Ferguson.

2 THE COURT: How much -- do you have any idea
3 what percentage of Line-Tec's business involves
4 dealing with Ferguson?

5 THE WITNESS: I think it's 100 percent. For
6 the contractor business -- not for the contract
7 business. They have a legitimate contractor
8 business. They have a resale business, every
9 single document, there's the file, indicates that
10 every single purchase that can't be identified has
11 been bought from Ferguson. Every single one.

12 Now, there is a -- like you mentioned, there
13 was other -- there is other -- the majority of the
14 purchase orders that I examined, you can't tell who
15 they are bought from. But I -- every indication is
16 that they bought from Ferguson because most of
17 those goods are goods which are only exclusively
18 distributed by Ferguson.

19 THE COURT: All right. Go ahead.

20 MS. LUYSTER: As an example, I know that the
21 County has these, but I wanted to introduce into
22 evidence and show Mr. Corona, these are actually
23 the County's documents, a letter from Ford Meter
24 Box Company dated October 27, 2008 to the County,
25 and a letter from Ford Meter Box Company dated

1 THE WITNESS: It's Ferguson.

2 THE COURT: How much -- do you have any idea
3 what percentage of Line-Tec's business involves
4 dealing with Ferguson?

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17 those goods are goods which are only exclusively
18 distributed by Ferguson.

19 THE COURT: All right. Go ahead.

20 MS. LUYSTER: As an example, I know that the
21 County has these, but I wanted to introduce into
22 evidence and show Mr. Corona, these are actually
23 the County's documents, a letter from Ford Meter
24 Box Company dated October 27, 2008 to the County,
25 and a letter from Ford Meter Box Company dated

1 December 4, 2008 to the County. These were
2 obtained from a public records request.

3 THE WITNESS: If I may, I want to just finish
4 answering my question that His Honor asked about
5 what damage does it do to Corcel and to the program
6 when you have Ferguson using Line-Tec a conduit.

7 When a small firm, small distributors, in
8 addition to all the other people engaged in other
9 lines of business that would be -- that the
10 contractor will use to meet as a commitment, our
11 relationship with manufacturers, it gets
12 diminished, gets hurt by a big contract -- a big
13 distributor like Ferguson telling them, listen, you
14 can compete. There is no bid preference for them.
15 There is no reason for you to open up lines to
16 Corcel or to anybody else. We've got our own
17 little SBE firm. And instead of a 10 percent, it's
18 really a 3 percent preference that they have.
19 That's the commission that we pay them --

20 THE COURT: You are saying basically that
21 Ferguson is able to keep manufacturers from selling
22 things to you and companies like yours by virtue of
23 the fact that they have this relationship through
24 Line-Tec.

25 THE WITNESS: Yes. It hurts our relationship

1 and our possibility to expand lines with different
2 manufacturers.

3 THE COURT: Well, if you are a certified small
4 business enterprise, why don't you have the same
5 advantage that Line-Tec has in dealing either
6 through Ferguson or a company like them or directly
7 with the manufacturers?

8 THE WITNESS: Well, it's illegal for me to
9 deal with Ferguson. And I wouldn't want to do
10 it --

11 THE COURT: Why is it illegal for you to deal
12 with Ferguson?

13 THE WITNESS: Because they would be a conduit.
14 How could I -- the idea of this program --

15 THE COURT: Wait a minute. Your understanding
16 is that if -- in a few select circumstances, you
17 get goods from Ferguson and serve, as you have been
18 serving to the County, that somehow that
19 disqualifies you as an SBE?

20 THE WITNESS: My contention, and it's
21 consistent with the law and with logic and with
22 everything else is that if I base my business, if
23 the majority of my sales are made from a
24 competitor, I cannot compete against that
25 competitor.

1 THE COURT: If the majority of your sales are
2 made from a competitor --

3 THE WITNESS: Well, my purchases. I am
4 supposed to -- the intention of this program is to
5 have a small business like Corcel, like L & L, like
6 others be able to compete head to head against
7 firms like Ferguson, and I do. We compete, and we
8 beat them sometimes and we lose to them sometimes.

9 THE COURT: But Ferguson is not a
10 manufacturer. It gets --

11 THE WITNESS: No. They do the same thing we
12 do, but they are much bigger.

13 Now, if we get their -- our goods to be most
14 of our bids, all of it, in fact, they are
15 competitive bids, except for contractors, and they
16 treat them competitively also, how could I possibly
17 beat Ferguson if I got to buy my stuff from them?

18 THE COURT: Well, doesn't Line-Tec buy from
19 them?

20 THE WITNESS: Exactly. That's what I am
21 saying. The only --

22 THE COURT: So if they can do it, why can't
23 you do it?

24 THE WITNESS: Because I don't want to.
25 Because I want to be able to compete against

1 Ferguson. And plus, it's illegal. There's people
2 in jail for this.

3 THE COURT: Thank you. Please proceed.

4 BY MS. LUYSTER

5 Q. Ray, what is the County's position on standard
6 industry practice?

7 Specifically, in this line of questioning, the
8 Judge is asking you why you would not purchase from
9 another -- from Ferguson and operate as a conduit. What
10 is the County's position on that?

11 A. With all due respect, the position of the
12 County and rightly so, is that you do not buy from a
13 distributor, another distributor. You don't buy from
14 another distributor because you become an extra
15 participant.

16 The idea of the program is that you can
17 compete with those big guys. And that's why they give
18 you these big preferences.

19 Q. And has the County not taken the position
20 that this practice does not fulfill the requirements of
21 commercially useful function and is an unnecessary step
22 in the process in which the SBE acts only as a conduit
23 for which funds are passed in order to meet a goal?

24 A. That is correctly so. And Ms. Oxendine
25 testified to that on two different occasions in court in

1 front of Judge French, and she also confirmed that in
2 her deposition. This is the logical thing. Senior
3 Assistant Dade [sic] County Attorney Fields edited and
4 drafted that sound, clear reasoning. You don't buy from
5 your competitor.

6 MS. LUYSTER: And I have also filed --

7 THE WITNESS: You can do it occasionally, but
8 you can't base your business on buying from a
9 competitor.

10 MS. LUYSTER: And I've also filed, and I will
11 ask the Court to take judicial notice of the
12 County's response to petition for writ of
13 certiorari in the L & L appellate matter, which is
14 pending in the circuit court.

15 BY MS. LUYSTER

16 Q. And you read that brief, correct, Ray?

17 A. That is correct.

18 Q. And didn't the County take the same position
19 in that brief?

20 A. They did. They said that -- if I may, they
21 repeated, they said, listen, if you -- we want you to
22 compete for real. That's why we are giving you all
23 these bid preferences and so on. If you put yourself in
24 a position where the County or the contractor can just
25 as easily buy from Ferguson, why pay the extra premium

1 from Line-Tec?

