

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	* =====	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes _____ No. _____

Budget Account No.: Fund _____ Agency _____ Org. _____ Object _____
Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Department Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Administration Comments:

* NO fiscal impact

[Signature] 9/28/11
OFMB SN 9/28/11
9/28/11
9/28/11

[Signature] 9/30/11
Contract Dev. and Control
9-29-11 B. Wood

B. Legal Sufficiency:

[Signature] 10/3/11
Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

(Summary Cont'd Page Three)

The 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 substantive in its reasoning. The Court listened to all the arguments and reviewed all exhibits introduced into evidence by 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 OSBA fulfilled their obligation by conducting a well 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. A full response to this report is included in attachment 2. Staff will continue to review and modify the Ordinance and PPMs to maintain the integrity of the program. It is our goal to ensure Palm Beach County's small businesses fully participate in County procurement. Countywide (TKF)



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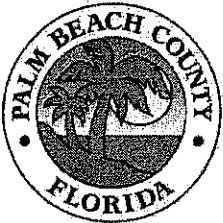
MEMORANDUM

DATE: April 20, 2011
TO: Sheryl Steckler, Inspector General
FROM: Verdenia Baker, Deputy County Administrator
Tammy K. Fields, Senior Assistant County Attorney
RE: OIG Management Review 2010 - 0008

Thank you for providing the Management Review concerning the Small Business Program. We appreciate your office's investigation of the concerns brought forward in September 2010 by County Administration and the County Attorney's Office concerning the possible use of an SBE trucking subcontractor as a conduit for the prime contractors on road construction projects. Additionally, we understand the need to address other complaints you received from SBEs who were previously certified to supply pipe. It should be noted, however, that these firms are no longer eligible for SBE certification because they have been so successful that they exceed the size standards to qualify. Further, these particular firms have filed several unsuccessful lawsuits against Palm Beach County concerning the SBE Program.

We appreciate the cooperative approach your office has taken in reviewing the SBE Program; however, there are certain aspects of this report that the County would like to further clarify. These are noted below:

- There are references to prime contractors considering the 15% SBE goal as a "mandate." The County wishes to make it very clear that the 15% goal is just that -- a goal in the bidding process. Since the inception of the program, numerous contracts have been awarded without the SBE goal being met. The County only allows a 10% preference for the goal to be met. In fact, the prime contractors cited in the report have each been awarded contracts when they did not meet the 15% goal. An example of a compliance review for one of Ranger Construction's projects is attached as Exhibit "A". Ranger



received the contract award even though they did not meet the 15% goal and the second low bidder had exceeded the goal, but the second low bidder's bid exceeded the 10% allowance.

- Section E on Compliance and Efficiencies indicates that there are no established procedures for SBE Compliance in PPM CW-0-043. Although this statement is true, the Office of Small Business Assistance has internal office PPMs that clearly outline procedures for (OSBA) compliance monitoring. PPM CW-0-043 is a Countywide Operations Policy and OSBA felt it more appropriate to include staff instruction on compliance monitoring in an internal office PPM. Compliance is an important aspect of the SBE Program and Ms. Tanoy Williams and Ms. Tonya Davis-Johnson of OSBA has even recorded an informational program on "County Connection" which runs on Channel 20 regarding compliance.

Also in this section, there is a reference to a few files that did not have the necessary documentation to substantiate the size requirements for eligibility as a small business. In an effort to be more customer-friendly to SBEs, OSBA, for a period of time, responded to the business community complaints regarding the amount of paperwork required for recertification applications. OSBA required SBEs to merely attest on an affidavit that nothing had changed for the business that would make them ineligible for certification. Unfortunately, some businesses were not truthful in this process and OSBA resumed requiring backup documentation for recertification applications in December, 2010.



- Prime Contractors' statements that higher project costs are due to meeting SBE goals are unproven. Over the last five years County staff has seen bids and quotes for road construction work submitted at substantially reduced rates and during this time SBE goals were met. In addition, there is no evidence that the Prime would bid less if there was no SBE requirement. To the contrary, on certain projects the Prime has maximized the use of SBE subcontractor (s) well beyond what was committed to in the original contract (in some instances 20% - 25% more). These facts indicate that it is more cost effective for the Prime to use SBEs for hauling, resulting in a possible increased profit for the Prime. The profit margins indicated by O.C. Limited and Southern Transport appear to be extremely inflated based on industry standards. Profits of this magnitude on a consistent basis would result in the subcontractors being ineligible for the SBE program. Furthermore, in the last few weeks, staff reviewed and analyzed both subcontractors' most recent income tax statements and they did not reflect this type of profit margin. Staff spoke with one of the Prime Contractors associated with this review and was told they did not believe the subcontractor made this type of profit. The Prime was of the opinion that the profit margin for contractors in the road construction industry ranged between 1% and 3% rather than the 17% to 27% indicated by O.C. Limited or the 3% to 10% indicated by Southern Transport.

In addition, your office performed an analysis of 13 road projects of which only two were not awarded to the lowest bidder. Those two are shown in Chart 1 of this report. This chart reflects the two instances in which the second low bidder received the award based on meeting the 15% SBE goals. The distinction between the total bid amounts reflects a 2% (\$230,000) difference. Small businesses comprise over 80% of the businesses of Palm Beach County and employ a significant number of residents of the County. The intent of the Small Business Program was to ensure all businesses located in Palm Beach County are afforded the opportunity to participate in the County's procurement process. Therefore, the County made a conscious decision to allow for a 10% differential over a minimum bid if a bidder met the 15% SBE goal. As shown above when the preference is applied the difference maybe significantly less than the 10% preference allowed.



Recommendations

We appreciate your recommendations on how to improve the SBE Program and provide the following responses to each of the recommendations:

Issue 1 Recommendations:

Recommendation No.1: Amend the County Ordinance to clearly identify certification/recertification, and decertification requirements. Specifically address industries prone to conduit and broker type activities and those businesses that do not provide a commercially useful function, i.e. road construction hauling.

Response: Staff has and will continue to review and modify the SBE Ordinance to ensure clarity, not only in areas prone to conduit and broker type activities and those businesses that do not provide a commercially useful function, but all other areas affected by the SBE Program.

Recommendation No.2: Add additional information to SBE documents/forms, such as Schedules 1,2,3,4 to identify owner, date, revision number, (i.e. OSBA Schedule 1, February 1, 2011, Revision 3); post all documents on-line for use by applicants, Prime Contractors, and Sub-contractors.

Response: Staff concurs with this recommendation.

Recommendation No. 3: Amend procedures to require Prime Contractors attestation of Subcontractor(s) daily work volume capacity and SBE requirement as it relates to the Prime Contractor's Project Schedule and any changes thereto.

Response: Staff will amend Schedule 2 to require prime contractor certification of the subcontractor's capacity to perform based on the project's schedule. Further for road construction projects, the County department responsible for the contract will require a breakdown of hauling activity over the life of the contract and will be required to enforce these elements of the contract.



Recommendation No.4: Enforce the Prime Contractor's responsibility for all Subcontractor requirements associated with the contract, i.e. daily work volume capacity and SBE requirements.

Response: Staff will amend Schedule 3 to require the prime contractor to attest that the work identified to be performed by the SBE on the invoice was actually performed by the approved SBE. The department's project inspectors will be required to monitor work schedules. In addition, road construction contracts and other contracts will be reviewed to ensure that prime contractors are ultimately responsible for compliance with all SBE provisions.

Recommendation No. 5: Amend OSBA Form, Schedule 4, *SBE-M/WBE Payment Certification*, dated 12/6/2010, to enhance its effectiveness by including identification of the SBE Sub's Subcontractors and the amount of funds disbursed or planned to be disbursed to each of them.

Response: Staff concurs and this was accomplished on January 3, 2011. It is currently in use by departments and contractors.

Recommendation No. 6: Consider excluding the road construction hauling business from SBE certification, thus removing the SBE preference for this service from contract evaluations.

Response: Staff concurs with the OIG's findings that certain prime contractors and SBE subcontractors are not in compliance with the intent of the SBE Ordinance. Staff does not recommend removal of road construction hauling as an area of SBE certification at this time. As stated previously, the County already has and is implementing further requirements that will allow for the evaluation of the actual level of service of small truckers. There are small jobs where the smaller hauling companies have the capacity to provide the service. Furthermore, SBE staff has already started outreach efforts to the independent construction hauling truckers to get more of these truckers Certified to handle portions of construction hauling contracts. In addition, OSBA will work with SBDC and existing Certified SBE construction hauling truckers to expand their capacity.

Issue 2A – Recommendation: Add a lead paragraph in the County Code outlining the Purpose of the SBE Program.



Response: Staff concurs with the recommendation. It should be noted that the purpose was clearly delineated in the "Whereas" clauses of the ordinances, but these clauses are not incorporated in the published version by the Municipal Code Corporation. Staff will add a Purpose section that will be added to the published code.

Issue 2B – Recommendation:

Recommendation No.1: To elevate standardization throughout the eligibility process, OSBA should develop guidelines for the uniform application of the CUF (commercially useful function) considerations.

Response: Staff believes the ordinance criteria should be followed. The ordinance currently contains the following criteria for consideration when determining whether a business performs a commercially useful function: (1) whether the business adds a value to the product or service provided; (2) whether the business has a distributorship agreement with the manufacturer of goods supplied; (3) whether the business takes possession of the product or service provided; (4) whether the business warrants the product or service provided; (5) whether the business maintains sufficient storage space to keep the product in inventory; (6) whether the business maintains sufficient inventory to meet the requirements of its contracts; and (7) whether the business provides the product or service to the public or other business other than a governmental agency. These criteria, when reviewed against the totality of the circumstances of a particular business, provide sufficient guidance to determine whether a business is providing a commercially useful business function.

Recommendation No.2: Amend the County Code to clearly identify certification/ recertification, and decertification requirements, including, warehousing standards for industries where warehousing activities are required.

Response: Staff is always open to reviewing the ordinance to provide further clarity when justified. Staff will not, however, be able to incorporate warehousing standards beyond those already stated in the ordinance, because it is impractical to do so. There are currently 13,054



commodities areas utilized by the Purchasing Department. Warehousing standards vary from industry to industry.

Issue 2C – Recommendations:

Recommendation No. 1: Delete the duplicate information in the M/WBE Section of the County Code to reduce the confusion that two separate programs (SBE and M/WBE) exist in the County.

Response: It has always been clear that the M/WBE Program sunset on October 31, 2002. Staff notified the Municipal Code Corporation that they no longer need to publish the sunset M/WBE Ordinance, and expect this section will be deleted in future published updates.

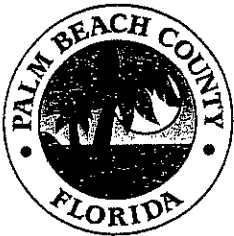
Recommendation No.2: Consider changing the M/WBE Certification to an M/WBE “designation” status and clearly delineate the differences between the two in any ordinance(s), PPM(s), and Form(s) to further reduce the confusion.

Response: Staff does not concur with this recommendation. It is essential to keep M/WBE certification as part of the ordinance, because M/WBE is required to be tracked. In addition, minority participation can be considered for CCNA solicitations pursuant to state statute. Further, Palm Beach County participates in an intergovernmental certifying program with other jurisdictions that still maintain M/WBE Certification programs.

Recommendations 2D:

Recommendation No. 1: Amend the County Code Section 2.80.30. Small Business Certification, (d). *Application Review Procedures* to read, “Once an applicant has submitted the original application, the certification review will be completed within ninety (90) [business, by definition] days of the original submission.

