



OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

REPORT OF INVESTIGATION CASE NUMBER: 2010-0010

Sheryl G. Steckler
Inspector General

"Enhancing Public Trust in Government"

EXECUTIVE SUMMARY

The Office of Inspector General (OIG) released Management Review #2010-0008 related to the Office of Small Business Assistance (OSBA) and the Small Business Enterprise (SBE) certification process on May 11, 2011. During the course of that review, the OIG received information from Corcel Corporation, Inc. Vice President Ray Corona alleging that Line-Tec, Inc. provided misleading and/or falsified documents to OSBA for certification as a SBE. Mr. Corona further indicated that despite various complaints from himself, as well as another competitor, National H₂O Waterworks, Inc. (National), OSBA failed to address concerns related to Line-Tec's certification and/or re-certification as a SBE. Based on the information provided by Mr. Corona, the OIG initiated an investigation.

The OIG investigation revealed that Line-Tec provided misleading documents in order to attain SBE certification from OSBA. Line-Tec provided six letters to OSBA as evidence of its (Line-Tec's) status as a distributor; however, upon the OIG's review of those letters, as well as subsequent contact with the authors of such letters, the authors readily admitted to one or all of the following:

1. Line-Tec had never procured goods from them;
2. Ferguson Enterprises, Inc. (Ferguson) was the actual distributor of their products in Florida; and/or
3. Ferguson solicited these distributors for letters on behalf of Line-Tec.

The OIG investigation also revealed that Line-Tec provided falsified sales invoices in order to attain SBE certification from OSBA. Line-Tec provided five sales invoices to OSBA as further evidence of its (Line-Tec's) status as a distributor; however, upon the OIG's review of those sales invoices, the following information was determined:

1. The sales invoices were actually packing slips.
2. The packing slips had each been altered (whited-out) to remove any reference to the actual distributor, Ferguson, and any indicator that the product had been sold to a third party other than Line-Tec.

During the course of the OIG investigation, Line-Tec, Inc. President Scott Ellsworth admitted to providing the misleading letters to OSBA to obtain SBE certification and Ferguson Municipal Sales Manager Jason Mueller admitted to soliciting the six letters on behalf of Line-Tec in order to assist them in obtaining SBE certification. Although Mr.

Ellsworth alleged that he was trying to protect his “trade secrets,” Mr. Ellsworth further admitted to altering the “sales invoices” that were submitted to OSBA.

The OIG Investigation further revealed that OSBA failed to adequately address concerns related to the certification, as well as re-certification, of Line-Tec, Inc. as a SBE. It is noted that between January 1, 2006 and July 1, 2011, Line-Tec was awarded at least 24 contracts (excluding renewals). In at least four of six procurements reviewed by the OIG, Line-Tec was not the low bidder and was awarded the contracts based solely upon its utilization of SBE credits.

On March 2, 2011, this case was referred to the State Attorney’s Office, in and for Palm Beach County, Florida, for possible criminal prosecution. On July 7, 2011, the State Attorney’s Office, 15th Judicial Circuit, declined prosecution based on the following quoted conclusion, in pertinent parts:

A larger problem is that the County Code governing the SBE program is unclear, causing enforcement and investigation of violations to be largely subjectively administered. The OIG’s Management Review 2010-0008¹ comprehensively discussed the problems that the current SBE code has. The failure to have specific definitions, verification, compliance monitoring, and clear standards for the discretionary judgment of the administrators makes penalties for violations of the current code unenforceable. Implementation of the recommendations set forth in the OIG’s Management Review 2010-0008 would greatly assist future investigations of similar situations.

RECOMMENDED CORRECTIVE ACTIONS

Based on witness testimony and records reviewed, the allegation that Line-Tec, Inc. provided misleading and/or falsified documentation in order to attain Small Business Enterprise certification from the Office of Small Business Assistance is **supported**. Based on the supported findings, we recommend the following:

1. Determine the current SBE status of Line-Tec and consider de-certification and debarment/suspension based on Line-Tec’s own admission that they provided misleading documents and/or falsified documents in order to obtain SBE certification.
2. Assess the current contract awards where the utilization of Line-Tec’s SBE credits affected the outcome of the selection.
3. Review the involvement of Ferguson’s representative and determine if any corrective action is warranted.