2 And that's why I don't do it. Because I want
3 to be able to compete on even ground, as I do.' If I buy
4 from Ferguson, I can't beat Ferguson on a competitive
5 bid.

6 THE COURT: I'm going to ask you to conclude
7 within about seven or eight minutes, if you will,
8 and then we will have cross and go from there. Go
9 ahead.

10 BY MS. LUYSTER

11 Q. Ray, you are aware that the code provides that
12 in order to be eligible as a small business, the small
13 business must perform a commercially useful business
14 function, the code provides elements to that?

15 A. Yes.

16 Q. In the site inspection that we are here that
17 is an exhibit with the Court and that you have read, did
18 anything in the site inspection reveal that Line-Tec
19 adds value to the products?

20 A. Nothing.

21 Q. Did anything actually in the site inspection
22 indicate specifically what products Line-Tec has or
23 provides to the County?

24 A. The -- as I said, the inventory and the
25 photographs and the documentation on the record indicate

1 that Line-Tec has the type of inventory that a
2 contractor has, not a distributor has.

3 Q. Did the site inspection indicate whether
4 Line-Tec has a distributorship arrangement with the
5 manufacturers of the goods?

6 A. No.

7 Q. Did the site inspection reveal whether the
8 business maintains sufficient storage base to keep the
9 product in inventory?

10 A. They do have storage space, but not according
11 to --

12 Q. Did the site inspection reveal if it had
13 sufficient storage space?

14 A. Not according to their rules. And this is
15 something that is unclear --

16 Q. Okay. What are the water utility's
17 requirements for ductile iron pipe for storage?

18 MS. EIDELBERG: Your Honor, I just -- again,
19 we are going down the garden path. Whatever it was
20 the water utilities made or require a spec has
21 nothing to with OSBA or the ordinance. Every
22 department can make its own specs or whatever it
23 wants. That is filtered out in the bidding
24 process.

25 We are supposed to focus here on the code.

1 And the code that they are referring to is not the
2 2005 code. He is testifying from the --

3 THE COURT: Is this storage requirement
4 something that is within the code or somewhere
5 else?

6 MS. EIDELBERG: Nothing to do with the code at
7 all.

8 THE COURT: Ms. Luyster, what is the
9 relevance?

10 MS. EIDELBERG: Absolutely nothing.

11 THE COURT: What's the relevance.

12 THE WITNESS: I have the code here.

13 THE COURT: No, wait a minute.

14 Ms. Luyster, what's the relevance to the
15 amount of storage space they have?

16 MS. LUYSTER: The relevance is that the County
17 has -- references it in the site inspection and
18 it's also within the ordinance which provides for
19 whether there is sufficient storage space to keep
20 the product in inventory. So I am asking him if he
21 knows what the storage space is.

22 THE COURT: Well, who requires that --

23 MS. LUYSTER: The County Code provides in
24 order for a business to provide a commercially
25 useful business function, that the business must

1 maintain sufficient storage space to keep the
2 product in inventory.

3 THE COURT: And who decides what the
4 sufficient storage space is?

5 MS. LUYSTER: I am asking him. It would be
6 the individual --

7 THE WITNESS: I can respond to that.

8 BY MS. LUYSTER

9 Q. Go ahead, Ray.

10 A. Well, both. The individual department,
11 depending on what the nature of your business is, we
12 deal with water utilities. That's our business. That's
13 the --

14 THE COURT: What basis do you have to say that
15 Line-Tec has an amount of storage space that is
16 legally inadequate? Does it disqualify them as an
17 SBE?

18 THE WITNESS: According to the documents, yes.

19 THE COURT: What documents?

20 THE WITNESS: The ordinance specifically
21 states that it must have adequate storage space.

22 THE COURT: All right. Fine. Now who decides
23 what is adequate?

24 THE WITNESS: Twice, the OSBA decided in a
25 letter dated October -- September 26, 2005, and

1 they outlined in the letter signed by Ms. Oxendine
2 and drafted with the assistance of Ms. Fields --

3 THE COURT: What did the letter say?

4 THE WITNESS: The warehouse requirements. The
5 water utility warehouse requirements.

6 THE COURT: Ms. Oxendine wrote a letter --

7 THE WITNESS: That letter is in evidence.

8 THE COURT: -- in September 2005 to whom?

9 THE WITNESS: To two firms. To a firm called
10 -- that were both engaged in this pipe valve
11 business.

12 When Ms. Eidelberg says that we are not in the
13 same thing, we are in the same thing. We are
14 talking about pipe, valves, and fittings.

15 THE COURT: Sir, please answer my question.

16 THE WITNESS: Yes, sir.

17 THE COURT: I am asking you to whom did
18 Ms. Oxendine write this letter?

19 THE WITNESS: To a company called L & L
20 Worldwide --

21 THE COURT: The one that was later found out
22 not to be a legitimate small business enterprise
23 because it operated out of a house and uses a shed
24 in the backyard and called and drop-shipped on all
25 of its suppliers. Is that correct?

1 THE WITNESS: That is part of the deal --

2 THE COURT: And they were found, according to
3 Ms. Oxendine --

4 THE WITNESS: They got an --

5 THE COURT: Pardon me. They were found,
6 according to Ms. Oxendine, not to have any viable
7 storage space, not to be able to supply inventory
8 on demand, but simply to be nothing more than
9 people who call the manufacturer or distributor and
10 say, drop-ship this to the County, right?

11 THE WITNESS: That is one of the things that
12 they did. They did some more stuff legitimately,
13 also.

14 THE COURT: Okay.

15 THE WITNESS: There is evidence that they did
16 some legitimate. There is evidence that they got
17 some warehouses since then.

18 THE COURT: The County made the determination
19 that they were not a legitimate small business
20 enterprise, correct?

21 THE WITNESS: That they would not operate --
22 no, not necessarily. They made a determination
23 that they were not operating as a conduit or
24 legitimately on some commodities, and they were
25 doing it legitimately in other commodities.

1 THE COURT: Okay. Thank you. Please proceed.

2 BY MS. LUYSTER

3 Q. Did the site investigation --

4 THE WITNESS: I want to finish the question.

5 His Honor asked where do we get it that Line-Tec

6 does not meet the warehouse requirements.

7 BY MS. LUYSTER

8 Q. Yes.

9 A. I got it from two sources. Number one, that
10 letter that was written to two different firms engaged
11 in this business. The company called Rogers Engines and
12 to a company called L & L. There may have been others.
13 I don't know. And I don't have a -- I'm not a friendly
14 person to -- I'm not treated friendly when I go there.
15 So they don't confide in me what other records they
16 have.