Response: Staff recommends the above-referenced section of the County Code be amended to read: “Once an applicant has submitted a completed application with all supporting documentation, the certification review will be completed within ninety (90) business days.”



Recommendation No. 2: Establish a process to ensure the 10 [business] day letter is mailed within 10 [business] days of the receipt of the vendor application.

Response: Staff is in agreement that there must be compliance with the established time frame. Staff will revisit whether this time frame is sufficient to make a determination of any additional documentary needs with the added affiliate and subsidiary requirements included in the most recent ordinance amendment.

Recommendation No. 3: Train all OSBA staff on the County Ordinance, PPM, and the requirements for certification, recertification, and decertification.

Response: Staff concurs with this recommendation and will enhance the ongoing training on ordinance and PPM requirements. Additionally, OSBA staff does receive annual training from professional organizations that provide training in this specialized area of work.

Recommendation No. 4: Incentivize participants to comply with the SBE Program requirements by establishing a sixty (60) day period from this abandonment letter date before a business can re-apply for SBE Certification.

Response: Staff concurs with this recommendation and will establish the sixty (60) [business] day period in the ordinance.

Recommendation 2E:

Recommendation No.1: Develop procedures to comply with County Code monitoring requirements pertaining to compliance and enforcement.

Response: These procedures are already in place.

Recommendation No.2: Ensure documentation received is reviewed for compliance prior to issuing a certification.

Response: Staff agrees with this recommendation and it is already standard practice. Staff utilizes a check list to record documents received and reviewed in order to make a determination on certification eligibility.



Recommendation No.3: Establish a Schedule to conduct random compliance reviews in various commodity areas.

Response: Staff concurs with this recommendation to the extent staffing levels allow.

Recommendation No.4: Develop a centralized complaint tracking system.

Response: Staff concurs with this recommendation.

Recommendations 2F:

Recommendation No.1: Work closely with applicants to determine the appropriate NIGP Code(s).

Response: Staff agrees with this recommendation, and it is already standard course of practice.

Recommendation No.2: Identify the specific NIGP Codes on the OSBA Certification Certificate to clearly delineate the code(s) in which the SBE is certified.

Response: The delineation of the NIGP Code on the certification letter serves no benefit to the SBE in responding to bids or RFPs. The County utilizes a description of services or products needed rather than utilization of the NIGP Code in its solicitation process. The NIGP Code is also not utilized in the vendor registration process. The certification Certificate does not contain sufficient space to list all descriptions and codes. Since the County's bid process does not utilize the NIGP Code, no change is warranted. However, staff does agree that NIGP Codes will be provided in the certification letter that is sent with each Certificate.

Issue 3 Recommendation: To encourage an open and competitive market for this industry, we recommend again (See Issue 1, Recommendation 6) the County consider excluding the road construction hauling business from SBE certification, thus removing the SBE preference for the service from contract evaluations.



Response: See Response to Issue 1, Recommendation 6

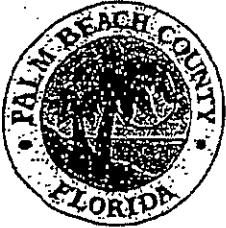
Additional Information: The County concurs with the recommendation to implement a sheltered market program where appropriate and this is already provided for in the SBE ordinance.

Again, we appreciate the input you have provided on this vital program, which assists small businesses in Palm Beach County.

VB/TKF/cmb
Enclosure: Exhibit "A"

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EXHIBIT "A"



Office of
Small Business Assistance
50 South Military Trail, Suite 209
West Palm Beach, FL 33415
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FAX: (561) 616-6850
www.pbogov.com/osba

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Robert Weisman

(WH)

(HI)

DATE: April 18, 2006

TO: David Young, P.E., Special Projects Manager
Roadway Production Division

THROUGH: Hazel Oxendine, Director
Office of Small Business Assistance

FROM: Allen F. Gray, Compliance Specialist

SUBJECT: Compliance Review on Project No. 97511C1
SEMINOLE PRATT WHITNEY ROAD N. OF SYCAMORE DRIVE
TO HIGH SCHOOL

The following is a Compliance Review of SBE participation on the above mentioned project.

Low Bidder: Ranger Construction Industries, Inc.
101 Sansbury's Way
West Palm Beach, FL 33411
Phone: (561) 793-9400

Bid Opening: April 4, 2006

Bid Amount: \$ 1,928,632.50

Goal: 15% Overall

Goal Achieved: 10.6% Overall

SBE Participation:

(WH)	Pathway Enterprises	\$ 113,845.00		5.90%
(HI)	Siboney Contracting	<u>100,000.00</u>	\$ 213,845.00	<u>5.18%</u>
				11.08%

2nd Low Bidder: *Rosso Paving & Drainage, Inc.
350 Martin Lane
West Palm Beach, FL 33413
Phone: (561) 688-0288
Bid Amount \$ 2,092,905.60
Goal Achieved: 49.6%

*Contractor is a certified SBE with Palm Beach County.

Page 2

File: 97511C1.doc

SBE Participation:

(WH) Rosso Paving	\$ 1,039,795.00	49.68%
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3rd Low Bidder: Asphalt Consultants, Inc.
880 NW 1st Avenue
Boca Raton, FL 33432
Phone: (561) 368-5797
Bid Amount: \$ 2,349,138.00
Goal Achieved: 15.3%

SBE Participation:

(WH) Pathway Enterprises	\$ 133,245.50	5.67%
(HI) Siboney Contracting	105,000.00	4.47%
(WH) Florida Guardrail	43,247.00	1.84%
(WH) Kathleen Hall	55,000.00	2.34%
(BL) Odum's Sod	<u>23,797.20</u>	<u>1.01%</u>
	\$ 360,289.70	15.33%

EVALUATION:

The Low Bidder, Ranger Construction Industries, Inc., failed to meet the SBE goal, but submitted SBE participation in excess of 7%.

The Second and Third low bid amounts fall outside the limit for ranking on responsive bidders consideration.

cc: Verdenia Baker, Deputy County Administrator
Tammy Fields, Assistant County Attorney



OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

Sheryl G. Steckler
Inspector General

“Enhancing Public Trust in Government”

Management Review

2010 – 0008

May 11, 2011

*“Provide leadership in the promotion of
accountability and integrity of County Government.”*



**OFFICE OF INSPECTOR GENERAL
PALM BEACH COUNTY**

**MANAGEMENT REVIEW
CASE NUMBER: 2010-0008**

Sheryl G. Steckler
Inspector General

EXECUTIVE SUMMARY

A management review of the Small Business Enterprise (SBE) Program was initiated by the Office of Inspector General (OIG) at the request of County Administration following a complaint about a company not performing the totality of work as a construction hauling SBE Subcontractor on several construction job sites, as required by the County contracts. The scope of the review was limited to one specific industry - road construction hauling - and the preference given to Prime Contractors, who were awarded, in part, the contracts based on their declarations that they would use SBEs to perform a minimum of 15% of the total work in order to meet the County's SBE goal.

ISSUE 1:

Road Construction Prime Contractors subcontracted with County SBE certified hauling and excavation contractor(s) on bids to meet the County's 15% SBE goal, knowing that the SBE Subcontractor(s) did not have the physical assets to fulfill the percentage of work required of them by the contract. Further, SBE Subcontractor(s) (construction hauling and excavation), knowing they did not have the assets to perform 100% of the projected work without help, subcontracted their work to Non-SBE companies; thus "acting as conduits or brokers." Although required, the SBE Subcontractors also did not disclose on the OSBA Schedule 2, Letters of Intent to Perform as an SBE-M/WBE Subcontractor, that Non-SBE Sub-Subcontractors would be used.

The review disclosed that Prime Contractors routinely used certified SBE companies (two of which were identified in the review) that did not have the capacity (limited assets) to perform the percentage of work (based on schedule) they bid to win County contracts. These SBE Subcontractors acted as conduits or brokers (middleman) by subcontracting out a large percentage of their work which they could not perform to Non-SBE road construction hauling companies. In summary, the Prime Contractors received the award preference and the SBE Subcontractors realized profits of a middleman.

Recommendations:

1. Amend the County Ordinance to clearly identify certification/recertification and decertification requirements. Specifically address industries prone to conduit and broker type activities and those businesses that do not provide a commercially useful business function, i.e. road construction hauling.

2. Add additional information to OSBA documents/forms such as Schedules 1, 2, 3, 4 to identify owner, date, revision number (i.e. OSBA Schedule 1, February 1, 2011, Revision 3) and post all documents on-line for use by applicants, Prime Contractors, and Subcontractors.
3. Amend procedures to require Prime Contractor's attestation of Subcontractor(s) daily work volume capacity and SBE requirement as it relates to the Prime Contractor's Project Schedule and any changes thereto.
4. Enforce the Prime Contractor's responsibility for all Subcontractor requirements associated with the contract, i.e. daily work volume capacity and SBE requirements.
5. Amend OSBA Form, Schedule 4, *SBE-M/WBE Payment Certification*, dated 12/6/2010, to enhance its effectiveness by including identification of the SBE Sub's Subcontractors and the amount of funds disbursed or planned to be disbursed to each of them.
6. Consider excluding the road construction hauling business from SBE certification, thus removing the SBE preference for this service from contract evaluations.

ISSUE 2:

The County Ordinance, Sections 2-80.21 – 2.80.34 and PPM # CW-O-043 that outline the SBE Program are unclear and confusing. In addition, the SBE program lacks appropriate verification, compliance, and monitoring.

The review disclosed that road construction hauling businesses, competing in County bids and contracts as Subcontractors, were certified as SBEs under the County Ordinance, based on subjective application of SBE policy. The SBE Ordinance lacks clarity which leads to confusion. The SBE program is subjectively administered resulting in questionable certifications/recertifications and decertifications. Further, the SBE program lacks appropriate verification, compliance checks, and program oversight.

Recommendations:

1. Add a lead paragraph in the County Code outlining the Purpose of the SBE Program.
2. To elevate standardization throughout the eligibility process, OSBA should develop guidelines for the uniform application of the CUF considerations.
3. Amend the County Code to clearly identify certification/recertification and decertification requirements, including warehousing standards for industries where warehousing activities are required.
4. Delete the duplicated information in the M/WBE section of the County Code to reduce the confusion that two separate programs (SBE and M/WBE) exist in the County.
5. Consider changing the M/WBE certification to a M/WBE "designation" status and clearly delineate the differences between the two in any Ordinance(s), PPM(s), and Form(s) to further reduce the confusion.

6. Amend the County Code, Section 2-80.30. Small business certification, (d). *Application review procedures* to read, "Once an applicant has submitted the original application, the certification review will be completed within ninety (90) [business, by definition] days of the original submission. (During this management review, OSBA issued an updated PPM # CW-O-043 on January 1, 2011. It was noted that paragraph 7.4, Certification Process Period, was changed to reflect "...within 90 business days of the original submission.)
7. Establish a process to ensure the 10 [business] day letter is mailed within 10 [business] days of the receipt of the Vendor application.
8. Train all OSBA Staff on the County Ordinance, PPM, and the requirements for certification, recertification, and decertification.
9. Incentivize participants to comply with the SBE program requirements by establishing a sixty (60) day period from the abandonment letter date before a business can re-apply for SBE certification.
10. Develop procedures to comply with County Code monitoring requirements pertaining to compliance and enforcement.
11. Ensure documentation received is reviewed for compliance prior to issuing a certification.
12. Establish a schedule to conduct random compliance reviews in various commodity areas.
13. Develop a centralized complaint tracking system.
14. Work closely with applicants to determine the appropriate NIGP code(s).
15. Identify the specific NIGP codes on the OSBA Certification Certificate to clearly delineate the code(s) in which the SBE is certified. By listing the NIGP code(s) on the Certificate or an attachment, it will be clear to all parties the commodity code(s) for which the vendor has been certified.