Based on witness testimony and records reviewed, the allegation that the Office of Small Business Assistance failed to adequately address concerns related to the certification, as well as re-certification, of Line-Tec, Inc. as a Small Business Enterprise is **supported**. Based on the supported findings, we recommend the following:

¹ OIG Management Review #2010-0008 related to various issues surrounding the SBE program, one of which pertained to County Codes and PPMs that were unclear and confusing, and that the SBE program lacks appropriate verification, compliance, and monitoring.

1. Amend the County Ordinance to clearly identify certification, re-certification, and de-certification requirements. (*Same as recommendation made in OIG Management Review #2010-0008*)
2. To elevate standardization throughout the SBE eligibility process, OSBA should develop clear guidelines for the uniform application of the “commercially useful business function” considerations. (*Same as recommendation made in OIG Management Review #2010-0008*)

BACKGROUND

Palm Beach County’s OSBA is responsible for providing assistance and improving business opportunities to SBEs in Palm Beach County (the County). Prior to being certified by OSBA as a SBE, businesses must meet a series of qualifications as set forth in Sections 2-80.21 through 2-80.34 of the County Code. SBE certification allows SBEs to gain up to a 10% advantage over the lowest, non-SBE bidder, when competing for County projects. In addition to eligibility criteria defined in Section 2-80.21 of the County Code, Section 2-80.30 of the County Code indicates the following:

*The company must have been in business for at least one year and perform “a commercially useful business function.” “A small business is considered to perform a commercially useful business function when it is responsible for execution of a distinct element of work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work performed. **Businesses who merely act as a conduit do not perform a commercially useful business function and will not be eligible for certification as a SBE.** In determining whether a business performs a commercially useful business function, consideration will include, but not be limited to whether the business adds a value to the product or service provided; **whether the business has a distributorship agreement with the manufacturer of goods supplied;** whether the business takes possession of the product or service provided; whether the business warrants the product or service provided; whether the business maintains sufficient storage space to keep the product in inventory; whether the business maintains sufficient inventory to meet the requirements of its contracts; whether the business provides the product or service to the public or other business other than a governmental agency.” [Emphasis Added]*

On September 10, 2010, Ray Corona, Vice President of the Corcel Corporation submitted a complaint to the OIG concerning the SBE certification of Line-Tec by OSBA. According to Mr. Corona, Line-Tec was merely a conduit for a national distributor, Ferguson. Mr. Corona alleged the following:

- Line-Tec provided misleading and/or falsified documentation to OSBA for certification as a SBE.
- OSBA failed to adequately address concerns related to the certification, as well as re-certification, of Line-Tec as a SBE.

Based on the information provided by Mr. Corona, the OIG initiated an investigation.

MATTERS INVESTIGATED AND FINDINGS

Matter Investigated (1):

Line-Tec, Inc. provided misleading and/or falsified documentation in order to attain Small Business Enterprise certification from the Office of Small Business Assistance. If supported, the allegation would constitute a violation of § 2-80.24 and § 2-80.26 of the Palm Beach County Code; the Fraud attestation in the Application for Recertification, dated January 11, 2010; and a potential violation of § 839.13(1), F.S.

Finding:

The information obtained *supports* the allegation.

As part of their re-certification process, on April 30, 2010, Line-Tec was requested by OSBA to provide proof of distributor agreements as evidence of direct agreements with manufacturers. OSBA also required Line-Tec to provide sales invoices as further evidence of distributorship agreements.

Review of Letters Provided by Line-Tec to OSBA

Despite instructions to provide distributor agreements (for example: a contractual agreement), Line-Tec provided OSBA with the following six letters:

Following a review of the six letters provided by Line-Tec to OSBA for re-certification, the OIG Investigator contacted each of the authors, at which time the following pertinent information was disclosed:

Manufacturer	Original Letters Provided by Line-Tec to OSBA as Evidence of Distributor Agreements	Information Subsequently Obtained by the OIG from the Authors of the Original Letters Provided to OSBA as Evidence of Distributor Agreements
American Valve	<i>Please allow this letter to serve as proof that Line-Tec Inc. is an approved reseller of American Valve products.</i>	President Seth Guterman: <i>In response to your inquiry, the letter appears to be authentic. We do not have any business with Line-Tec - I don't even know who they are. We believe they are our customer's customer...Jason Mueller at Ferguson^[2] asked us to update the letter in 2008. Then again on May 3 of last year [2010], he asked us to update it again.</i>

² Mr. Guterman provided e-mail correspondence indicating Mr. Mueller's request for the letter.