17 There is also, since April of 2006, the water
18 utilities department. The minimum operating standards
19 call for certain warehouse requirements. I don't know
20 how you can divorce one from the other. I mean, I don't
21 necessarily agree or disagree with their -- with those
22 warehouse requirements, but they used them as a weapon
23 at one time and they used them and then they are trying
24 to say apparently that they don't apply. I don't
25 understand.

1 Certainly, Line-Tec does not meet those
2 requirements. And I'm not saying one way or the other
3 whether they are fair or just what they are, but those
4 are the requirements.

5 Q. Did the Line-Tec investigation reveal that the
6 Office of Small Business was asking for the same
7 documents from Line-Tec as it did from Corcel?

8 A. No.

9 Q. For example, did they ask Corcel for copies of
10 checks and bank statements showing proof of payments to
11 suppliers?

12 A. They asked that from a -- they asked that
13 specific question from L & L.

14 Q. And --

15 A. And they didn't ask it from Line-Tec. They
16 asked Corcel for copies of inventory showing who we
17 bought goods from, and who do we pay to. That's the
18 central issue. And they didn't ask that critical
19 question what -- as far as showing who you buy from.

20 Our position is that they are buying
21 practically all of their goods from someone who is
22 supposed to be their competitor.

23 Q. Does the site visit summary and memorandum
24 indicate whether the County can ask for complete
25 transactions for purchases of pipes and valve and pipe

1 fittings from beginning to end?

2 A. It indicates that they did not ask for that,
3 but they asked it from other companies, yes.

4 Q. Who has the County asked that of?

5 A. For that -- asked for that type of information
6 from both Corcel and from L & L. Two investigations
7 that were done contemporaneously.

8 Q. How about a list of inventory? Did the site
9 investigation indicate that the County ask for or
10 evaluate a list of inventory?

11 A. No. In fact, I saw on a Chapter 119 request
12 that the County has not had a balance sheet from
13 Line-Tec since 2003, I think it was.

14 Q. And finally, does the site inspection of
15 Line-Tec reveal that the County asked for or evaluated
16 copies of manufacturer's representative and
17 distributorship agreements?

18 A. There is no indication that that was
19 requested.

20 Q. And has the County asked that of other small
21 businesses?

22 A. They have requested. And the ones that
23 they -- the evidence indicates that the letters that
24 Line-Tec has gotten, at least a number of them for sure,
25 were gotten for them through Ferguson. There is no

1 indication that they have any type of relationship with
2 any manufacturer other than to buy the goods from
3 Ferguson.

4 (Petitioner's Composite Exhibit No. 1 was
5 received into evidence.)

6 BY MS. LUYSTER

7 Q. Two more things: I want to show you what I
8 have marked as Petitioner's Composite Exhibit 1, and we
9 are going back to the Ford Motor Box Company and ask you
10 to take a look at these and explain the significance of
11 those two letters.

12 A. Yeah. This is a very large contract that was
13 recently bid in the last couple of months in Palm Beach
14 County. And one of the requirements from purchasing was
15 a letter from the manufacturer indicating that there
16 were -- that the vendor is authorized to sell the
17 products.

18 The first letter that was sent by Line-Tec --
19 I will read it. I think it speaks for itself.

20 MS. EIDELBERG: Objection. Hearsay, but --

21 THE WITNESS: I have the document here.

22 THE COURT: Who issued the letter? Line-Tec
23 or someone else?

24 THE WITNESS: Ford Meter Company writes the
25 letter. The letter was submitted by Line-Tec.

1 THE COURT: Ford Meter?

2 THE WITNESS: Ford Meter --

3 THE COURT: Submitted by Line-Tec to whom?

4 THE WITNESS: To the County.

5 THE COURT: All right. So I'll regard that as
6 a statement by a party, and therefore regard that
7 as a hearsay exception and it may come in. Go
8 ahead.

9 THE WITNESS: "To whom it may concern:
10 Ferguson Underground Supply Company No. 125 located
11 at 2361 Northwest 22nd Street in Pompano Beach is
12 an authorized distributor of the Ford Meter Box
13 Company in Wabash, IN., manufacturer of waterworks
14 brass, pipe products and Uni-Flange products.

15 "Line-Tec, who is a customer of Ferguson
16 Underground Supply resells Ford Meter Box
17 products."

18 I complained to the -- I inquired from the
19 purchasing department, is this -- you know, this
20 shows that they -- what they have been saying all
21 along; that Line-Tec is purchasing from a
22 distributor, as opposed to directly from a
23 manufacturer, as required.

24 And they got a different letter. Which I
25 think incriminates Line-Tec and proves -- you know,

1 indicates that the -- that what we are charging is
2 correct.

3 And this is another letter. This one is dated
4 December 4, 2008. The prior one was dated
5 October 27, 2008. And it goes again --

6 MS. EIDELBERG: This is after -- I'm sorry.

7 THE COURT: Go ahead.

8 THE WITNESS: "To whom it may concern: This
9 letter is to inform you that Line-Tec, Incorporated
10 is authorized to resell products manufactured by
11 the Ford Meter Box Company.

12 "All Ford products purchased from our
13 authorized distributors and their representatives
14 will be fully warrantied and supported by a
15 company's field service representatives.

16 THE COURT: What does that show?

17 THE WITNESS: It shows that all the
18 manufacturer is saying is, listen, we sell to our
19 distributors. And whoever they sell to, we stand
20 behind them. There is no relationship between me
21 and this company, Line-Tec. This is what it's
22 saying to me.

23 THE COURT: All right. So they are saying
24 that the end user is going to have the benefit of
25 the warranty.

1 THE WITNESS: Right. But the ordinance --

2 THE COURT: So what's the problem? Why is --

3 THE WITNESS: The problem --

4 THE COURT: Go ahead.

5 THE WITNESS: The problem is that the
6 ordinance requires a relationship with the
7 manufacturer, not with the distributor.

8 THE COURT: Okay.

9 THE WITNESS: In fact, the preamble to the
10 ordinance and in the newspaper of OSBA, they call
11 for a direct relationship with the manufacturer.

12 Clearly, there is no relationship here. All
13 the manufacturer is saying, that whoever they sell
14 to through the distribution, they'll stand behind
15 it.

16 THE COURT: All right. Ms. Luyster, please
17 wrap this up within 90 seconds.

18 BY MS. LUYSER

19 Q. Last question, Ray.

20 What would you like Judge Stern to do?

21 A. I would like Judge Stern to -- if he is not
22 convinced that the evidence is that Line-Tec is acting
23 as a conduit for Ferguson, to at least let us have
24 discovery so we can prove it to the Court unequivocally.
25 I think that it's not going to take very long in a

1 deposition for the truth to come a hundred percent out.