ISSUE 3:

Who is benefitting from the SBE Program goal and at what cost to the taxpayers?

The County's policy of awarding contracts to SBE responsive bidders over Non-SBE responsive low bidders resulted in increased contract costs. The OIG determined, based on a small sample (13) of road construction contracts, that the County incurred additional costs in two of those contracts totaling \$230,963 as a result of this policy.

Recommendation:

To encourage an open and competitive market for this industry, we recommend again (See Issue 1, Recommendation 6) the County consider excluding the road construction hauling business from SBE certification, thus removing the SBE preference for this service from contract evaluations.



OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

MANAGEMENT REVIEW
CASE NUMBER: 2010-0008

Sheryl G. Steckler
Inspector General

BACKGROUND

In September 2010, Palm Beach County (County) Administration notified the Office of Inspector General (OIG) of preliminary findings in an Office of Small Business Assistance (OSBA) compliance review. This notification requested the OIG to review allegations that O.C. Unlimited, Inc. was not performing the totality of work as a Small Business Enterprise (SBE) Subcontractor on several construction job sites, as required by the County contracts.

O.C. Unlimited, a certified County SBE in Excavation and Construction Hauling Services, obtained County work as a SBE Subcontractor through Prime Contractors, who were awarded, in part, the contracts based on their declarations that they would use SBEs to perform a minimum of 15% of the total work in order to meet the County's SBE goal of 15%.

During September - November 2010, the OIG received additional complaints regarding the SBE certification/decertification program from Corcel Corporation (a former SBE participant) and L&L Worldwide (a former SBE participant, currently decertified since 2005.) The complaints involved the SBE certification/decertification program and compliance processes associated with the County SBE program.

Based on the above, the OIG began a Management Review of the SBE program administered by OSBA. This review specifically addresses the road construction hauling industry of the OSBA SBE program.

History of SBE Program

On October 21, 2002, the Board of County Commissioners (BCC) passed County Ordinance No. 2002-064 establishing the SBE Program. This was a race and gender neutral program (race and gender not used to certify a SBE) intended for County businesses only. The SBE program succeeded the Minority/Women-Owned Business Enterprises (M/WBE) program because the County had achieved its established M/WBE numerical participation goals during the designated 10 year remedy period, 1992-2002; thus, the County didn't have a legal foundation to maintain or continue the M/WBE program. The two programs operated concurrently between October 1, 2002 and March 31, 2003, to allow for a smooth transition. It was expected that County M/WBE participants, most being smaller businesses, would continue to benefit from the new program. At the onset of the SBE program, the BCC set a minimum 15% goal for

SBEs on all County contracts. The OSBA was the designated County Department tasked to coordinate and lead this effort since they had overseen the M/WBE program. (See Appendix A for further History)

ISSUES AND FINDINGS

ISSUE 1:

Road Construction Prime Contractors subcontracted with County SBE certified hauling and excavation contractor(s) on bids to meet the County's 15% SBE goal, knowing that the SBE Subcontractor(s) did not have the physical assets to fulfill the percentage of work required of them by the contract. Further, SBE Subcontractor(s) (construction hauling and excavation), knowing they did not have the assets to perform 100% of the projected work without help, subcontracted their work to Non-SBE companies; thus "acting as conduits or brokers." Although required, the SBE Subcontractors also did not disclose on the OSBA Schedule 2, Letters of Intent to Perform as an SBE-M/WBE Subcontractor, that Non-SBE Sub-Subcontractors would be used.

GOVERNING DIRECTIVES:

County Municipal Code (Code), Chapter 2. Administration, Article III. Financial Affairs, Division 2. Purchases, Part C. Small Business Enterprise Program, Sections. 2-80.21—2-80.34 (Ord. 02-064, 10-1-2002; amended Ord. 04-071/effective date 12-29-2004; amended Ord. 05-048/effective date 11-21-2005; amended Ord. 08-014/effective date 5-29-2008; amended Ord. 2009-024/effective date 8-26-2009.

Section 2-80.21. Definitions.

"Acting as a conduit means, in part, not acting as a regular dealer by making sales of material, foods or supplies from items bought, kept in stock and regularly sold to the public, as opposed to only government agencies, in the useful course of business. Brokers, manufacturer's representatives, sales representatives and non-stocking distributors are considered as conduits that do not perform a commercially useful business function."

"Commercially useful business function means adding value to the goods and services supplied under a contract."

Section 2-80.25. Ranking of responsive bidders.

When evaluating competitive bids/quotes of up to one million dollars (\$1,000,000) in which the apparent low bidder is determined to be non-responsive to the SBE requirement, the contract shall be awarded to the low bidder responsive to the SBE requirements, or in the event there are no bidders responsive to the SBE requirements, to the bidder with the greatest SBE

participation in excess of seven percent (7%) participation, as long as the bid does not exceed the low bid amount by ten percent (10%).

In cases where the low bid exceeds one million dollars (\$1,000,000), the contract shall be awarded to the low bidder responsive to the SBE requirements, or in the event there are no bidders responsive to the SBE requirements, to the bidder with the greatest SBE participation in excess of seven percent (7%) participation, provided that such bid does not exceed the low bid otherwise responsive to the bid requirements by more than one hundred thousand dollars (\$100,000) plus three percent (3%) of the total bid in excess of one million dollars (\$1,000,000).

This section only applies when price is the determining factor.

Section 2-80.30. Small business certification, (a). Eligibility Standards. "An eligible small business for this program must perform a commercially useful business function."

Section 2-80.30. Small business certification, (b). *Commercially useful business function (CUF)*. "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]

County Policy and Procedures Memorandum (PPM) # CW-O-043, dated August 5, 2009, Small Business Enterprise Program Policies and Procedures Manual.

Section 7, Certification: paragraph 7.11 - "An eligible small business for this program must perform a value-added commercially useful business function by maintaining storage inventory and/or being responsible for the execution of a distinct element of work of a contract and carrying out its responsibility by actually performing and managing and supervising the work performed."

Section 7, Certification: paragraph 7.15 – Grounds for Decertification; item h) – "The small business does not perform a commercially useful business function."

Section 8, Suspension/Debarment: paragraph 8.4 – "Representing a SBE as performing a commercially useful function when such business is merely acting

as a conduit in order to participate in the county's SBE program or receive a preference or benefit under the SBE program.”

County Road Construction Contracts - Instruction to Bidders – (All County contracts are between the County and Prime Contractors.)

8. SBE PARTICIPATION AND SOLICITATION DOCUMENTATION: NOTE: A prime bidder ... Failure to submit the necessary SBE documentation to establish that the goals have been met or good faith efforts exercised may result in the SBE bidder being deemed non-responsive to the SBE requirements.

OSBA Schedule(s) 2 – Letter(s) of Intent to Perform as a SBE-M/WBE Subcontractor: One Schedule 2 for each SBE Subcontractor listed on Schedule 1 shall be completed and executed by the proposed SBE Subcontractor and M/WBE Subcontractor.

FINDING:

A. SBE Preference

The County gives preference to those Prime Contractor bids that meet the County's SBE goals. According to documents and witness interviews, Prime Contractors solicited O.C. Unlimited, based on the company's SBE certification, for road construction hauling services in order to help meet the County's minimum 15% SBE goal. Prime Contractors stated they saw the SBE Program as a "mandate" to win a contract award.

On approximately November 27, 2007, Devland Site, Inc, a competitor of O.C. Unlimited, contacted the OSBA and lodged a complaint that O.C. Unlimited was a "front company" and did not have the capacity, both in terms of equipment and manpower, to perform the work for which they were being contracted. The OSBA conducted a compliance review of O.C. Unlimited at that time and noted that the company owned equipment such as a front end loader and a truck. OSBA determined the allegation was unfounded. Again, on April 29, 2010, the same complainant made a similar allegation. The OSBA conducted nine (9) unannounced site visits to projects on which O.C. Unlimited was listed as a Subcontractor for hauling services. During the unannounced visits, the OSBA representative did not see any O.C. Unlimited equipment or dump trucks. Further OSBA inquiries of on-site Prime Contractor Project Managers disclosed that O.C. Unlimited trucks were seldom seen on any of the project sites and the hauling work was performed by independent truckers. During an interview of one Prime Contractor's Project Superintendent, the OSBA representative was told that O.C. Unlimited and Siboney Trucking Company (a Non-SBE company) work together. The OSBA representative was directed to call a telephone number that the Project Superintendent used to order the hauling trucks. Upon calling the number, the OSBA representative was told by the person answering the telephone that the number belonged to Siboney.

O.C. Unlimited is a trucking company specializing in excavation services, construction, and hauling services. The President of the company is Osmond Clarke. Based on

information provided by the Florida Department of State, O.C. Unlimited was originally incorporated on September 8, 1980, as O.C. Trucking, Inc. The company executed a name change on May 6, 2002, and changed its name to O.C. Unlimited, Inc., as it is known today. The OSBA transitioned the company from the M/WBE program to the SBE program in 2003, with subsequent recertifications in 2006 and 2009 (certifications are for three years.) During the 2006 recertification process, there was concern, per Patricia Wilhelm's (OSBA Specialist II) Site Visit Report, dated May 12, 2006, as to where the company's equipment was stored; as it was a different location from where the administration office was located; however, they were subsequently recertified. The company was recertified again as a SBE on June 15, 2009, for the period from June 15, 2009 through June 14, 2012. The Office of Inspector General's (OIG) direct examination of the company's location and payroll records in December 2010 confirmed O.C. Unlimited equipment inventory included two dump trucks and two tractor trailers and four people on payroll.

B. OSBA Form, Schedule 2

Prior to contract award, SBE Subcontractors, such as O.C. Unlimited, were required by OSBA policy to submit an OSBA Form, *Schedule 2, Letter of Intent to Perform as an SBE-M/WBE Subcontractor* for a project bid with a Prime Contractor, in order for the Prime Contractor to receive SBE preference points. It was not uncommon for multiple Prime Contractors on a proposal to submit Schedule 2s with the same Subcontractors for SBE preferences. The owners of two SBE hauling service companies provided different testimony as to what portions of the Schedule 2 were completed by the Subcontractor and the Prime Contractors when asked about the statement, "If undersigned intends to sub-subcontract any portion of this subcontract to a non-certified SBE contractor, the amount of any such subcontract must be stated \$ ____." Clarke (O.C. Unlimited) stated he completed this section, while Hiram Mendiondo (Southern Transport & Equipment, Inc.) stated the Prime Contractor completed this section. Mendiondo stated he only completed two sections on the form: "The undersigned is certified by Palm Beach County as a ..." and the signature block. OSBA Schedule 2 clearly states that the form must be completed by the SBE-M/WBE Subcontractor.

An OIG review of Schedule 2 forms submitted by Prime Contractors for various construction projects reflected, in all cases, the response to the statement was zero (0). Despite their Schedule 2 attestation that they did not "intend" to subcontract work to a non-certified SBE Subcontractor, OIG interviews revealed that SBE hauling Subcontractors knew, based on their experiences over the past years, that they could not perform all of the required hauling work on road construction contracts.

C. Non-SBE Subcontractors

County Road Construction Coordinators disclosed to the OIG that O.C. Unlimited trucks were seldom observed on the four construction projects reviewed. The majority of the dump trucks seen by the County Road Construction Coordinators throughout the course of the projects were either Subcontractors (Company Truck recognition - Company name, color) or independent owner/operator trucks (hand scribed personal names on

truck and truck color); however, the County Road Construction Coordinators were not on project sites 100% of the time as they moved daily from one project to another.