(Table Continued From Above)

Manufacturer	Original Letters Provided by Line-Tec to OSBA as Evidence of Distributor Agreements	Information Subsequently Obtained by the OIG from the Authors of the Original Letters Provided to OSBA as Evidence of Distributor Agreements
PowerSeal	<i>I am writing to confirm that Line-Tec, Inc. is a fully authorized PowerSeal stocking distributor in the state of Florida.</i>	Southeast Territory Manager Cullen Allred: <i>The letter it is authentic, however, we have had no sales history with this account, nor do we have it set up in our database as a customer.</i>
FMK, Inc.	<i>Please be advised Line-Tec, Inc. is an authorized reseller of EBAA³ Iron products.</i>	Mike Key (Unknown Title): <i>EBAA Iron provides product to Line-Tec through local stocking distributors. Our distributors in Palm Beach County are HD Supply, Ferguson Underground and Utility Supply Associates. Any sales history would have to be confirmed by the distributor.</i>
The Ford Meter Box Company, Inc.	<i>Line-Tec Incorporated, is authorized to re-sell products manufactured by the Ford Meter Box Company, Inc.</i>	Marketing Manager Melanie Boyll: <i>Our authorized distributor Ferguson Underground, Pompano Beach, FL requested the letter. They stated it was required for the Palm Beach County bid.</i>
Sigma Corporation	<i>This letter is to serve notice that Line-Tec Inc. is a fully authorized stocking distributor of all products manufactured, produced and sold by Sigma Corporation in the State of Florida.</i>	Florida District Sales Manager Kevin Stine: <i>The letter was in fact produced and signed by me with the knowledge of my boss, Mr. Greg Fox, Southeast Region Sales Manager. Line-Tec has not done any previous business with Sigma but had inquired about becoming an authorized distributor in Southeast Florida.</i>
Diamond Plastics	<i>Diamond Plastics is pleased to announce Line Tec Inc. is an authorized distributor of Diamond Plastics' PVC piping products.</i>	Director of Marketing and Sales Skip Yentes: <i>The letter is authentic. However, we have no sales history with this company.</i>

Testimony of Ferguson Municipal Sales Manager Jason Mueller

Mr. Mueller admitted to the OIG that he asked various companies for letters of “distributorship,” which Line-Tec could provide to OSBA during their re-certification. According to Mr. Mueller, the letters were necessary in establishing Line-Tec’s status as a “distributor” in order to qualify for SBE status with OSBA. Mr. Mueller claimed ignorance in regards to the SBE certification process and/or the County Code(s) pertaining to criteria necessary to obtain SBE certification.

³ FMK, Inc. is the authorized distributor of EBAA Iron products in Florida.

Testimony of Line-Tec, Inc. President Scott Ellsworth

Mr. Ellsworth was provided with the opportunity to review statements made by the authors of the six “distribution letters,” which he provided to OSBA during his July 2010 re-certification as evidence of being a distributor. Upon review of their statements, Mr. Ellsworth admitted to the OIG Investigator that he was not a stocking distributor and that he simply provided those letters to OSBA in order to qualify for SBE certification. According to Mr. Ellsworth, had he not done so, the County would not have been able to meet its “goals” for SBE participation.