2 MS. LUYSTER: No further questions.

3 THE COURT: Thank you. Any cross?

4 MS. EIDELBERG: I do have some cross.

5 THE COURT: Please go ahead.

6 CROSS (RAY CORONA)

7 BY MS. EIDELBERG

8 Q. Mr. Corona, is it true that as recently as
9 December 16, 2008, the County advised you that you
10 should not be focusing solely on the relationship
11 between manufacturers and distributors in determining
12 commercially useful function, and you have been told
13 numerous times, including as recently as December 16,
14 2008, that that is what you choose to focus on, and
15 that's not what the ordinance says?

16 A. That's why I am suing the County. That's not
17 the ordinance. That's what you would like it to be.

18 Q. Okay. But you have been told by the County on
19 numerous occasions, that it may be best at this point to
20 just agree to disagree; that your interpretation of the
21 ordinance is different than the County's interpretation
22 of its own ordinance.

23 Would that be accurate, yes or no, that you
24 have been told that?

25 A. Yes.

1 Q. Okay. And would it also be accurate, if I
2 understood the beginning of your testimony, that you
3 made four complaints about your competitors, and that
4 three times the County, the Office of Small Business
5 agreed with you. But in this fourth instance with
6 Line-Tec, they did not; is that accurate?

7 A. It's accurate, but I had to sue the County.
8 To get the results, I had to fight with the County --

9 Q. When you sued --

10 A. -- to get the results on the other three.

11 Q. Excuse me. When you sued L & L --

12 MS. EIDELBERG: And before I forget, Judge, I
13 know I am running around.

14 BY MS. LUYSER

15 Q. -- this is the Line-Tec file that you have
16 reviewed --

17 MS. EIDELBERG: May I approach?

18 THE COURT: You may.

19 BY MS. EIDELBERG

20 Q. -- numerous times at the Office of Small
21 Business, correct?

22 A. That's one of the files.

23 Q. Right. That's one of the files.

24 Would you agree with me that this is an
25 inventory list in the Line-Tec file in the home file,

1 that this is a list of inventory that Line-Tec keeps on
2 hand, yes or no? Is that what it's called?

3 A. This is a list of inventory as of --

4 Q. Yes. Okay.

5 A. As of --

6 Q. It's an inventory that's dated 2006, correct?

7 A. This is a list of inventory dated 2006 --

8 Q. Right. Okay.

9 A. -- which is consistent with the inventory that
10 they had when they were strictly a contractor. That is
11 my point.

12 Q. Okay. But my point is that you want to come
13 in and second-guess what OSBA and its certified staff
14 does and how it conducts --

15 A. No. I wanted to follow the law and not to
16 protect big businesses, is our lawsuit here. I'm all
17 for OSBA supporting --

18 Q. All right. Now --

19 MS. EIDELBERG: Would you please ask him to
20 answer my questions?

21 THE COURT: Sir, please answer the question.

22 MS. EIDELBERG: And I'm just trying to be more
23 direct because we have limited time.

24 BY MS. EIDELBERG

25 Q. Now, you bid against Line-Tec on a regular

1 basis, correct?

2 A. Ever since they became --

3 Q. Yes or no, sir?

4 MS. LUYSER: I would just object to the tone
5 of voice.

6 BY MS. EIDELBERG

7 Q. Would you please answer the question?

8 MS. EIDELBERG: Okay. I'm sorry.

9 THE COURT: Okay.

10 MS. EIDELBERG: I'm just rushing. It's
11 nothing personal.

12 THE COURT: Ms. Eidelberg is simply trying to
13 meet time constraints. We are way overdue with the
14 time schedule.

15 MS. EIDELBERG: Let me rephrase the question.

16 THE COURT: I'll sustain, because

17 Ms. Eidelberg did slightly raise her voice.

18 MS. EIDELBERG: Yes, I did. I'm sorry.

19 THE COURT: Okay. Please answer the question.

20 MS. EIDELBERG: Let me rephrase it.

21 BY MS. EIDELBERG

22 Q. You are a competitor of Line-Tec, correct?

23 A. I compete against Line-Tec only on Palm Beach
24 County jobs because they don't bid on other jobs to
25 contractors or to municipalities which don't have a

1 small business preference.

2 Q. Okay. Yes or no? You are a competitor of
3 Line-Tec in Palm Beach County --

4 A. I answered the question. Do you want me to
5 answer it again?

6 Q. Is that a "yes?"

7 A. I compete against them in Palm Beach County.
8 I do not compete against them. They do not participate
9 in any other bids and other -- to the public.

10 Q. We are only talking about Palm Beach County,
11 sir. This is a Palm Beach County Ordinance, not other
12 municipalities. Palm Beach County.

13 Now, you --

14 A. One of the requirements of the ordinance is
15 whether the SBE vendor maintains a relationship with
16 other municipalities and the public other than Palm
17 Beach County. So it's very germane to the inquiry here.

18 Q. Am I correct that you would benefit from
19 Line-Tec's decertification?

20 A. I would benefit from the -- yes and no.

21 Q. Okay. Would -- let me show you is -- am I
22 correct that Line-Tec more -- well, that Line-Tec bids
23 directly against Ferguson for the same products?

24 A. You are incorrect. The records show, and we
25 have substantial evidence that we put on the record that

1 for two years, from the time that Line-Tec was
2 certified -- this is very germane to the inquiry -- from
3 the time that Line-Tec was certified in 2006 through
4 August of 2008, Ferguson discontinued competing against
5 Line-Tec on all but direct invitations from the County
6 in which they -- for small bids.

7 All major solicitations, all advertised
8 solicitations, and I have a record of many, many of
9 them, Ferguson did not participate. Only participated
10 using Line-Tec as a conduit.

11 Q. Mr. Corona --

12 A. Now, after -- I am finishing the answer to the
13 question.

14 THE COURT: Please go ahead.

15 THE WITNESS: After -- on August 15th of 2008,
16 we complained and we brought up the fact that for
17 all this time, Line-Tec -- Ferguson, although they
18 were the largest distributor in the world, the
19 largest distributor in the County, that they were
20 not bidding on county projects because they had
21 their own conduit. And after that, then they
22 switched gears and Ferguson began bidding parallel
23 with Line-Tec.

24 BY MS. EIDELBERG

25 Q. Would you agree with me that the petition that

1 you filed in this case, the third amended petition is
2 dated March 27, 2008?

3 A. Yes.

4 Q. Would you agree --

5 A. I guess so. I don't remember the date.

6 Q. Would you agree that --

7 A. Sounds right.

8 Q. -- the relevant date, the date you requested
9 an investigation is March 18, 2008?

10 A. No. The date I requested investigations is
11 since the summer of 2006.

12 Q. All right. All before any of the stuff that
13 you just testified that happened recently or the new
14 code and what you are relying on in the new code, which
15 didn't even come into fact until June of 2008; is that
16 accurate?