OIG interviews with Olinda Valcarcel, Office Manager, and Clarke of O.C. Unlimited substantiated that, due to O.C. Unlimited's limited assets consisting of two dump trucks for construction hauling, there was a need to use independent truckers (owner/operators) when the Prime Contractor's schedule required three (3), five (5), ten (10) or more trucks a day. Therefore, per Clarke, he maintained a list of 37 Non-SBE Subcontractors (the majority were independent truckers) to call upon to help meet his contractual obligations. None of these 37 companies were certified by OSBA as a SBE as of January 2011. Per Valcarcel, Clarke or the company providing the material paid the independent truckers either an hourly rate or by the load.

Mendondo (Southern Transport & Equipment, Inc.) stated his company (assets include two dump trucks), after an award, provided hauling services for Prime Contractors by contracting with independent truckers. He maintained a list of approximately 50-60 Non-SBE Subcontractors, including independent truckers, and stated the Prime Contractors were aware of the use of independent truckers by their Subcontractors.

The OIG interviewed management personnel of two Prime Contractors (Ranger Construction and J.W. Cheatham) regarding their use of SBE Subcontractors on County road construction projects. Each one said that the SBE goal was a "mandate" or "requirement" in order to win the contract. Both agreed that for years it was standard business practice in the road construction hauling business for a SBE Subcontractor to use other hauling companies and independent truckers to complete the required work on contracts. Both stated that all the truck hauling companies such as Southern Transport and O.C. Unlimited relied on the independent truckers to fulfill their contract needs by "acting as brokers" on these contracts. Management personnel for the Prime Contractors stated that their costs would be less if the SBE program did not exist; however, both also stated that the use of the independent truckers was essential since neither company wanted to maintain a large fleet of trucks. Both Prime Contractors also added that they didn't want to idle their employees (use SBE trucks instead of their own company trucks) due to SBE goals.

Based on the interviews, the Prime Contractors stated SBE goals for hauling services on a County contract were met on paper, but not during the actual road construction projects. Subcontractors, such as O.C. Unlimited and Southern Transport, subcontracted out a greater percentage of work than they actually provided with their limited assets, thus serving "as a conduit or broker." The various independent truckers used were not SBE certified, thus negating the purpose for the County's 15% SBE goal on all County road construction contracts. Although the County contracts required the Prime Contractors to report to the County a change in their Subcontractors, there was no County requirement for the Prime Contractor's Subcontractor to identify to the County any Subcontractors that they use following contract award. OIG interviews of company personnel associated with the road construction industry verified that the use of independent truckers in the road construction hauling industry in the County and other Florida counties was routine since deregulation in the early 1980s.

Recommendations:

1. Amend the County Ordinance to clearly identify certification/recertification and decertification requirements. Specifically address industries prone to conduit and broker type activities and those businesses that do not provide a commercially useful business function, i.e. road construction hauling.
2. Add additional information to OSBA documents/forms such as Schedules 1, 2, 3, 4 to identify owner, date, revision number (i.e. OSBA Schedule 1, February 1, 2011, Revision 3) and post all documents on-line for use by applicants, Prime Contractors, and Subcontractors.
3. Amend procedures to require Prime Contractor's attestation of Subcontractor(s) daily work volume capacity and SBE requirement as it relates to the Prime Contractor's Project Schedule and any changes thereto.
4. Enforce the Prime Contractor's responsibility for all Subcontractor requirements associated with the contract, i.e. daily work volume capacity and SBE requirements.
5. Amend OSBA Form, Schedule 4, *SBE-M/WBE Payment Certification*, dated 12/6/2010, to enhance its effectiveness by including identification of the SBE Sub's Subcontractors and the amount of funds disbursed or planned to be disbursed to each of them.
6. Consider excluding the road construction hauling business from SBE certification, thus removing the SBE preference for this service from contract evaluations.

ISSUE 2:

The County Code, Sections 2-80.21 – 2.80.34, and PPM # CW-O-043 that outline the SBE Program are unclear and confusing. In addition, the SBE program lacks appropriate verification, compliance, and monitoring.

GOVERNING DIRECTIVE:

County Municipal Code (Code), Chapter 2. Administration, Article III. Financial Affairs, Division 2. Purchases, Part C. Small Business Enterprise Program, Sections. 2-80.21—2-80.34 (Ord. 02-064, 10-1-2002; amended Ord. 04-071/effective date 12-29-2004; amended Ord. 05-048/effective date 11-21-2005; amended Ord. 08-014/effective date 5-29-2008; amended Ord. 2009-024/effective date 8-26-2009.

Section 2-80.21. Definitions. Days means business days unless specified otherwise.

Section 2-80.30. Small business certification, (b). *Commercially useful business function* (CUF). "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.”

Section 2-80.30. Small business certification, (d). *Application review procedures*, states “Once an applicant has submitted the application and all supporting documentation, certification review will be completed within ninety (90) [business, by definition] days ...”

Section 2-80.30. Small business certification, (h). *Recertification*, states “... criteria for recertification shall be the same as for certification ...”

Section 2-80.31. M/WBE certification, (a). *Eligibility standards*, state “Although preferences to certified M/WBEs will not be extended under this part, unless otherwise provided by law, businesses eligible for certification as a M/WBE are encouraged to maintain their certification in order to assist in the tracking of M/WBE availability and awards of contracts to M/WBEs.”

County Policy and Procedures Memorandum (PPM) # CW-O-043, dated August 5, 2009, Small Business Enterprise Program Policies and Procedures Manual.

Section 7.4. Certification Process Period, states “Upon receipt of an application for certification, all supporting documents will be logged in as appropriate. OSBA will preview the application to determine whether any additional information is needed and **notify the applicant of any needed information within 10 business days of receipt**. If the applicant timely submits the required information, OSBA will endeavor to make a determination on the certification application within 60 days of the original submission. Any applicant failing to submit the requested documentation within thirty (30) days of the notice shall be deemed to have abandoned its application.” [Emphasis added]

FINDING:

A. Purpose of SBE Program

Unlike the County Code for the former M/WBE program that had a purpose paragraph (Sec. 2-72. Purpose), the County Ordinance for the SBE program did not include a section that outlines the purpose of the SBE program and the goal(s) of the program. The OIG review of the available SBE/SBA Advisory Committee Minutes from January, 2004 – December, 2010 reflected periodic discussions between SBE Advisory Board members as to what was the purpose of the SBE program. Minutes of the February 9, 2005 board meeting reflected that Tammy Fields, Senior County Attorney, reminded

everyone that the "purpose of the SBE Program is to help small businesses play the big boys' game." October 2006 minutes included a comment by board member (Laurie Rogers) that the purpose of the SBE Program was to graduate, not stay in forever.

Recommendation:

Add a lead paragraph in the County Code outlining the Purpose of the SBE Program.

B. Eligibility Standards

The Small Business Certification section in the County Code (Sec. 2-80.30), paragraph (a) (Eligibility Standards) outlines the eligibility standards for a small business. Paragraph (a) identifies two criteria for certification as a Small Business in the County's SBE program (neither of which states the business must domicile in the County): 1.) for profit business concern whose gross receipts are within the standards as defined in Sec. 2-80.21 and, 2.) who has been in business at least one year or has obtained a certificate of small business competency for an approved OSBA course. Within the paragraph (a), it states a small business must perform a commercially useful business function (CUF); therefore paragraph (b) must be reviewed. In order for someone to know that the small business must be domiciled in the County, then one must refer to Sec. 2-80.21, Definitions, Small Business. Recertification is outlined in Sec. 2-80.21(h) and states that the criteria for recertification shall be the same as for certification.

Allen Gray (Manager/Interim Director, OSBA) stated that there were only two eligibility criteria for SBE certification. Those two criteria were: local business and size. He said that the Commercially Useful Business Function (CUF) section laid out the criteria for decertification of small businesses.

The OIG interviewed the four OSBA Specialists who perform certifications, recertifications, and decertifications. They all stated that there was an OSBA Certification Checklist (similar to the Applicant's checklist) that they used throughout the process as a guide, but there were no formal instructions or directions on how to use or complete the checklist. One Senior Specialist, based on her experiences and understanding, provided periodic training on the process and the Certification Checklist. The only other training associated with the program was on-the-job training. In reference to the CUF section (Sec. 2-80.21(b)) of the County Code, all the Specialists used the outlined considerations when they conducted certifications, recertifications, and decertifications. A few Specialists stated they use a seven (7) factor CUF checklist devised by one of the Specialists. They each stated their certification decisions were based on the totality of the circumstances on a case by case scenario.

Tammy Fields (Senior County Attorney) was interviewed in reference to the former MWBE program and the current SBE program ordinances, in particularly the CUF area, she had authored over the years. She concurred there was some necessary subjectivity within the CUF area of the County Ordinance, especially with hauling and warehousing (pipe) certifications, which may cause confusion in the certification/decertification process.

The OSBA representatives' decisions to certify/recertify/decertify small businesses are based on the admittedly subjective CUF criteria. However, other than the seven factor CUF checklist, OSBA was unable to produce established written guidelines or policies that addressed uniform application of the criteria to the various circumstances of each case by case scenario. Recognizing the complexity of various industries and the OSBA's subjective certification process, there is a need for standardization requirements throughout each of the industries in the SBE program. This is needed so that the businesses within an industry can be evaluated with clear and objective criteria.

Recommendations:

1. To elevate standardization throughout the eligibility process, OSBA should develop guidelines for the uniform application of the CUF considerations.
2. Amend the County Code to clearly identify certification/recertification and decertification requirements, including warehousing standards for industries where warehousing activities are required.

C. SBE and M/WBE Programs

The SBE program succeeded the M/WBE program since the County had met their established goals; thus, the County was advised it did not have a sufficient legal foundation to continue the M/WBE program. However, to ensure the County would not become a participant in passive discrimination, the County encouraged M/WBEs to maintain M/WBE certification so that the County could track what happens to M/WBE participation within a race and gender neutral program and awards of contracts to M/WBEs. Procurement preferences are not extended to certified M/WBEs, unless otherwise provided by law, i.e. FS 287.055 (Consultants' Competitive Negotiation Act).

The only additional requirement as indicated on the OSBA Form, *Steps to Completing the Application Form for SBE Certification*, dated 12/3/2010, for identifying a SBE as a M/WBE (solely for tracking purposes) is proof of gender or ethnicity, since ownership and control are already included under the SBE category. This was confirmed by several OSBA Specialists. (A copy of this form was attached in PPM CW-O-043, dated August 26, 2009, as Attachment B/Page 5.)

SBE participants as well as Vendors stated to the OIG that they believed there was still a minority and gender component to the SBE program. The following also adds to the confusion within the SBE program:

1. Two types of certifications are distinguished in separate sections within the County Code: Sec. 2-80.30. (Small business certification) and Sec. 2-80.31. (M/WBE (Minority-owned or Women-owned business enterprise) Certification), duplicating in each section similar eligibility requirements, commercially useful business functions, and application procedures. These two different certification sections make it appear as if the County has two separate programs instead of one.
2. The County Code encourages minority/women owned small businesses to certify as a M/WBE to track M/WBE participation in contract awards.

3. Even though the M/WBE program sunset on October 31, 2002, the online MuniCode, as of December 2010, still reflects the entire M/WBE Sec. 2-71 – Sec. 2-80.13, almost eight years after the sunset.

Recommendations:

1. Delete the duplicated information in the M/WBE section of the County Code to reduce the confusion that two separate programs (SBE and M/WBE) exist in the County.
2. Consider changing the M/WBE certification to a M/WBE "designation" status and clearly delineate the differences between the two in any Ordinance(s), PPM(s), and Form(s) to further reduce the confusion.