Review of Sales Invoices Provided by Line-Tec to OSBA

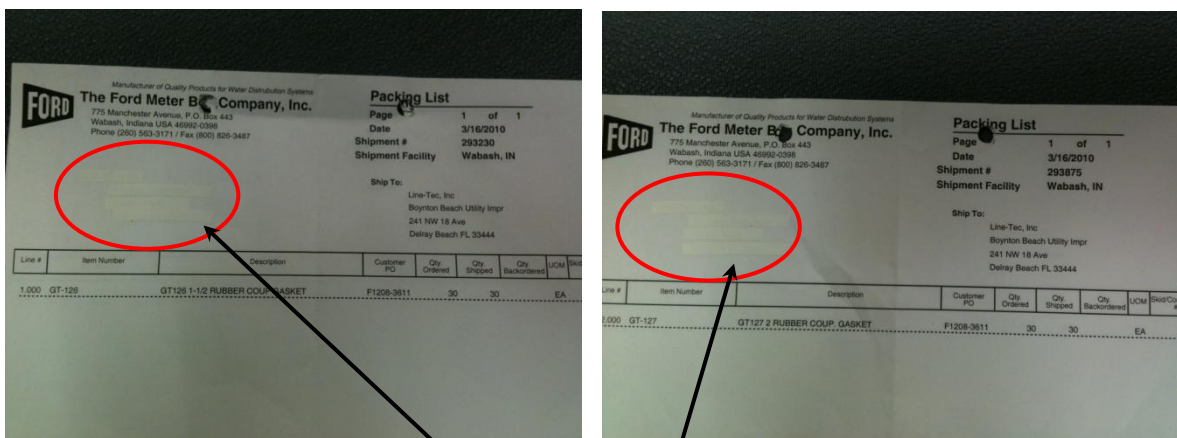
As part of the re-certification, Line-Tec was also requested by OSBA to provide sales invoices as further evidence of purchases made directly from the manufacturer. Despite instructions to provide sales invoices, Line-Tec provided OSBA with packing slips.

Following a review of “sales invoices” submitted by Line-Tec to OSBA for re-certification, the following pertinent information was disclosed:

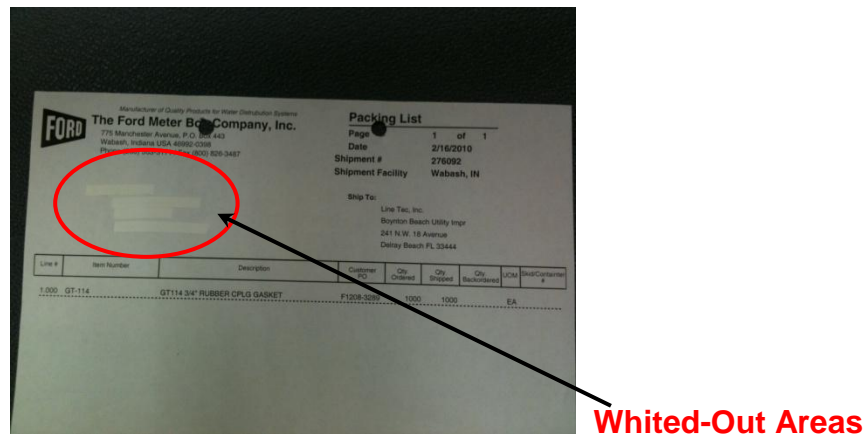
The Ford Meter Box Company

Line-Tec submitted Packing Slips #293230, #293875, and #276092 to OSBA as evidence of “sales invoices.” Upon comparison of the original Packing Slips provided to the OIG by the State Attorney’s Office Public Integrity Unit and the Packing Slips provided to OSBA by Line-Tec, it appears that the “Sold To” section had been altered to remove any reference to Ferguson as the actual distributor.

It is noted that upon the execution of a search warrant by the State Attorney’s Office Public Integrity Unit, the following three Packing Slips (#293230, #293875, and #276092) were discovered at Line-Tec’s office, containing whiteout over the “Sold To” section.



Whited-Out Areas



DeZURICK, Inc.

Line-Tec submitted Packing Slips #291729 and #289840 OSBA as evidence of “sales invoices.” Upon comparison of the original Packing Slips provided to the OIG by Fluid Control Specialties⁴ Accounting Manager Abby Barnes and the Packing Slips provided to OSBA by Line-Tec, it appears that the “Sold To” section had been altered to remove any reference to Ferguson as the actual distributor, and to remove any indication that the product had been sold to a firm other than Line-Tec.

According to Ms. Barnes, “Line-Tec is on the customer list but does not have an account with Fluid Control Specialties. Their name did not show up in the DeZURICK customer list on our database for Florida.”