17 A. No, I don't agree with that. And I don't
18 understand -- you are flip-flopping on the code. You
19 say that the code is not applicable when you shall or
20 you may decertify as being a mandatory or being
21 discretionary and that's the new code. But now you are
22 trying to say that the old code doesn't -- is the one
23 that really applies, not the new code because of the
24 filing, so I don't understand.

25 To answer your question, those requirements

1 and those complaints that I have are as valid under the
2 old code as under the new code.

3 Q. Would you agree, though, for purposes of this
4 litigation and the petition that you filed here that
5 Judge Stern is supposed to determine was filed in March
6 of 2008 and therefore, the applicable code would be the
7 2005 code?

8 A. The applicable code is a legal issue. I'm not
9 a lawyer, so I don't know about that. But I don't have
10 a problem with it, quite frankly.

11 Q. I'm going to show you, with the Court's
12 permission, the 2005 code. And show me where it says --
13 and I even have the flags marked, that you are welcome
14 to use, show me where it says that --

15 A. You are flagging to help me? Is that what you
16 are saying?

17 Q. I'll take the flags out. This is the 2005
18 code. They are flagged because --

19 A. Okay. I am saying they are not to help me or
20 they are to help me? Well, go ahead.

21 Q. Show me in the code what you were referring to
22 in answering your attorney's questions about a
23 distributorship and a relationship between the
24 manufacturer -- that there has to be a business -- a
25 distributorship arrangement with the manufacturer of

1 goods and supplies, and whether the business maintains
2 sufficient inventory to meet the requirements.

3 Show me where in the 2005 code that language
4 is. Because you testified to that earlier when the
5 attorney was asking --

6 A. Yes. I can find a link to that.

7 And also, on the September 25, 2006 letter, if
8 I can take that and we have -- I think I have a copy
9 there, from the OSBA, it clearly makes references to all
10 those items.

11 Q. Okay.

12 A. Now, I mean, there is -- there is a -- the
13 issue about a relationship with the manufacturer
14 specifically, that was in addition under the new code.

15 Q. Right. So it's not in the old code --

16 A. I'm not saying it's not under the old code.
17 It was constructed under the old code, the construction
18 of the ordinance by the County Attorney's Office and by
19 the director and that it was in there. That you had to
20 have a relationship.

21 That's why that September 2005 letter said
22 that you had to -- that you could not. That a company
23 who purchased from a distributor, as opposed to directly
24 from a manufacturer, was not meeting a commercially
25 useful function. And that was the interpretation.

1 It became -- I guess to further clarify the
2 intent of the ordinance, they made it an amendment to
3 the ordinance. And you are correct, that was done in
4 May of 2008.

5 Q. All right. So you have been told numerous
6 times by Office of Small Business, the County Attorney's
7 Office that the letter that you keep referring to in the
8 L & L case is from 2005, and is outdated and is not the
9 standard of the law. Is that correct?

10 A. I received an e-mail, from -- which I think is
11 ludicrous, saying that something, that a law is
12 outdated. I don't agree with that.

13 That interpretation was -- that was the
14 interpretation and was fortified by an amendment to the
15 code specifically calling for a relationship between the
16 manufacturer and the distributor. So I can't understand
17 just because you say it's not so, doesn't make it not
18 so.

19 Q. Well, could you show me where --

20 THE COURT: Ms. Eidelberg, I'll give you 60
21 more seconds.

22 BY MS. EIDELBERG

23 Q. Where does it say in the 2005 ordinance that
24 it's so? That you have to have a certain amount of
25 warehouse space; that you have to have a certain amount

1 of distributor relationships; that you cannot ever drop
2 ship? Or does it say in the code that it is a
3 combination of factors left to the discretion of OSBA to
4 determine on a case by case basis?

5 A. There is language in both the 2005 and the
6 2008 amendments of the ordinance that talk about
7 warehouse space, that talk about inventory, and --

8 Q. Show me in the 2005 because that's the only
9 one that is applicable here.

10 A. Okay. I showed it to Mr. -- let me see.

11 Q. Because would you agree with me if I told you
12 that that language is referenced only in the 2008, which
13 was just passed, it has nothing to do with the petition?

14 A. There was language in the 2005 ordinance that
15 reflects that you have to have adequate warehouse --
16 adequate storage facilities, I think is the language
17 that they use. I have to find it, but it's in there.

18 THE COURT: Well, it says it's adequate.

19 THE WITNESS: Right.

20 THE COURT: So if the County decides it's
21 adequate, and you think it's inadequate, you are
22 asking a court to say that you are right, the
23 County is wrong, and therefore I should regard them
24 as not qualified to be an SBE?

25 THE WITNESS: That's not the main thing. That

1 is one of the requirements. First, the --

2 THE COURT: Who is it to make that
3 determination of adequacy?

4 THE WITNESS: The County has made the
5 determination -- I don't know what it is. The
6 County made it -- the OSBA made it in September of
7 2005, a certain criteria. That same criteria was
8 adopted by the Board of County Commissioners in
9 April of 2006.

10 THE COURT: So what? How does it apply to
11 this case?

12 THE WITNESS: Now, I don't know. Are you
13 saying that the --

14 THE COURT: Don't ask her a question. Answer
15 my question.

16 THE WITNESS: Yes.

17 THE COURT: How does any of this apply to this
18 case to make Line-Tec unqualified as an SBE?

19 THE WITNESS: The essence of the commercial
20 use of the -- the main thing that they are in
21 business for, that the OSBA is there for, is to
22 prevent big business from cheating small business.

23 THE COURT: What's that got to do with storage
24 space?

25 THE WITNESS: Storage space is a minor thing.

1 That's not my major thing.

2 THE COURT: You are making a big issue of it.

3 That's why I wanted --

4 THE WITNESS: No, no. I'm not making a big --

5 I'm saying there is a specific requirement.

6 Certainly, that's one of the requirements. The

7 essence, the big thing is buying from Ferguson,

8 from the competitor.

9 THE COURT: All right. I'm going to allow you
10 a maximum of two more questions.

11 MS. EIDELBERG: I'm just going to --

12 THE WITNESS: That's just one of the many --

13 MS. EIDELBERG: -- ask for this back, and I
14 have nothing further.

15 THE COURT: All right. Very good. She's just
16 asking for this back.

17 MS. EIDELBERG: Thank you. And I'm sorry I
18 raised my voice.

19 THE WITNESS: That's all right. That's all
20 right, ma'am. I know you get excited.

21 MS. EIDELBERG: I'm just rushing.

22 THE COURT: Ms. Luyster, any redirect?

23 MS. EIDELBERG: I did want a few minutes,
24 Judge, for closing to just --

25 THE COURT: All right. Ms. Luyster?

1 MS. LUYSTER: I don't think I have any
2 redirect. I do want a few minutes just to
3 summarize.

4 THE COURT: Okay. You may step down,
5 Mr. Corona. Thank you very much.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Please watch your step.