D. 90-day rule/10-day letter

OIG interviews with all six OSBA staff regarding the 90 [business] day (as outlined in the County Code) rule for certification and recertification yielded various interpretations on how it was applied. All of them stated the 90 [business] day clock was a "stop and go" matter. The differences in their interpretations were based on various events that caused the clock to stop. None of the OSBA staff stated it was a straight, non-stop 90 business day period from receipt of the initial application. In addition, as to whether the days were business days or calendar days, the Manager and Specialists provided a mix of responses. To add further confusion, contrary to the County Code, the PPM states the OSBA will endeavor to make a determination on the certification application within 60 days of the original submission; however, it does not identify whether days are business or calendar.

As part of the 90-day rule (PPM CW-O-043, Section 7.4), the OSBA office is to notify the applicant of any additional required documentation within 10 business days of receipt of the Vendor's application. This is known as the 10 day letter. Besides identifying the additional documentation to the Vendor, this letter also gives the Vendor a 30 day deadline in which to provide the documentation or the Vendor's file will be abandoned. Below are three examples of OSBA's lack of compliance with its own internal processes:

1. Line-Tec Corporation's recertification application was postmarked at West Palm Beach on Friday, January 15, 2010. On February 17, 2010 (20 business days after it should have been received by OSBA), Line-Tec's envelope was stamped by OSBA that it was received. It was April 30, 2010 (72 business days after mailing) before OSBA sent a letter requesting additional information. On June 22, 2010 (108 business days after mailing), a second letter was sent. On July 13, 2010, Patricia Wilhelm (OSBA Specialist II) conducted a site visit of Line-Tec. During this site visit, according to Wilhelm's letter, Line-Tec agreed to provide the requested information (4/30/2010 and 6/22/2010 letters) by July 20, 2010. On July 23, 2010 (130 business days after mailing), Wilhelm sent Line-Tec a letter stating their request for recertification was removed from consideration and was considered abandoned because Line-Tec had failed to provide the requested information within 30 days of the request. Per Gray, on July 27, 2010, Scott

Ellsworth, President of Line-Tec, spoke directly to him regarding Line-Tec's abandonment. On July 28, 2010 (133 business days after mailing), Gray and Wilhelm had a meeting to discuss Line-Tec's recertification. Wilhelm subsequently sent a letter to Line-Tec informing them they had been recertified for three years.

2. East Coast Underground & Construction Corp. (East Coast) signed the application for certification on September 12, 2009. On September 21, 2009, OSBA sent East Coast a letter stating their recertification application had been received. On March 31, 2010 (128 business days after receipt) OSBA sent East Coast a letter requesting additional information. On April 26, 2010 (146 business days after receipt), OSBA sent a letter to East Coast indicating they were certified for three years.
3. Taylor, Principal of Taylor Land Development Inc., signed the application for recertification. On May 28, 2010, OSBA sent Taylor a letter stating their recertification application was received. On September 3, 2010 (68 business days after receipt), Pam Hart (OSBA Specialist I) sent a letter to Taylor requesting additional information. On September 24, 2010 (82 business days after receipt), Hart sent another letter to Taylor indicating they were recertified for three years.

The OSBA letters sent to the three companies mentioned above, to acknowledge receipt of their application, was contrary to PBC PPM # CW-O-043. PBC PPM # CW-O-043 states OSBA "will endeavor to make a determination on the certification application within 60 days of the original submission." The letters acknowledging receipt stated the "review will be completed within ninety (90) business days of receipt of all required documentation", which agrees with the County Code, but conflicts with the PPM. In all cases, OSBA exceeded their time frame in the PBC PPM # CW-O-043 where it states "OSBA will preview the application to determine whether any additional information is needed and notify the applicant of any needed information within 10 business days of receipt". In all three cases, letters requesting additional information were sent; however, none were completed within 10 days of receipt. In summary, only one of the three companies was processed within the 90-day required timeframe (Taylor in 82 business days, Line-Tec - 133 business days; and East Coast - 151 business days).

As this review was being conducted, the OIG received another complaint regarding the OSBA recertification time frame, citing that the OSBA received the application on November 10, 2010, but that the 10-day letter was not mailed until Feb 3, 2011. The small business, who filed the complaint, expressed a concern that they were not going to receive the SBE preference on some current solicitations.

Recommendations:

1. Amend the County Code, Section 2-80.30. Small business certification, (d). *Application review procedures* to read, "Once an applicant has submitted the original application, the certification review will be completed within ninety (90) [business, by definition] days of the original submission. (During this management review, OSBA issued an updated PPM # CW-O-043 on January 1,

2011. It was noted that paragraph 7.4, Certification Process Period, was changed to reflect "...within 90 business days of the original submission.)

2. Establish a process to ensure the 10 [business] day letter is mailed within 10 [business] days of the receipt of the Vendor application.
3. Train all OSBA Staff on the County Ordinance, PPM, and the requirements for certification, recertification, and decertification.
4. Incentivize participants to comply with the SBE program requirements by establishing a sixty (60) day period from the abandonment letter date before a business can re-apply for SBE certification.

E. Compliance and Efficiencies

Section 2-80.24 of the SBE County Code states, "the office of small business assistance will establish procedures for monitoring and evaluating program performance and compliance, subject to the County administrator's approval;" however, the OIG review did not reveal evidence of an effective compliance program. OIG interviews with OSBA staff identified the following instances of non-compliance:

1. No established procedures exist for monitoring SBE compliance in PPM CW-O-043.
2. An OIG review of three case files for currently certified SBEs showed two files missing the necessary documentation to substantiate the SBE's sizing requirements (gross receipts as defined in the County Code) for the past two recertifications.

Through OSBA staff interviews, the OIG identified that the OSBA office had only one person conducting compliance reviews. This employee also conducts certifications, recertifications, and decertifications. The OIG requested a list of all complaints from OSBA that they had received for certification issues, performance issues, etc. from 2008 – 2010. The OIG found that OSBA had no master list (electronic or manual) to track complaints. Allen Gray (Manager/Interim Director) stated that complaints were filed within each Vendor's file; therefore, he could not provide the OIG with any complaint unless he searched each file or had more specific information as to the Vendor.

The lack of uniform procedures and a complaint tracking system hinders the OSBA department's capacity to maximize efficiencies with available resources.

Recommendations:

1. Develop procedures to comply with County Code monitoring requirements pertaining to compliance and enforcement.
2. Ensure documentation received is reviewed for compliance prior to issuing a certification.
3. Establish a schedule to conduct random compliance reviews in various commodity areas.
4. Develop a centralized complaint tracking system.

F. National Institute of Governmental Purchasing (NIGP) Commodity Services Codes

The County, in August 2009, deleted the North American Industry Classification System (NAICS) codes from the County Code, but retained the NIGP codes to identify the commodities in which to certify small businesses. Under the current County Code, NIGP codes of which there are either 3-digits, 5-digits, 7-digits, or 11-digits, are as follows:

Code Structure	Sample Code	Sample Description
3-Digit (Class) Code	620	Office Supplies: Erasers, Inks, Leads, Pens, Pencils, etc.
5-Digit (Class-Item) Code	620-80	Pens (General Writing Types): Ball Point, Nylon Tip, etc.
7-Digit (Class-Item-Group) Code	620-80-21	Pens, Ball Point, Retractable, Refillable, All Plastic Barrel W/Metal Pocket Clip
11-Digit (Class-Item-Group-Detail) Code	620-80-21-035-4	Fine Point, Black Ink, 12/Box

An OIG review of multiple SBE Certification records found it difficult to determine which commodities the SBEs were certified for since there were no NIGP codes listed on the certificates. In accordance with Sec. 2-80.30 (d), Application Review Procedures, paragraph (2) states "that the office of small business assistance will review the goods or services provided by the applicant to determine the appropriate NIGP codes."

Recommendations:

1. Work closely with applicants to determine the appropriate NIGP code(s).
2. Identify the specific NIGP codes on the OSBA Certification Certificate to clearly delineate the code(s) in which the SBE is certified. By listing the NIGP code(s) on the Certificate or an attachment, it will be clear to all parties the commodity code(s) for which the vendor has been certified.

ISSUE 3:

Who is benefitting from the SBE Program goal and at what cost to the taxpayers?

GOVERNING DIRECTIVE:

County Municipal Code (Code), Chapter 2. Administration, Article III. Financial Affairs, Division 2. Purchases, Part C. Small Business Enterprise Program, Sections. 2-80.21—2-80.34 (Ord. 02-064, 10-1-2002; amended Ord. 04-071/effective date 12-29-2004; amended Ord. 05-048/effective date 11-21-2005; amended Ord. 08-014/effective date 5-29-2008; amended Ord. 2009-024/effective date 8-26-2009.

Section 2-80.25. Ranking of responsive bidders.

When evaluating competitive bids/quotes of up to one million dollars (\$1,000,000) in which the apparent low bidder is determined to be non-responsive to the SBE requirement, the contract shall be awarded to the low bidder responsive to the SBE requirements, or in the event there are no bidders responsive to the SBE requirements, to the bidder with the greatest SBE participation in excess of seven percent (7%) participation, as long as the bid does not exceed the low bid amount by ten percent (10%).

In cases where the low bid exceeds one million dollars (\$1,000,000), the contract shall be awarded to the low bidder responsive to the SBE requirements, or in the event there are no bidders responsive to the SBE requirements, to the bidder with the greatest SBE participation in excess of seven percent (7%) participation, provided that such bid does not exceed the low bid otherwise responsive to the bid requirements by more than one hundred thousand dollars (\$100,000) plus three percent (3%) of the total bid in excess of one million dollars (\$1,000,000).

This section only applies when price is the determining factor.

FINDING:

Tammy Fields, Senior County Attorney, stated the hauling and pipe industries were areas being abused. Fields further clarified, due to her concerns in the construction hauling business, she concurred with the County Administration's referral of this matter to the OIG. Fields was aware of concerns related to Subcontractors not following the regulations of the SBE program, in particular, that some Subcontractors acted as conduits and did not perform commercially useful business functions. Fields admitted that some larger distributors asked smaller companies to achieve SBE status in order to act as a broker or conduit for goods or services, something that was supposed to be caught during the certification process. As to the area of pipe supply, Fields stated firms were decertified and the criteria for demonstrating performance of a commercially useful business function was strengthened through several past ordinance amendments. Fields stated the SBE program was a policy decision by the Board of County Commissioners (BCC) in 2002 at the sunset of the M/WBE program. She stated the BCC realized there was an "allowable" cost associated with the SBE program and they were willing to pay this additional cost.

Kathy Scarlett, County Purchasing Director, related the County Code allowed the County to award a contract to a SBE, who was within 10% of the winning bid, if the winning bid was submitted by a Non-SBE company. Scarlett reiterated the policy of the BCC was they were willing to spend more money on contracts in support of the SBE program. ("Allowable cost" is the cost difference between the apparent low bidder determined to be non-responsive to the SBE requirement and the low bidder responsive to the SBE requirement who is within the allowable range of the lowest bid amount.)

Road Construction Prime Contractors as well as SBE owners used the following terms in characterizing the SBE program: subjective, a restraint of trade, a barrier to competition, counterproductive, and political. Road Construction industry executives and project coordinators disclosed that the SBE program forced them to change their

scope of work within their proposals, purchase unneeded services, and enter into contracts which may not otherwise be necessary. In order to meet SBE program goals, according to the interviewed Prime Contractors, they were put in the position of paying higher costs and passing these higher costs on to the County. Further, one Prime Contractor admitted to routinely using these companies to reach the County's SBE participation goal of 15%, when in fact, they knew the work was being provided by independent drivers not certified by the SBE program.