It is noted that a review of similar Packing Slips submitted by Line-Tec to OSBA during other certification periods contained similar documents that contained no “Sold To” sections.

Testimony of Line-Tec, Inc. President Scott Ellsworth

Through Mr. Ellsworth’s attorney, Mr. Ellsworth indicated to the OIG that per instruction from a previous attorney (unidentified) representing Line-Tec, he (Mr. Ellsworth) “whited-out” information on invoices submitted to OSBA to “protect [Line-Tec’s] trade secrets.”

It is noted that Line-Tec never advised the County that it would not provide this information because it was a “trade secret.” Further, Line-Tec’s competitors in this industry already knew who the actual distributor of these products was (Ferguson), as referenced in their repeated protests to the County. (See OIG Response on Pages 11-12)

Matter Investigated (2):

The Office of Small Business Assistance failed to adequately address concerns related to the certification, as well as re-certification, of Line-Tec, Inc. as a Small Business Enterprise. If supported, the allegation would constitute a violation of § 302.00 of the Palm Beach County Administrative Code; Section 7.02.d.(16) of the Palm Beach County Merit System and Rules and Regulations; and § 2-80.30 of the Palm Beach County Code.

⁴ DeZURICK, Inc. represents Fluid Control Specialties in Florida.

Finding:

The information obtained *supports* the allegation.

Testimony of Corcel Corporation Vice President Ray Corona

Mr. Corona opined that OSBA was arbitrary and discriminatory in its certification and/or de-certification process of SBEs. According to Mr. Corona, while the County Code states that SBEs must be distributors (pursuant to Section 2-80.30(b) of the County Code), Line-Tec was never held to the same standard and remained certified as a SBE.

Mr. Corona stated that OSBA failed to address concerns regarding Line-Tec's SBE certification, despite the fact that over several years, he, as well as another competitor, National, notified OSBA that Line-Tec was not a distributor. Mr. Corona further indicated that because OSBA failed to address his concerns, Line-Tec, as well as Ferguson, continued to defraud the County and other legitimate SBE and non-SBE companies by receiving contract awards with higher prices. Mr. Corona provided the following historical background concerning complaints to OSBA:

- **March 26, 2004:** Line-Tec received SBE certification for underground utilities.
- **June 14, 2005:** Line-Tec applied for an amendment to its SBE certification to include fire hydrants. OSBA approved the amendment.
- **August 2, 2006:** National submitted a protest in response to Bid #06-108/TN, in which it questioned the validity of Line-Tec's SBE certification. According to National, Line-Tec was not a distributor for any water, sewer, or drainage products.
- **August 16, 2006:** Line-Tec applied for an amendment to its SBE certification to include the supply of "valves and pipe fittings, metals, structural shapes, and construction materials."
- **September 28, 2006:** While acknowledging the letter from National, pertaining to Line-Tec's SBE certification, OSBA Manager Allen Gray recommended that Line-Tec's most recent application (August 16, 2006) be granted.
- **October 3, 2006:** Mr. Corona sent an e-mail to OSBA to dispute the SBE certification of Line-Tec. According to Mr. Corona, Line-Tec was not a distributor and was merely a conduit for Ferguson.
- **October 10, 2006:** Despite allegations from two competitors, related to Line-Tec's validity as a distributor, OSBA granted the August 16, 2006 application.
- **November 15, 2006:** Mr. Corona protested Bid #06-146R/TN and again alleged that Line-Tec was a conduit for Ferguson. Mr. Corona provided numerous invoices to Line-Tec from various distributors, including Ferguson, to show that Line-Tec was not the actual distributor.
- **November 30, 2006:** County Director of Purchasing Kathleen Scarlett advised Mr. Corona, via letter, that his bid protest was being denied and that Line-Tec would remain SBE qualified "until and unless" OSBA decides otherwise.