8 All right. We have discussed ad infinitum the
9 issues in this case. You have both thoroughly
10 briefed the issues. I am going to limit you to 60
11 seconds each and tell me what the cogent reasons
12 are why I should rule in favor of your respective
13 positions.

14 All right. First, Counsel for Corcel.

15 MS. LUYSTER: Bottom line, Your Honor, is we
16 have requested that they conduct an adequate site
17 investigation. The site investigation that is in
18 the record under the code, the County must -- Small
19 Business must be decertified, if it does not meet
20 the eligibility standards for certification. That
21 is found in Section 2-80.30(i) "eligibility
22 standards."

23 Also in that section under subsection (A)
24 states that an eligible small business must perform
25 a commercially useful business function.

1 Subsection (B) defines commercially useful
2 business functions and include whether the business
3 adds value to the product, whether the business
4 takes possession of the product. Whether the
5 business warrants the product. Whether the
6 business maintains sufficient storage space to keep
7 the product in inventory. And whether the business
8 provides a product of service to the public or
9 other businesses other than a governmental agency
10 and whether the business is operating in accordance
11 with normal industry practice. And the results of
12 the site investigation of Line-Tec, (A), do not
13 reveal that the County has investigated any of that
14 criteria. (B), reveals that Line-Tec does not meet
15 those criteria.

16 And therefore, it's Corcel's position that
17 based on the lack of evidence, that it is operating
18 as a conduit, and the business should be
19 decertified.

20 THE COURT: Thank you.

21 MS. LUYSTER: Thank you, Judge.

22 THE COURT: Ms. Eidelberg.

23 MS. EIDELBERG: Judge, I ask that you look at
24 the 2005 code, which was marked as Exhibit 1, Page
25 9. It lays out the seven factors that Ms. Oxendine

1 referred to and are referred to in the memorandum
2 of law and in the Exhibit 2, site visit report.
3 Each and every factor is addressed in the report
4 and in Ms. Oxendine's testimony by reference to the
5 report.

6 There are seven factors that you consider to
7 see if the company will be decertified. These
8 seven factors do not exist with respect to
9 Line-Tec. These seven factors are from the 2005
10 code.

11 I will just say gratuitously that under the
12 2008 code, they would still be certified, and they
13 are still a legitimate business. The only
14 significant change in that code has to do with
15 whether we ever had to do the ministerial duty of
16 an investigation.

17 Since we have conceded for purposes of this
18 case that we had a duty to investigate and that we
19 did the duty to investigate based on the Court's
20 rule to show cause, I think it's now appropriate
21 that we did it in compliance with the law. This is
22 the code. This is the ordinance. This is what we
23 followed.

24 Commercial useful function, it's the same
25 thing under -- on Page 6 when it talks about the

1 factors. There, it's not as much of a mandate. It
2 says you will consider. Therefore, it's
3 automatically discretionary how the OSBA staff
4 would come up with the final conclusion.

5 And I would just, in summary, say that the
6 Court, it's now time -- we respectfully ask that
7 the Court deny the third amended petition with
8 prejudice.

9 THE COURT: Thank you. All right. I have
10 found the testimony of Ms. Oxendine to be very
11 compelling, extremely plausible, and quite
12 thorough, in terms of what was considered.

13 What this Court has the authority to do under
14 mandamus is to order a required act to be
15 performed. So if the County had not performed an
16 investigation or if the investigation had been
17 patently superfluous and perfunctory and there were
18 some strong indication of legitimacy, that would be
19 one thing.

20 What we have here is an investigation that was
21 conducted. It was certainly not perfunctory. To
22 the contrary, it was thorough, had considered all
23 of the required seven elements. The County has
24 done what it is required to do.

25 This Court is being asked to substitute its

1 judgment for the very qualified and responsible
2 county officials, whose job it is to interpret and
3 implement the County code. I think it is rather
4 axiomatic in law at both the state and federal
5 levels of when a governmental entity or agency has
6 the obligation of interpreting and implementing
7 statutes or ordinances or regulations that have
8 been delegated to it for interpretation and
9 regulation -- I'm sorry, and enforcement, that the
10 judgment and interpretation of that agency is to be
11 given great deference by the courts.

12 Moreover, whereas here, the explanations given
13 by the representative of the agency are extremely
14 plausible and totally in line with the clear
15 language of the ordinances, there is absolutely no
16 basis on which this Court can substitute its
17 judgment for that of the agency.

18 Furthermore, what this Court is being asked to
19 do is to basically supervise ongoing investigation
20 of Line-Tec by Palm Beach County by the Office of
21 Small Business, and this would be something that
22 the courts have absolutely no authority to do in a
23 mandamus situation. And for that proposition, I
24 would cite to the Town of Manalapan vs. Rechler,
25 R-E-C-H-L-E-R, reported at 674 So.2d 789, a 4th DCA

1 case 1996 where review was denied. And also, to --
2 sorry, there was an earlier case. It's the Orlando
3 case, I believe, yes. Also, a 4th District case
4 from '72 reported at 269 So.2d 402. And that's --
5 the full name of that is State ex rel. Fraternal
6 Order of Police, Orlando Lodge No. 25 v. City of
7 Orlando, as to which certiorari was denied. Both
8 cases strongly standing for the proposition that a
9 court has absolutely no mandamus authority to
10 conduct an ongoing supervision of a required act.

11 I find categorically that the testimony of
12 Ms. Oxendine was categorical; that she is totally
13 familiar with the activities of Oxendine [sic] and
14 with its performance under a history of contracts,
15 and that it categorically does provide a
16 commercially useful business function, and has been
17 found through an investigation properly conducted
18 as required by the Code to be properly certified.

19 The County fulfilled its obligation by
20 conducting an investigation, a documented
21 investigation in which all required elements were
22 met head-on and carefully considered.

23 Mr. Corona has performed a useful function in
24 the other three complaints in which the County has
25 subsequently found, if I am understanding the facts

1 correctly, that other enterprises were either sham,
2 Small Business Enterprises or would otherwise not
3 qualify. But that is not to say that therefore it
4 is to be assumed that every time he makes a
5 complaint, that it is well-founded. I am not
6 questioning his bad faith, but I certainly question
7 his reasoning.

8 Mr. Corona seems to feel that the fact that on
9 some occasions, a small business enterprise buys
10 directly from a manufacturer or from a distributor
11 or from a potential competitor somehow invalidates
12 its status as a small business enterprise.