Interviews of County Road Construction Coordinators, Road Construction Executives, and trucking company owners indicated that many companies operated, wholly or partially, as trucking brokers. The OIG review included interviews and unannounced onsite visits to road construction projects to determine which companies were performing County contracted work. It was determined that neither O.C. Trucking nor Southern Transport had the equipment or manpower to fulfill County contracts for which they were subcontracted.

Michael Slade, President of Ranger Construction, and Thomas Uhrig, Vice-President for J.W. Cheatham, LLC, both stated their costs on County road projects would be lower without the SBE program. Slade stated that SBE certified hauling companies which act as brokers increased his project costs related to hauling by 15% to 18%. He said the SBE program mandated him to include a SBE middleman on his projects for hauling, and anytime you add a middleman, you end up with increased costs. Furthermore, Slade related that he told his staff not to submit a bid, if they didn't secure the SBEs needed to meet the 15% SBE goal. Uhrig stated the selection and quality of Subcontractors would be better without the SBE program. Uhrig estimated his costs were 10% higher because of the SBE program, not just for hauling, but other facets of his work as well, such as fencing, culverts, and curbing.

Clarke, President of O.C. Unlimited, stated the County would save money if his company was not used as a SBE Subcontractor. Clarke estimated his company's profit margin was around 25%, giving two examples where his profits ranged between 17% and 27%. Clarke stated he was never informed as to the type of work (construction hauling services or excavation services) or the daily volume the Prime Contractor needed him to perform. Instead, he was just provided a dollar amount that represented his participation in a project. As a result of a random OIG review of OSBA's "Compliance Review" memorandum and Prime Contractors' "Construction Activity" schedules in conjunction with Clarke's estimation of his company's profit margin, the OIG estimated O. C. Unlimited, Inc. potentially received a profit between \$577,364 and \$916,990 on nine (9) contracts. Mendiondo, President of Southern Transport & Equipment Inc., related that his profit margin was between 3% and 10%. A similar OIG review of Mendiondo's profit margin concluded Southern Transport & Equipment, Inc. potentially received a profit between \$90,915 and \$303,051 on five (5) projects. The potential total profit margin for the two Subcontractors - each of which "acted as a conduit or broker" - on the fourteen (14) reviewed County road construction hauling projects was between \$668,000 and \$1,220,000.

SBE Fiscal Consequences

Chart 1 was created after reviewing "Compliance Review" memorandums for two road construction projects prepared by the OSBA staff in conjunction with the County's established minimum SBE participation goal of 15% and the "allowable cost" element of the SBE program. In these instances, the apparent low bidder was determined to be non-responsive to the SBE requirement, and per County Code, the contracts were awarded to the low bidder responsive to the SBE requirement. The practice of awarding contracts to bidders responsive to the County's minimum SBE participation goal, who are within the allowable range of the lowest bid amount (i.e. 10% for contracts less than \$1,000,000), resulted in increased costs of \$230,963 for the following two (2) projects:

CHART 1				
Analysis of Allowable Cost				
Project Number	Project Name	SBE Non-Responsive Bid Amount (Prime)	SBE Responsive Bid Amount (Prime)	Allowable Cost
2002055	Limestone Creek	\$1,621,961	\$1,728,864	\$106,903
2008054	Asphalt Milling	8,665,850	8,789,910	124,060
TOTAL				\$230,963

In these two road construction projects, if SBE goal preferences did not exist, these contracts would have been awarded to the SBE Non-Responsive low bidder; thus, saving the County \$230,963.

It is noted that Southern Transport and Equipment, Inc. (one of the Subcontractors listed on each of these two SBE responsive bids) provides hauling services for Prime Contractors by subcontracting with Non-SBE independent drivers.

Recommendation:

To encourage an open and competitive market for this industry, we recommend again (See Issue 1, Recommendation 6) the County consider excluding the road construction hauling business from SBE certification, thus removing the SBE preference for this service from contract evaluations.

ADDITIONAL INFORMATION

County Code, Sec. 2-80.23(c), authorizes the implementation of a "sheltered market program" whereby the County can set aside contracts (\$50,000 to \$250,000) for SBEs as long as there are at least three qualified bidders. The OIG reviewed a situation where this occurred to benefit Glades-only companies. If the BCC continues with the SBE program in the areas (truck hauling and pipes) covered in this report, it is recommended, in order to procure in an open and competitive market and reduce costs

to the County, that the BCC consider implementing a "sheltered market program" for small businesses.

We would like to thank all the County and Company employees listed in this report for their cooperation and time throughout the course of this review.

Article XII, SECTION 2- 427

Pursuant to Article XII, Section 2-247 of the Palm Beach County Code, Verdenia Baker, Deputy County Administrator provided the attached management comments to this review. County management generally concurred with the OIG recommendations.

In response to management's comments and their non-concurrence to some OIG recommendations, the OIG would like to note the following:

1. Management's Comment: *Additionally, we understand the need to address other complaints you received from SBEs who were previously certified to supply pipe. It should be noted, however, that these firms are no longer eligible for SBE certification because they have been so successful that they exceed the size standards to qualify. Further, these particular firms have filed several unsuccessful lawsuits against Palm Beach County concerning the SBE Program.*

Regarding management's reference to our "need to address other complaints" from firms previously certified to supply pipe, the information that the OIG has received to date indicates not all the complaining firms have outgrown the size limits to qualify for SBE certification. Even if all complainants had exceeded the size limits for certification, the fact would be of questionable relevance to the merits of their complaints, since most of the complaints are unrelated to the size standards.

2. Management's Response, Recommendation 2E, No. 1 referring to establishing procedures for SBE monitoring: *These procedures are already in place.*

Throughout the course of this management review requests were made and OSBA staff members were provided numerous opportunities to supply and/or identify any additional operating procedures, documentation, and objective Commercially Useful Business Function criteria used to certify/recertify and decertify small businesses. However, no additional information was received prior to the draft report being presented to management for comments. Management's response indicates "procedures are already in place". Based on Management's response, the OIG requested and received a copy of OSBA's Internal Policies and Procedures Memoranda (IPPM). The majority of the IPPMs have an issue date and effective date of January 3, 2011 and were signed by Manager/Interim Director Allen Gray and a few IPPMs reflect issue dates and effective dates of June 15, 2009, also signed by Gray, instead of Hazel Oxendine, the OSBA Director at that time. Subsequent interviews of Gray and

OSBA personnel determined that the IPPMs were signed by Gray in mid-March 2011 and provided to the staff in mid-April 2011.

3. *Management's Comment: In addition, your office performed an analysis of 13 road projects of which only two were not awarded to the lowest bidder. Those two are shown in Chart 1 of this report. This chart reflects the two instances in which the second low bidder received the award based on meeting the 15% SBE goals. The distinction between the total bid amounts reflects a 2% (\$230,000) difference. Small businesses comprise over 80% of the businesses of Palm Beach County and employ a significant number of residents of the County. The intent of the Small Business Program was to ensure all businesses located in Palm Beach County are afforded the opportunity to participate in the County's procurement process. Therefore, the County made a conscious decision to allow for a 10% differential over a minimum bid if a bidder met the 15% SBE goal. As shown above when the preference is applied the difference maybe significantly less than the 10% preference allowed.*

The fiscal consequence addressed by the OIG is a reflection of only a small sample of road construction contracts (two of 13) where the second low bidder, who met a SBE goal, received the contract award over the low bidder. It is an unknown as to how many dollars the County spent over the past 10 years on contracts awarded to the second low bidder, who met a SBE goal, where the SBE Subcontractor was subcontracting out their work to Non-SBEs.

APPENDIX A - History of SBE Program

The transition of the County M/WBE program to the current SBE program resulted from a United States Supreme Court decision in 1989. The United States Supreme Court ruled in *City of Richmond v. Croson*, 488 U.S. 469 (1989) that a race-based set aside program in the City of Richmond, VA, violated the equal protection clause of the United States Constitution. The Court held that in order to withstand strict scrutiny, a program that uses race as a criterion for preferential treatment must be narrowly tailored to remedy the effects of past discrimination. In a 6-to-3 decision, the Court held that "generalized assertions" of past discrimination could not justify "rigid" racial quotas for the awarding of public contracts.

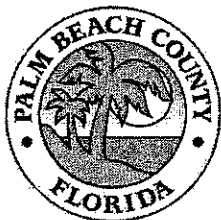
The United States Supreme Court established new standards by which local governments could constitutionally operate local M/WBE programs to end the effects of past discrimination within their own jurisdiction; provided they could show at least passive participation in a system of race and gender exclusion practiced by market area businesses. The BCC commissioned a Disparity Study after the decision to determine if the County's past procurement practices were discriminatory, and recommended corrective actions to remedy any disparities found.

The Disparity Study covered an eight (8) year period (FY 1981-1989). On January 17, 1991, MGT of America, Inc. concluded in its revised Final Report that the County had, in fact, been a "passive" participant in discrimination against minority and women owned business enterprises. The BCC concluded there was a compelling governmental interest to justify the creation, implementation and enforcement of a M/WBE County Ordinance. On April 9, 1991 the BCC adopted M/WBE County Ordinance No. 91-34, setting up reporting requirements, goal setting procedures and parameters for operating an M/WBE Program.

On October 19, 1993, County Ordinance No. 93-28 replaced 91-34 and required that the "narrowly tailored" actions to remedy past discrimination not last longer than the discriminatory effects it was designed to eliminate.

The Sunset provision of County Ordinance No. 93-28 required that the M/WBE Program sunset on September 30, 2002, and that six (6) months prior to the sunset the County would review all of the successes and failures of the M/WBE Program and determine if there was a need for continuing the program. A review of the program in 2002 by County officials concluded that the County had met their goals; thus could eliminate the program.

*This Management Review was conducted in accordance with the Association of
Inspectors General
Principles & Quality Standards for Investigations*



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Board of County
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Paulette Burdick

Steven L. Abrams

Burt Aaronson

Jess R. Santamaria

Priscilla A. Taylor

County Administrator

Robert Weisman

"An Equal Opportunity
Affirmative Action Employer"

MEMORANDUM

DATE: April 20, 2011
TO: Sheryl Steckler, Inspector General
FROM: Verdenia Baker, Deputy County Administrator
Tammy K. Fields, Senior Assistant County Attorney
RE: OIG Management Review 2010 - 0008

Thank you for providing the Management Review concerning the Small Business Program. We appreciate your office's investigation of the concerns brought forward in September 2010 by County Administration and the County Attorney's Office concerning the possible use of an SBE trucking subcontractor as a conduit for the prime contractors on road construction projects. Additionally, we understand the need to address other complaints you received from SBEs who were previously certified to supply pipe. It should be noted, however, that these firms are no longer eligible for SBE certification because they have been so successful that they exceed the size standards to qualify. Further, these particular firms have filed several unsuccessful lawsuits against Palm Beach County concerning the SBE Program.

We appreciate the cooperative approach your office has taken in reviewing the SBE Program; however, there are certain aspects of this report that the County would like to further clarify. These are noted below:

- There are references to prime contractors considering the 15% SBE goal as a "mandate." The County wishes to make it very clear that the 15% goal is just that – a goal in the bidding process. Since the inception of the program, numerous contracts have been awarded without the SBE goal being met. The County only allows a 10% preference for the goal to be met. In fact, the prime contractors cited in the report have each been awarded contracts when they did not meet the 15% goal. An example of a compliance review for one of Ranger Construction's projects is attached as Exhibit "A". Ranger



received the contract award even though they did not meet the 15% goal and the second low bidder had exceeded the goal, but the second low bidder's bid exceeded the 10% allowance.