- **February 15, 2007:** After being repeatedly denied by the County to pursue allegations against Line-Tec, Mr. Corona filed suit in circuit court requesting that the Court order OSBA to conduct an investigation concerning Line-Tec.
- **March 18, 2008:** Mr. Corona again requested that OSBA conduct a thorough investigation and reconsider Line-Tec's SBE certification. Mr. Corona provided detailed documents to indicate that Line-Tec was not a distributor and that Line-Tec was actually purchasing product from Ferguson, the actual distributor. Mr. Corona further indicated that letters authored on behalf of Line-Tec were not distribution agreements, and that Ferguson solicited such letters.
- **January 15, 2009:** The Court denied Mr. Corona's petition, citing that it lacked the authority to order OSBA to take action and that the Court had no authority to substitute its judgment for that of OSBA since OSBA had already testified that it conducted an investigation and that Line-Tec met the criteria for SBE certification.
- **January 22, 2010:** Line-Tec applies for re-certification.
- **April 30, 2010:** OSBA requests that Line-Tec provide "distributor agreements," "proof of payment," and "customer sales invoices for the inventory" that they (Line-Tec) carry.
- **May 3 - 4, 2010:** Despite OSBA's request for distributor agreements, Line-Tec provides OSBA with six letters (previously identified in this OIG Report on Page 5).
- **June 22, 2010:** OSBA again requests that Line-Tec provide "distributor agreements," "proof of payment," and "customer sales invoices for the inventory" that they (Line-Tec) carry.
- **July 23, 2010:** OSBA notifies Line-Tec that because the requested information was not provided, their application for re-certification "has been removed from consideration and considered abandoned."
- **July 26, 2010:** Line-Tec submits a letter to OSBA Small Business Development Specialist Patricia Wilhelm indicating that they "cannot do what you want us too [sic]." According to their letter, Line-Tec indicates that the timeframe they have been given is "unfair."
- **July 26, 2010:** Ms. Wilhelm forwards Line-Tec's e-mail to OSBA Acting Director Allen Gray and advises Mr. Gray that she advised Line-Tec that "we look at all suppliers of product the same way." Ms. Wilhelm further advised Mr. Gray that Line-Tec now wished to speak to him (Mr. Gray).
- **July 28, 2010:** Line-Tec's re-certification is approved.

Excerpt from State Attorney's Investigation

During the search warrant, [Mr. Ellsworth] stated...that because of the size of his business, he was unable to buy directly from the manufacturers, so he bought their products from other, larger distributors [sic] such as Ferguson and HD Waterworks...In several instances, due to its small size, Line-Tec was unable to purchase directly from the companies Ferguson contacted and therefore Line-Tec was forced to purchase through Ferguson.

Testimony of OSBA Small Business Development Specialist II Patricia Wilhelm

Ms. Wilhelm explained that Line-Tec's re-certification was based on Line-Tec being able to meet the "commercially useful business function," as outlined in the County Code. According to Ms. Wilhelm, a "totality of the circumstances [were considered] in applying the seven factors of a commercially useful business function." Ms. Wilhelm stated that her role in this case was to only make a recommendation for approval; however, no final decision as to the re-certification of Line-Tec was made without the approval of Mr. Gray.

Ms. Wilhelm related that Mr. Gray was aware of the steps she took during the re-certification process in regards to Line-Tec. According to Ms. Wilhelm, prior to notifying Line-Tec (July 23, 2010) of her decision to "abandon" their re-certification application, she provided Mr. Gray with a copy of the Abandonment Notification letter, at which time Mr. Gray concurred because Line-Tec had not provided the documents she previously requested. Ms. Wilhelm stated that following her decision to deny Line-Tec's re-certification application, she spoke to Line-Tec's President, Scott Ellsworth (July 26, 2010 - after Line-Tec received the Abandonment Notification letter), who requested to speak to Mr. Gray. Ms. Wilhelm indicated that she forwarded Mr. Ellsworth's request to Mr. Gray, but was not aware of their specific conversation. Ms. Wilhelm acknowledged that following Mr. Ellsworth and Mr. Gray's conversation, she approved Line-Tec's re-certification, but again reiterated that no final decision was made without the approval of Mr. Gray.