13 And Ms. Oxendine made it quite clear that that
14 is not the case. And that instead, to paraphrase,
15 or at least analogize to what antitrust law calls
16 commercial reality, which the courts are required
17 to use as the benchmark for their determinations,
18 Ms. Oxendine was categorical in saying that the
19 functions of dealers, jobbers, distributors, and
20 others in the marketplace have to be freely
21 available for use, and that Line-Tec satisfies its
22 obligations to the County and more than meets its
23 obligations as a small business enterprise by
24 carrying, stocking, and having readily available, a
25 broad list of products and product lines when the

1 County needs them.

2 There is absolutely no question that the
3 County has done what it was obligated to do, and
4 this Court certainly finds that it did its -- it
5 performed in that obligation of conducting this
6 investigation in precisely the manner in which it
7 is required to perform.

8 The determinations have been made not only by
9 Ms. Oxendine, but by her subordinates, who are
10 clearly very well-qualified to make these
11 evaluations. It is clear that the motivation of
12 Ms. Oxendine and those under her is to serve the
13 interests of the County and ensuring the viability
14 and availability of small business enterprises in
15 this County. And they also have an obligation to
16 disqualify or decertify those enterprises found not
17 to meet the criteria of the Code.

18 The behavior of the County in this case has
19 been exemplary and has been totally in conformance
20 with its obligations under the Code and otherwise
21 under the law. And I therefore deny the petition
22 for writ of mandamus with prejudice. And if the
23 Fourth DCA feels that further action by this Court
24 is necessary, I am sure they won't hesitate to say
25 so.

1 I want to thank you both for your repeated and
2 thorough presentations, but I certainly wanted to
3 make sure that every consideration was given to
4 both sides, and I would like to think that I have
5 done that as carefully as the Court can do.

6 I am going to ask that the County Attorney or
7 the Counsel for the County, I should say, draw up a
8 proposed order in accordance with my comments here
9 today and my findings after faxing those to
10 Ms. Luyster so that she can review it and decide
11 whether it does or does not accurately reflect my
12 findings.

13 It's respectfully noted that obviously,
14 Ms. Luyster and Mr. Corona do not agree with the
15 findings or ruling of this Court, but I do want
16 them to have the -- or at least Ms. Luyster to have
17 the opportunity to say yes or no as to the accuracy
18 of the proposed order in setting forth the findings
19 and rulings of this Court.

20 Thank you both. I wish you all a Happy New
21 Year. I'm going on to family court after this,
22 and --

23 MS. EIDELBERG: Thank you, Your Honor. While
24 we are on the record, I just want to say that on
25 the record, I'm going to order an expedited copy of

1 just the ruling portion, as well as a disk, and
2 that I will type up verbatim what you said, submit
3 it to Ms. Luyster. And if for whatever reason, we
4 can't agree within a day or two of what is typed
5 up, I will submit that copy of the transcript and
6 the disk to you and your assistant, okay?

7 THE COURT: I appreciate that. And I would
8 ask that if either of you have any submissions --
9 well, put it this way: If Ms. Luyster disagrees,
10 please have your cover letter to me indicate that,
11 so I will look for her submission, as well.

12 MS. EIDELBERG: Yes. But I'm just going to
13 type up what you said. I am not going to take any
14 poetic --

15 THE COURT: Understood. All right. Thank
16 you.

17 MS. LUYSTER: Have a wonderful time in family
18 court. I may see you there.

19 THE COURT: All right. It will be a pleasure
20 there, as it has been here. Thank you and have a
21 Happy New Year.

22 (The hearing was concluded.)
23
24
25

C E R T I F I C A T E

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STATE OF FLORIDA
COUNTY OF PALM BEACH

I, Lisa M. Mazzei, Registered Professional
Reporter, State of Florida at large, certify that I was
authorized to and did stenographically report the
foregoing proceedings and that the transcript is a true
and complete record of my stenographic notes.

Dated this 7th day of January, 2009.

Lisa M. Mazzei, RPR

Job #65698

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO. 502007CA002275XXXXMB AE

CORCEL CORP.,
a Florida corporation,
Plaintiff,

v.

PALM BEACH COUNTY, a political
subdivision of the State of Florida,
Defendant,

**FINAL JUDGMENT DENYING WITH PREJUDICE
PLAINTIFF'S THIRD AMENDED PETITION FOR WRIT OF MANDAMUS**

THIS CAUSE came before the Court on January 6, 2009, for an Evidentiary Hearing on Petitioner, Corcel Corp.'s Third Amended Petition for Writ of Mandamus, pursuant to the Court's Order to Show Cause and Order Reiterating Denial of Motion for Injunction dated December 8, 2008. Present before the Court were: Julia Luyster, Counsel for Petitioner, Corcel Corp. ("Corcel"); Ray Corona, Vice-President of Corcel Corp.; Pamela G. Eidelberg, Assistant County Attorney for Respondent, Palm Beach County; Tammy Fields, Assistant County Attorney; Hazel Oxendine, Director of the Palm Beach County Office of Small Business Assistance ("OSBA"); and Lisa Miller, Counsel for non-party, Line-Tec, Inc. ("LineTec").

After hearing the testimony of Hazel Oxendine on behalf of the Respondent, and the testimony of Ray Corona on behalf of the Petitioner, after observing the

demeanor of the witnesses, and after hearing the arguments of counsel and reviewing the exhibits introduced into evidence, as well as the pre-hearing memoranda submitted by each party, this Court makes the following findings of fact and conclusions of law:

1. In Count I of its Third Amended Petition for Writ of Mandamus ("Third Amended Petition"), Corcel alleges that the County's OSBA has failed to investigate non-party, Line-Tec. The relief sought in Count I is that the Court issue a Writ of Mandamus requiring Palm Beach County and the OSBA to investigate whether Line-Tec is not performing a commercially useful business function or not meeting the eligibility requirements for certification as a small business as otherwise required by Palm Beach County Code.

2. In Count II of its Third Amended Petition, Corcel seeks a Writ of Mandamus requiring Palm Beach County and the OSBA to decertify Line-Tec as a certified Small Business Enterprise ("SBE"). In support thereof, Corcel alleges that Line-Tec does not meet the eligibility standard for certification as a small business under Palm Beach County Code.

3. In an action for Writ of Mandamus, this Court has the authority to order a required act to be performed. The Court must determine if the County has not performed an investigation or if the investigation performed was patently superfluous and perfunctory.

4. The Court finds the testimony of Ms. Oxendine very compelling, extremely plausible, and quite thorough, in terms of what the OSBA considered during its investigation of Line-Tec. The investigation was certainly not

perfunctory. To the contrary, it was thorough and OSBA staff considered all of the required seven elements under the Palm Beach County Code. Palm Beach County and OSBA has done what it is required to do.

5. Corcel asks the Court to substitute its judgment for the very qualified and responsible county official(s), whose job it is to interpret and implement the Palm Beach County Code. It is rather axiomatic in law at both the state and federal levels, that when a governmental entity or agency has the obligation of interpreting and implementing statutes or ordinances or regulations that have been delegated to it for interpretation and enforcement, that the judgment and interpretation of that agency is to be given great deference by the courts.