- Section E on Compliance and Efficiencies indicates that there are no established procedures for SBE Compliance in PPM CW-0-043. Although this statement is true, the Office of Small Business Assistance has internal office PPMs that clearly outline procedures for (OSBA) compliance monitoring. PPM CW-0-043 is a Countywide Operations Policy and OSBA felt it more appropriate to include staff instruction on compliance monitoring in an internal office PPM. Compliance is an important aspect of the SBE Program and Ms. Tanoy Williams and Ms. Tonya Davis-Johnson of OSBA has even recorded an informational program on "County Connection" which runs on Channel 20 regarding compliance.

Also in this section, there is a reference to a few files that did not have the necessary documentation to substantiate the size requirements for eligibility as a small business. In an effort to be more customer-friendly to SBEs, OSBA, for a period of time, responded to the business community complaints regarding the amount of paperwork required for recertification applications. OSBA required SBEs to merely attest on an affidavit that nothing had changed for the business that would make them ineligible for certification. Unfortunately, some businesses were not truthful in this process and OSBA resumed requiring backup documentation for recertification applications in December, 2010.



- Prime Contractors' statements that higher project costs are due to meeting SBE goals are unproven. Over the last five years County staff has seen bids and quotes for road construction work submitted at substantially reduced rates and during this time SBE goals were met. In addition, there is no evidence that the Prime would bid less if there was no SBE requirement. To the contrary, on certain projects the Prime has maximized the use of SBE subcontractor (s) well beyond what was committed to in the original contract (in some instances 20% - 25% more). These facts indicate that it is more cost effective for the Prime to use SBEs for hauling, resulting in a possible increased profit for the Prime. The profit margins indicated by O.C. Limited and Southern Transport appear to be extremely inflated based on industry standards. Profits of this magnitude on a consistent basis would result in the subcontractors being ineligible for the SBE program. Furthermore, in the last few weeks, staff reviewed and analyzed both subcontractors' most recent income tax statements and they did not reflect this type of profit margin. Staff spoke with one of the Prime Contractors associated with this review and was told they did not believe the subcontractor made this type of profit. The Prime was of the opinion that the profit margin for contractors in the road construction industry ranged between 1% and 3% rather than the 17% to 27% indicated by O.C. Limited or the 3% to 10% indicated by Southern Transport.

In addition, your office performed an analysis of 13 road projects of which only two were not awarded to the lowest bidder. Those two are shown in Chart 1 of this report. This chart reflects the two instances in which the second low bidder received the award based on meeting the 15% SBE goals. The distinction between the total bid amounts reflects a 2% (\$230,000) difference. Small businesses comprise over 80% of the businesses of Palm Beach County and employ a significant number of residents of the County. The intent of the Small Business Program was to ensure all businesses located in Palm Beach County are afforded the opportunity to participate in the County's procurement process. Therefore, the County made a conscious decision to allow for a 10% differential over a minimum bid if a bidder met the 15% SBE goal. As shown above when the preference is applied the difference maybe significantly less than the 10% preference allowed.



Recommendations

We appreciate your recommendations on how to improve the SBE Program and provide the following responses to each of the recommendations:

Issue 1 Recommendations:

Recommendation No.1: Amend the County Ordinance to clearly identify certification/recertification, and decertification requirements. Specifically address industries prone to conduit and broker type activities and those businesses that do not provide a commercially useful function, i.e. road construction hauling.

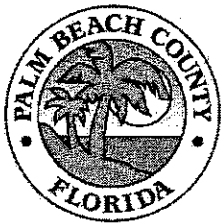
Response: Staff has and will continue to review and modify the SBE Ordinance to ensure clarity, not only in areas prone to conduit and broker type activities and those businesses that do not provide a commercially useful function, but all other areas affected by the SBE Program.

Recommendation No.2: Add additional information to SBE documents/forms, such as Schedules 1,2,3,4 to identify owner, date, revision number, (i.e. OSBA Schedule 1, February 1, 2011, Revision 3); post all documents on-line for use by applicants, Prime Contractors, and Sub-contractors.

Response: Staff concurs with this recommendation.

Recommendation No. 3: Amend procedures to require Prime Contractors attestation of Subcontractor(s) daily work volume capacity and SBE requirement as it relates to the Prime Contractor's Project Schedule and any changes thereto.

Response: Staff will amend Schedule 2 to require prime contractor certification of the subcontractor's capacity to perform based on the project's schedule. Further for road construction projects, the County department responsible for the contract will require a breakdown of hauling activity over the life of the contract and will be required to enforce these elements of the contract.



Recommendation No. 4: Enforce the Prime Contractor's responsibility for all Subcontractor requirements associated with the contract, i.e. daily work volume capacity and SBE requirements.

Response: Staff will amend Schedule 3 to require the prime contractor to attest that the work identified to be performed by the SBE on the invoice was actually performed by the approved SBE. The department's project inspectors will be required to monitor work schedules. In addition, road construction contracts and other contracts will be reviewed to ensure that prime contractors are ultimately responsible for compliance with all SBE provisions.

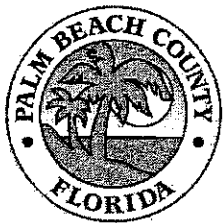
Recommendation No. 5: Amend OSBA Form, Schedule 4, *SBE-M/WBE Payment Certification*, dated 12/6/2010, to enhance its effectiveness by including identification of the SBE Sub's Subcontractors and the amount of funds disbursed or planned to be disbursed to each of them.

Response: Staff concurs and this was accomplished on January 3, 2011. It is currently in use by departments and contractors.

Recommendation No. 6: Consider excluding the road construction hauling business from SBE certification, thus removing the SBE preference for this service from contract evaluations.

Response: Staff concurs with the OIG's findings that certain prime contractors and SBE subcontractors are not in compliance with the intent of the SBE Ordinance. Staff does not recommend removal of road construction hauling as an area of SBE certification at this time. As stated previously, the County already has and is implementing further requirements that will allow for the evaluation of the actual level of service of small truckers. There are small jobs where the smaller hauling companies have the capacity to provide the service. Furthermore, SBE staff has already started outreach efforts to the independent construction hauling truckers to get more of these truckers Certified to handle portions of construction hauling contracts. In addition, OSBA will work with SBDC and existing Certified SBE construction hauling truckers to expand their capacity.

Issue 2A – Recommendation: Add a lead paragraph in the County Code outlining the Purpose of the SBE Program.



Response: Staff concurs with the recommendation. It should be noted that the purpose was clearly delineated in the "Whereas" clauses of the ordinances, but these clauses are not incorporated in the published version by the Municipal Code Corporation. Staff will add a Purpose section that will be added to the published code.

Issue 2B – Recommendation:

Recommendation No.1: To elevate standardization throughout the eligibility process, OSBA should develop guidelines for the uniform application of the CUF (commercially useful function) considerations.

Response: Staff believes the ordinance criteria should be followed. The ordinance currently contains the following criteria for consideration when determining whether a business performs a commercially useful function: (1) whether the business adds a value to the product or service provided; (2) whether the business has a distributorship agreement with the manufacturer of goods supplied; (3) whether the business takes possession of the product or service provided; (4) whether the business warrants the product or service provided; (5) whether the business maintains sufficient storage space to keep the product in inventory; (6) whether the business maintains sufficient inventory to meet the requirements of its contracts; and (7) whether the business provides the product or service to the public or other business other than a governmental agency. These criteria, when reviewed against the totality of the circumstances of a particular business, provide sufficient guidance to determine whether a business is providing a commercially useful business function.

Recommendation No.2: Amend the County Code to clearly identify certification/ recertification, and decertification requirements, including, warehousing standards for industries where warehousing activities are required.

Response: Staff is always open to reviewing the ordinance to provide further clarity when justified. Staff will not, however, be able to incorporate warehousing standards beyond those already stated in the ordinance, because it is impractical to do so. There are currently 13,054



commodities areas utilized by the Purchasing Department. Warehousing standards vary from industry to industry.

Issue 2C – Recommendations:

Recommendation No. 1: Delete the duplicate information in the M/WBE Section of the County Code to reduce the confusion that two separate programs (SBE and M/WBE) exist in the County.

Response: It has always been clear that the M/WBE Program sunset on October 31, 2002. Staff notified the Municipal Code Corporation that they no longer need to publish the sunset M/WBE Ordinance, and expect this section will be deleted in future published updates.

Recommendation No.2: Consider changing the M/WBE Certification to an M/WBE “designation” status and clearly delineate the differences between the two in any ordinance(s), PPM(s), and Form(s) to further reduce the confusion.

Response: Staff does not concur with this recommendation. It is essential to keep M/WBE certification as part of the ordinance, because M/WBE is required to be tracked. In addition, minority participation can be considered for CCNA solicitations pursuant to state statute. Further, Palm Beach County participates in an intergovernmental certifying program with other jurisdictions that still maintain M/WBE Certification programs.

Recommendations 2D:

Recommendation No. 1: Amend the County Code Section 2.80.30. Small Business Certification, (d). *Application Review Procedures* to read, “Once an applicant has submitted the original application, the certification review will be completed within ninety (90) [business, by definition] days of the original submission.

Response: Staff recommends the above-referenced section of the County Code be amended to read: “Once an applicant has submitted a completed application with all supporting documentation, the certification review will be completed within ninety (90) business days.”



Recommendation No. 2: Establish a process to ensure the 10 [business] day letter is mailed within 10 [business] days of the receipt of the vendor application.

Response: Staff is in agreement that there must be compliance with the established time frame. Staff will revisit whether this time frame is sufficient to make a determination of any additional documentary needs with the added affiliate and subsidiary requirements included in the most recent ordinance amendment.

Recommendation No. 3: Train all OSBA staff on the County Ordinance, PPM, and the requirements for certification, recertification, and decertification.

Response: Staff concurs with this recommendation and will enhance the ongoing training on ordinance and PPM requirements. Additionally, OSBA staff does receive annual training from professional organizations that provide training in this specialized area of work.

Recommendation No. 4: Incentivize participants to comply with the SBE Program requirements by establishing a sixty (60) day period from this abandonment letter date before a business can re-apply for SBE Certification.

Response: Staff concurs with this recommendation and will establish the sixty (60) [business] day period in the ordinance.

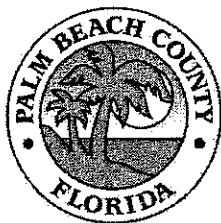
Recommendation 2E:

Recommendation No.1: Develop procedures to comply with County Code monitoring requirements pertaining to compliance and enforcement.

Response: These procedures are already in place.

Recommendation No.2: Ensure documentation received is reviewed for compliance prior to issuing a certification.

Response: Staff agrees with this recommendation and it is already standard practice. Staff utilizes a check list to record documents received and reviewed in order to make a determination on certification eligibility.



Recommendation No.3: Establish a Schedule to conduct random compliance reviews in various commodity areas.

Response: Staff concurs with this recommendation to the extent staffing levels allow.

Recommendation No.4: Develop a centralized complaint tracking system.

Response: Staff concurs with this recommendation.

Recommendations 2F:

Recommendation No.1: Work closely with applicants to determine the appropriate NIGP Code(s).

Response: Staff agrees with this recommendation, and it is already standard course of practice.

Recommendation No.2: Identify the specific NIGP Codes on the OSBA Certification Certificate to clearly delineate the code(s) in which the SBE is certified.

