



County Administration

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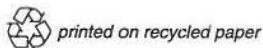
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*"An Equal Opportunity
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TO: Flora Butler, Investigations Supervisor
Office of Inspector General

FROM:  Verdenia C. Baker, Deputy County Administrator

RE: OIG Case #2010-0010

Date: August 11, 2011

Staff has reviewed the draft findings regarding the Inspector General's investigation of Line-Tec and concurs that Line Tec submitted altered documents as a part of the SBE recertification process and therefore was in violation of county code. However, I would like to highlight the fact that Line-Tec met the eligibility criteria when originally certified. Below are specific comments relating to your findings:

Finding 1

In regards to the distributorship letters, your office appears to discount the validity of the letters because they are not a "contractual agreement" between the two parties. OSBA has discovered over time that not all manufacturers and distributors have a formal arrangement with distributors or resellers of their products. While some have contractual agreements, others only require that a business establishes an account with them or they may send a letter stating the arrangement between the two parties. All of the letters submitted by Line-Tec to OSBA were verified by the OIG as being authentic letters. OSBA believes the authenticity of the letters should be clearly stated in the finding. Further, the County does not dictate with whom a vendor must conduct business, just that they are authorized to do business with a manufacturer as a distributor or reseller of the manufacturer's product. If an SBE purchases products from an authorized distributor and the SBE is an authorized reseller of the product, this does not constitute a violation of any County rule as long as there is no collusion between the distributor and the SBE. Staff is not aware of evidence that rises to the level of collusion between Line-Tec Inc., Ferguson and HD Supply. Also, it should be noted that although a criminal investigation was done as referenced in your report, the State



Attorney's Office is also not pursuing any charges of fraud or collusion against Line-Tec.

Finding 2

Staff totally disagrees with the OIG determination and the method in which you arrived at the conclusion that OSBA failed to address concerns related to the certification, as well as the recertification of Line-Tec, Inc. as a SBE. Your office appears to have relied solely on the testimony of Mr. Ray Corona, who happens to be a competitor to Line-Tec., and disregarded all the documented steps OSBA took to investigate this matter over a number of years. The August 2, 2006 letter from National Waterworks (NWW) was a complaint regarding the operations at Line-Tec's facility in Delray Beach alleging that this facility did not comply with the storage space requirements in the bid documents at that time. OSBA conducted unscheduled site visits of Line-Tec's facilities in Delray Beach and Boynton Beach August 11th, 18th, 22nd and 24th of 2006 as a result of NWW's complaint. Staff took pictures of the inventory and the new facility and noted that Line-Tec was in the process of relocating from Boynton Beach to Delray Beach at the time this complaint was filed. None of this activity and documentation by OSBA was mentioned in your findings. The reference to the August 28, 2006 memo regarding Line-Tec's request to amend their services incorrectly identified Allen Gray as the Acting Director, Hazel Oxendine was still the Director in her full capacity in 2006.

Also, OIG made reference to two allegations being filed with OSBA by Line-Tec competitors regarding Line-Tec not being an authorized distributor, however, only Corcel Corp. provided documentation that may have substantiated this claim. OSBA reviewed the submitted documentation and considered all the other documentation collected and reviewed by staff and concluded that the allegations were unsubstantiated. On December 12, 2006, Hazel Oxendine, Director of OSBA sent an email to Mr. Corona, president of Corcel Corp., detailing OSBA's determination regarding this matter. Again, OIG failed to mention this correspondence with regards to OSBA's efforts to address the concerns regarding Line-Tec's certification.

OIG made a brief reference to the January 15, 2009 court decision denying Corcel Corp petition, citing that the courts did not have authority to substitute its judgment for that of OSBA. While this is correct, the Judge's ruling was much more substantive in its reasoning. **The Court listened to all the arguments and reviewed all exhibits introduced into evidence from Corcel Corp. and OSBA and opined that OSBA staff had conducted a thorough job of investigating this matter and it was not a perfunctory effort. The Court further stated that OSBA fulfilled their obligation by conducting a documented investigation in which all elements were met and carefully considered. The Court noted that the behavior of OSBA was exemplary and in total conformance with the code and under the law. The Court concluded that the explanations given by OSBA representatives were extremely plausible and totally in line with the clear language of the relevant ordinances, and in this light, there was absolutely no basis on which the Court could substitute its judgment for that of the agency.**

Finally, when the OIG submitted new evidence to OSBA regarding the documents Line-Tec had submitted as part of their request for re-certification as an SBE of supplies, OSBA conducted an independent investigation and took the appropriate actions by decertifying Line-Tec Inc. for supplies as a result of this new information. The County believes these factors are critical and should be include as a part of your findings. Please do not hesitate to contact me if you have any questions regarding this response.

c: Robert Weisman, County Administrator
Denise Nieman, County Attorney
Tammy Fields, Assistant County Attorney
Allen Gray, Acting Manager, OSBA