6. Moreover, as in this case, where the explanations given by the representative of the agency are extremely plausible and totally in line with the clear language of the relevant ordinances, there is absolutely no basis on which the Court can substitute its judgment for that of the agency.

7. Furthermore, the Petitioner is asking the Court to exercise continuous supervisory jurisdiction to ^{ensure} ~~insure~~ the investigation of Line-Tec by Palm Beach County's Office of Small Business was or is performed correctly. The courts have absolutely no mandamus authority to do so, as such a situation requires the Court to command performance, not of a single act, but of a continuous and continuing series of acts. The writ is not appropriate for this purpose. The Court has absolutely no mandamus authority to conduct an ongoing supervision of a required act. See, *Town of Manalapan vs. Rechler*, 674 So.2d 789, (4th DCA 1996, review ⁷⁹⁰ ^{FLG} _^ _^)

denied) and *State ex rel. Fraternal Order of Police, Orlando Lodge No. 25 v. City of*
402-403, Fla. 4th
Orlando, 269 So.2d 402, (DCA 1972)(certiorari denied).

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8. The Court finds categorically ^{that} the testimony of Ms. Oxendine ^{was} ~~to be~~ compelling; she is totally familiar with the activities of Line-Tec and with its performance under a history of contracts, and that Line-tec categorically does provide a commercially useful business function, and that Line-tec has been found, through an investigation properly conducted as required by the Code, to be properly certified as an SBE.

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9. Palm Beach County and ^{its} OSBA fulfilled ^{their} obligations by conducting a documented investigation in which all required elements were met and carefully considered by OSBA.

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10. The Court notes that even if Mr. Corona previously requested that OSBA perform a commercially useful business function evaluation in three other complaints he filed with OSBA in the past, and where Palm Beach County and OSBA have subsequently found those other enterprises were either a sham or would not otherwise qualify as an SBE, it is not to be assumed that every time he makes a complaint, such a complaint is well-founded. Although the Court is not questioning his bad faith, it does certainly question Mr. Corona's reasoning ^{in this instance.}

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11. Although Mr. Corona seems to believe that if on some occasions, a small business enterprise buys directly from a manufacturer or from a distributor or from a potential competitor, this somehow invalidates its status as a small business enterprise, Ms. Oxendine made it quite clear that that is not the case. Instead, to paraphrase, or at least analogize the situation to what antitrust law calls

(13) "commercial ^{realities,} reality," which the courts are required to use as the benchmark for their determinations, Ms. Oxendine was categorical in saying that the functions of dealers, jobbers, distributors, and others in the marketplace have to be freely available for use, and that Line-Tec satisfies its obligations to Palm Beach County and more than meets its obligations as a small business enterprise by carrying, stocking, and having readily available, a broad list of products and product lines when the County needs them.

12. The Court finds there is absolutely no question that Palm Beach County has done what it was obligated to do, and that it performed its obligation of conducting an investigation in precisely the manner in which it is required to perform such an act. The determinations have been made not only by Ms. Oxendine, but also by her subordinates, who are clearly very well-qualified to make these evaluations.


13. The Court finds that the motivations of Ms. Oxendine and those under her are to serve the interests of the county and to ensure the viability and availability of small business enterprises in this county. Likewise, it is clear to this Court that Ms. Oxendine and her staff are aware of their obligation to decertify those enterprises found not to meet the criteria of the Code.

(13) 14. The Court finds that the behavior of Palm Beach County and OSBA in this case have been exemplary and totally in conformance with ^{their} ~~the~~ obligations under the Code and otherwise under the law. Accordingly, it is hereby

ORDERED AND ADJUDGED AS FOLLOWS:

Petitioner, Corcel Corp.'s Third Amended Petition for Writ of Mandamus is denied with prejudice.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 15th day of January, 2009.


KENNETH D. STERN
Circuit Court Judge

Copies furnished:

Pamela G. Eidelberg, Assistant County Attorney, 300 N. Dixie Hwy., Ste. 359, West Palm Beach, FL 33401 (VIA INTEROFFICE MAIL)

Julia Luyster, Counsel for Corcel Corp., 5353 N. Federal Hwy., Suite 303, Fort Lauderdale, Florida 33308

Lisa Miller, Counsel for Non-Party, Line-Tec, Inc., 1004 DeSoto Park Drive, Tallahassee, FL 32301

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2009

CORCEL CORP., A Florida corporation,
Appellant,

v.

PALM BEACH COUNTY, a Political Subdivision of the State of Florida,
Appellee.

No. 4D09-302

[November 25, 2009]

PER CURIAM.

Affirmed.

HAZOURI, DAMOORGIAN, JJ. and RODRIGUEZ-POWELL, MILY, Associate Judge,
concur.

* * *

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm
Beach County; Kenneth D. Stern, Judge; L.T. Case No.
502007CA002275XXXXMB.

David J. Valdini, Fort Lauderdale, (withdrawn as counsel after filing
brief), and Julia Luyster of Rutherford Mulhall, P.A., Boca Raton, for
appellant.

Shannon Fox, Assistant County Attorney, West Palm Beach, for
appellee.

Not final until disposition of timely filed motion for rehearing.

Scott Ellsworth

From: Patricia Wilhelm M. [PWilhelm@pbcgov.org]
Sent: Tuesday, July 27, 2010 1:02 PM
To: Scott@linetecinc.com
Cc: Allen Gray F.
Subject: NIGP Codes for recertification

Mr. Ellsworth,

Allen Grey and I met to clarify the NIGP codes for those goods and services you provide. As mentioned in your e-mail dated July 26, 2010, we are willing to assign codes covering only the services provided under your Plumbing and Underground Utility License. If requesting only services areas, please provide a signed and dated letter affirming this. These are the codes for those areas;

91468 Plumbing
91389 Maintenance and Repair, Utility/underground projects
91356 Construction, Utility/Underground projects
91244 Excavation Services

For the items your company has in stock (inventory) and can demonstrate that provides a commercially useful business function for Palm Beach County Procurement purposes, ie has a written agreement to provide the item from a distributor or supplier and provides delivery (not drop shipping) the following codes can be given:

89045 Meter Fittings, water, accessories, parts and conversion kits
89040 Meter Boxes, meter vaults and valve boxes
21045 Meter boxes and Concrete Pull Boxes
65973 Saddles, sleeves and straps
65860 Pipe (PVC)
65978 Tubing Fittings, Brass, Bronze and Copper
34060 Fire Hydrants
67069 Valves, Brass and Copper
67070 Valves, Bronze: Angle, Ball, Check, Gate, Globe, etc
67075 Valves, Iron Body: Angle, Check, Gate , Globe, etc

You may reach me at 561-616-6843 if you have questions.

Sincerely,

Patricia M. Wilhelm
SBDS II

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.