Testimony of OSBA Acting Director Allen Gray

Mr. Gray explained that during his telephone conversation with Mr. Ellsworth, Mr. Ellsworth complained that the SBE certification process took too long and that Ms. Wilhelm was difficult to work with. According to Mr. Gray, following his conversation with Mr. Ellsworth, he directed Ms. Wilhelm to "try and work with Mr. Ellsworth." Mr. Gray stated that there were no instructions given to Ms. Wilhelm to re-certify Line-Tec and that the decision to re-certify Line-Tec was a decision she made on her own.

Upon review of the six documents provided by Line-Tec, as well as the disclosures made by the authors of those letters, Mr. Gray advised the OIG Investigator that "none of these letters are good." When asked by the OIG Investigator what he would do in similar circumstances, Mr. Gray indicated that the normal process would be to de-certify Line-Tec as a SBE, with the understanding that Line-Tec would be provided with an opportunity to explain the situation.

ARTICLE XII, SECTION 2-247

Pursuant to Article XII, Section 2-427 of the Palm Beach County Code, Line-Tec, Inc. President Scott Ellsworth and Deputy County Administrator Verdenia Baker were provided the opportunity to submit a written explanation or rebuttal to the findings as stated in this investigative report within ten (10) calendar days. Their written responses, in part are as follows (*response, in its entirety, is attached*):

Line-Tec, Inc.

On August 10, 2011, Line-Tec provided the OIG with the following quoted response, in pertinent parts:

- *As your draft IG report shows, the letters that discussed Line-Tec were all authentic. As requested by Ms. Patricia Wilhelm in her July 27, 2010 e-mail, letters were provided that support specific items Line-Tec could supply.*

OIG Response: Although the letters were determined to be authentic, inasmuch as they were authored by the companies and addressed to Line-Tec, it was the content of such letters that were determined to be misleading. As part of their re-certification process, on April 30, 2010, Line-Tec was requested by OSBA to provide proof of distributor agreements as evidence of direct agreements with manufacturers. When individually contacted by the OIG Investigator, the authors of those letters indicated that they had never done business with Line-Tec; that Ferguson was the actual distributor of their products; and/or Ferguson solicited those letters on behalf of Line-Tec.

- *You also raise a question about how Line Tec [sic] 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.*

OIG Response: Section 812.081, Florida Statutes, is not relevant in this matter as it pertains to criminal sanctions relating to the theft of a trade secret. In this particular instance, Line-Tec was requested by OSBA to provide sales invoices as further evidence of their status as the distributor by showing that Line-Tec was directly purchasing from the manufacturers. Line-Tec never advised the County that it would not provide this information because it was a “trade secret.” Further, Line-Tec’s competitors in this industry already knew who the actual distributor of these products was (Ferguson), as referenced in their repeated protests to the County.

As part of their re-certification process, on April 30, 2010, Line-Tec was also requested by OSBA to provide sales invoices as further proof of their (Line-Tec’s) distributorship status with manufacturers.

It is noted that these same manufacturers (whose sales invoices were altered) provided statements to the OIG Investigator that Ferguson was their authorized distributor (Ford Meter Box Company, Inc.) and that Line-Tec did not appear in the customer database for Florida (DeZurick). These specific sales invoices had been issued by the manufacturers and contained both “ship to” and “sold to” blocks. In each case, the product was “shipped to” Line-Tec, and in each case the product had been “sold to” the actual distributor, Ferguson. In each of the invoices submitted to OSBA, the entire “sold to” block had been whited-out, which created the impression that Line-Tec was the only other party to the transaction.

As no new information has been presented that would affect the findings in this report, Matter Investigated (1) remains **supported**.

Office of Small Business Assistance

On August 15, 2011, OSBA provided the OIG with the following quoted response, in pertinent parts:

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.*

OIG Response: After review of the letters provided by Line-Tec, as well as the disclosures made by the authors of those letters, even the testimony of OSBA itself, indicated that “none of these letters are good.” Further, when asked by the OIG Investigator what OSBA would do in similar circumstances, OSBA indicated that the normal process would be to de-certify Line-Tec as a SBE, with the understanding that Line-Tec would be provided with an opportunity to explain the situation.

- *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.*

OIG Response: The question of authenticity is not what was alleged, rather the fact that the information contained within the letters was an apparent attempt to mislead and/or falsely portray Line-Tec’s status as a distributor. When contacted by the OIG, the authors of such letters indicated that they had no business relationship with Line-Tec; Ferguson was the actual distributor in Florida; and/or that Ferguson solicited the letters on behalf of Line-Tec.