Response: The delineation of the NIGP Code on the certification letter serves no benefit to the SBE in responding to bids or RFPs. The County utilizes a description of services or products needed rather than utilization of the NIGP Code in its solicitation process. The NIGP Code is also not utilized in the vendor registration process. The certification Certificate does not contain sufficient space to list all descriptions and codes. Since the County's bid process does not utilize the NIGP Code, no change is warranted. However, staff does agree that NIGP Codes will be provided in the certification letter that is sent with each Certificate.

Issue 3 Recommendation: To encourage an open and competitive market for this industry, we recommend again (See Issue 1, Recommendation 6) the County consider excluding the road construction hauling business from SBE certification, thus removing the SBE preference for the service from contract evaluations.



Response: See Response to Issue 1, Recommendation 6

Additional Information: The County concurs with the recommendation to implement a sheltered market program where appropriate and this is already provided for in the SBE ordinance.

Again, we appreciate the input you have provided on this vital program, which assists small businesses in Palm Beach County.

VB/TKF/cmb
Enclosure: Exhibit "A"

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EXHIBIT "A"



Office of
 Small Business Assistance
 50 South Military Trail, Suite 209
 West Palm Beach, FL 33415
 (561) 616-6840
 FAX: (561) 616-6850
 www.pbgov.com/osba

Palm Beach County
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 Jeff Koons
 Warren H. Newell
 Mary McCarty
 Burt Aronson

County Administrator
 Robert Weisman

"An Equal Opportunity
 Affirmative Action Employer"

DATE: April 18, 2006
 TO: David Young, P.E., Special Projects Manager
 Roadway Production Division
 THROUGH: Hazel Oxendine, Director *Hazel Oxendine*
 Office of Small Business Assistance
 FROM: Allen F. Gray, Compliance Specialist *A. Gray*
 SUBJECT: Compliance Review on Project No. 97511C1
 SEMINOLE PRATT WHITNEY ROAD N. OF SYCAMORE DRIVE
 TO HIGH SCHOOL

The following is a Compliance Review of SBE participation on the above mentioned project.

Low Bidder: Ranger Construction Industries, Inc.
 101 Sansbury's Way
 West Palm Beach, FL 33411
 Phone: (561) 793-9400
 Bid Opening: April 4, 2006
 Bid Amount: \$ 1,928,632.50
 Goal: 15% Overall
 Goal Achieved: 10.6% Overall

SBE Participation:

(WH)	Pathway Enterprises	\$ 113,845.00		5.90%
(HI)	Siboney Contracting	<u>100,000.00</u>	\$ 213,845.00	<u>5.18%</u>
				11.08%

2nd Low Bidder: *Rosso Paving & Drainage, Inc.
 350 Martin Lane
 West Palm Beach, FL 33413
 Phone: (561) 688-0288
 Bid Amount \$ 2,092,905.60
 Goal Achieved: 49.6%

*Contractor is a certified SBE with Palm Beach County.

Page 2

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SBE Participation:

(WH) Rosso Paving	\$ 1,039,795.00	49.68%
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3rd Low Bidder: Asphalt Consultants, Inc.
880 NW 1st Avenue
Boca Raton, FL 33432
Phone: (561) 368-5797
Bid Amount: \$ 2,349,138.00
Goal Achieved: 15.3%

SBE Participation:

(WH) Pathway Enterprises	\$ 133,245.50	5.67%
(HI) Siboney Contracting	105,000.00	4.47%
(WH) Florida Guardrail	43,247.00	1.84%
(WH) Kathleen Hall	55,000.00	2.34%
(BL) Odum's Sod	<u>23,797.20</u>	<u>1.01%</u>
	\$ 360,289.70	15.33%

EVALUATION:

The Low Bidder, Ranger Construction Industries, Inc., failed to meet the SBE goal, but submitted SBE participation in excess of 7%.

The Second and Third low bid amounts fall outside the limit for ranking on responsive bidders consideration.

cc: Verdenia Baker, Deputy County Administrator
Tammy Fields, Assistant County Attorney



MEMORANDUM

Date: September 29, 2011
To: Sheryl Steckler, Inspector General
From: Verdenia C. Baker, Deputy County Administrator
RE: Office of Inspector General (OIG) Report of Investigation 2010-0010

County Administration

P.O. Box 1989

West Palm Beach, FL 33402-1989

(561) 355-2030

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Robert Weisman

This memo is in response to OIG Report 2010-0010 relating to Line-Tec Inc., providing misleading and/or falsified documents to OSBA for certification as a SBE. First, I would like to highlight a number of important factors your report did not reflect. In regards to the distributorship/reseller letters, your report appears to discount the validity of the letters from the manufacturers 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 contract with distributors or resellers of their products. While some parties have contractual agreements, others only require that a business establish an account and others simply send a letter stating the arrangement between the two parties. Further, the County does not dictate with whom a vendor must conduct business, just that they are authorized to distribute the manufacturer's product. 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 the activity is legal. As stated in your report, the State Attorney's Office (SAO) declined to prosecute because the "County Code (SBE Ordinance) was unclear, causing enforcement and investigation of violations to be largely subjectively administered." SAO stated there was no evidence to show that Line Tec was a shell (conduit) company for Ferguson and that Ferguson was not the only company Line-Tec purchased supplies. The SAO concluded there was no kick back to Ferguson or that they received a portion of any SBE contracts granted to Line-Tec Inc.

Secondly, staff vehemently disagrees with the OIG conclusion that OSBA failed to address concerns related to the certification and the recertification of Line-Tec, Inc. as an SBE. Staff correctly issued the original certification and prior recertification. OIG appears to have relied on the testimony of Mr. Ray Corona, who happens to be a competitor of Line-Tec., and disregarded all the documented steps OSBA took to investigate this matter over the years and the various Court rulings. 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 because 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 of this complaint.



This documentation was not mentioned in your report. In addition, OIG referred 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 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 regard to OSBA's efforts to address the concerns regarding Line-Tec's certification.

Furthermore, 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 then 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." The Court dismissed the case with prejudice. Staff is of the opinion that all the above factors are critical and should have been included in your report.

Below are responses to OIG Recommended Corrective Actions outlined in Report 2010-0010:

1. Line-Tec submitted misleading and/or falsified documentation.

Recommendation No. 1: "Determine the current SBE status of Line-Tec and consider decertification 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."

Response: After further investigation of information submitted as a part of Line-Tec recertification in 2010, it was determined the information was altered and misleading resulting in Line Tec being decertified as an SBE on July 5, 2011 in the areas of Materials and Supplies. As a result of this decertification, Line Tec was suspended as a vendor with Palm Beach County by the Purchasing Department for 2 years as of September 23, 2011. This suspension resulted in the decertification of Line-Tec as an SBE in all areas of procurement as of September 27, 2011.



Recommendation No. 2: "Assess the current contract awards where the utilization of Line-Tec's SBE credits affected the outcome of the Selection."

Response: OSBA was able to review 23 of the 24 contracts the OIG referred to in their report. In assessing the current contract awards where Line-Tec received an SBE preference and the contract awarded, these contracts totaled \$1,235,433.94. If the county had awarded these same contracts strictly based on low bid price, the contracts would have totaled \$1,172,038.25. Because of the SBE preference extended to Line-Tec on these contract items, the county's cost increased by 5.4% or an additional \$63,395.70.

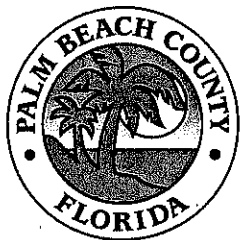
Recommendation No. 3: "Review the involvement of Ferguson's representative and determine any corrective action is warranted."

Response: Staff spoke to Jason Mueller, Ferguson Enterprises, Inc. (Ferguson), regarding the involvement of their company with Line-Tec. Mr. Mueller stated that Ferguson has done business with Line-Tec for over 15 years and that they are a good customer. He stated that he was contacted by Line-Tec to assist in getting the letters from the various manufactures because of a bid Line-Tec was looking to respond. He stated that Line-Tec buys their supplies from a variety of manufactures and distributors and sometimes Line-Tec can acquire materials and supplies cheaper from other distributors. In addition, County records reflect Line Tec competes against Ferguson and has been awarded bids without receiving any preference. Furthermore, the SAO did not find Line-Tec to be a conduit for Ferguson. No further action is warranted on this matter.

2. OSBA failed to address concerns adequately related to certification/re-certification of Line-Tec Inc.

Recommendation No. 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)"

Response: As previously stated in response to OIG Management Review #2010-0008, Staff has and will continue to review and modify the SBE Ordinance to ensure clarity, not only in the areas prone to conduit and broker type activities and businesses that do not provide a commercially useful function, but all other areas affected by the SBE Program. After a recent discussion with the SAO on September 28, 2011 and the review of a copy of the SAO investigative reports on Line Tec Inc., staff will specifically review the Ordinance and make the necessary modifications to readily prosecute violators of the Ordinance in the future. In addition,



staff made modifications to the SBE bid and payment schedules to hold the Prime and Sub-contractor accountable for submitted information.

Recommendation No. 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).

Response: As previously stated in response to OIG Management Review #2010-0008, staff is of the opinion the Ordinance contains seven (7) explicit criteria to consider when determining whether a business performs a commercially useful business function. Staff will review the Office PPMs that govern certification related procedures to ensure that they are clear and properly applied through on-going training.



**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

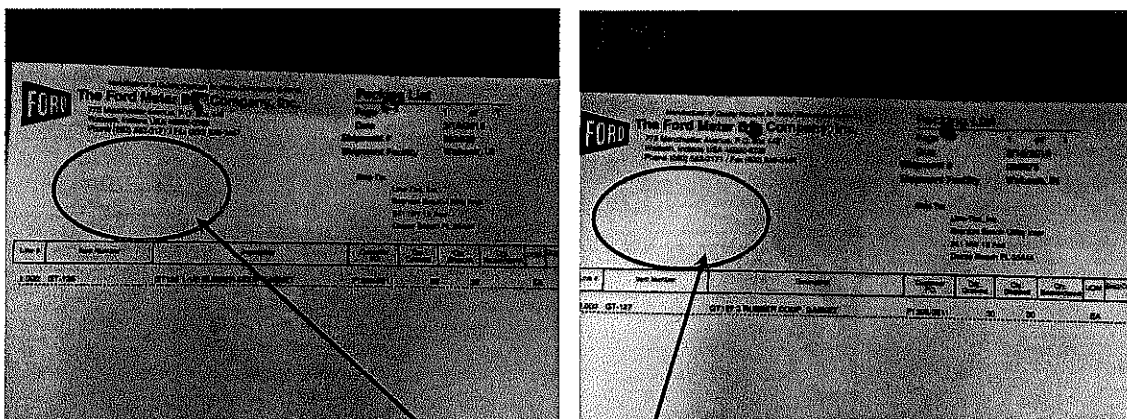
As part of the re-certification, Line-Tec was also requested by OSBA to provide sales invoices as further evidence of purchases made directly from the manufacturer. Despite instructions to provide sales invoices, Line-Tec provided OSBA with packing slips.

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

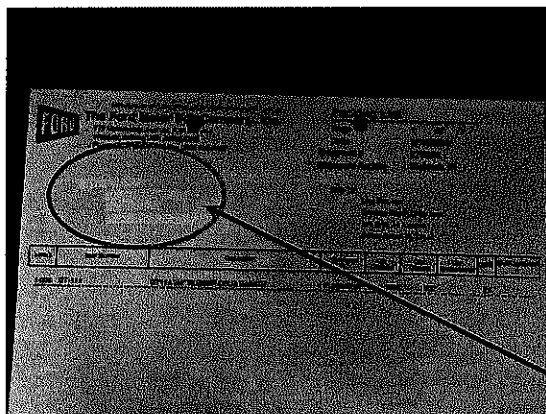
The Ford Meter Box Company

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



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.