- *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.*

OIG Response: The OSBA has expressed the position that in the field of pipes, valves, pipe fittings, and related areas a firm must be an actual “distributor” of products, not merely a reseller, in order to “perform a commercially useful function” and qualify for SBE certification. It was OSBA’s own staff who requested that Line-Tec provide its distributorship agreements for the 2010 recertification.

The fact that Line-Tec deleted the “Sold To” block from the shipping invoices it submitted to the OSBA in the process of applying for recertification in 2010, appears to be an indication that even Line-Tec understood that County

standards required it to be an actual distributor and not merely a reseller of those products.

- *If an SBE purchases product 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.*

OIG Response: With regard to Ferguson, the OIG report shows that at least two of the manufacturers which submitted letters purporting to represent a business relationship with Line-Tec, admitted to the OIG that they had done so at the request of their actual distributor, Ferguson.

It is further noted that Ferguson's own testimony acknowledged that they solicited the letters of "distributorship," which Line-Tec could provide to OSBA during their re-certification. According to Ferguson, the letters were necessary in establishing Line-Tec's status as a "distributor" in order to qualify for SBE status with OSBA.

The OIG report makes no claim as to collusion between Line-Tec and HD Supply (originally operating as National), who also complained to OSBA about Line-Tec's certification as an SBE.

- *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.*

OIG Response: Although the State Attorney's Office declined to pursue criminal prosecution against Line-Tec, the decision was in part, because "the County Code governing the SBE program is unclear, causing enforcement and investigation of violations to be largely subjectively administered."

It should be further noted that Line-Tec's own response to the findings included the following quoted statement:

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."

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.*

OIG Response: The OIG's investigation involved interviews with numerous individuals, including staff within OSBA, Line-Tec, as well as other industry participants, including, but not limited to Mr. Corona. More significantly, the OIG investigation relied on documents produced by all involved, including the OSBA's own files.

The allegation has been amended to "OSBA failed to adequately address concerns..."

- *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.*

OIG Response: The OIG report has been corrected to reflect that at the time of the September 28, 2006⁵ memorandum, Mr. Gray was the "OSBA Manager."

- *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. [Mr. Corona] 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...Again OIG failed to mention this correspondence with regards to OSBA's efforts to address the concerns regarding Line-Tec's certification.*

OIG Response: Although two competitors (Corcel and National) sent complaints to OSBA indicating that Line-Tec was not a distributor, OSBA now asserts that only one provided OSBA with evidence to support that claim.

In any certification or licensing process, it is not the responsibility of potential competitors of the applicant to prove or disprove the applicant's qualifications. Rather, the role of due diligence rests in the hands of the certifying agency.

In this case, we have seen no evidence of the OSBA ever reviewing Line-Tec's books to determine if it actually paid manufacturers directly, as a distributor typically would, rather than paying the actual distributor of these products. Further, we have seen no evidence of OSBA ever making an effort to contact any manufacturer of any of these products to discuss in detail who its actual distributors were; inquire if Line-Tec was actually one; and request actual evidence of any such claim.

Line-Tec failed to produce requested documentation for its re-certification and the application was considered abandoned; however, without further explanation by OSBA staff or continuing to require the requested documentation, Line-Tec's re-certification was approved.

- *Finally, when the OIG submitted new evidence to OSBA regarding the documents Line-Tec had submitted as part of their request for re-certification*

⁵ It is noted that the OSBA response references an August 28, 2006 memorandum in which Mr. Gray's title was inaccurate; however, the memorandum referenced in the OIG report involves a September 28, 2006 memorandum.

as an [sic] 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.

OIG Response: The OIG commends your decision to de-certify Line-Tec for supplies; however, the OIG maintains its recommendation to consider de-certification in its entirety, as well as suspension and/or debarment.

As no new information has been presented that would affect the findings in this report, Matter Investigated (2) remains **supported**.

This Investigation has been conducted in accordance with the ASSOCIATION OF INSPECTORS GENERAL Principles & Quality Standards for Investigations.