

City investigating Portland firm over possible \$2 million fraud

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By Gordon R. Friedman | The Oregonian/OregonLive

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City of Portland officials believe they have uncovered evidence that the owners of a successful painting company fraudulently obtained certification as a woman-run business to win more than \$2 million in city contracts.

Investigators say there are indications that Portland Coatings, ostensibly owned and run by Terezia Nyland, was not independent from a painting company owned by her husband when it landed the contracts. That would disqualify it from being considered woman-run under city and state rules.

City officials are wading into uncharted territory as they investigate Portland Coatings' credentials. They are trying for the first time to exercise oversight powers granted to them by the Oregon Legislature in 2015, but have run into determined resistance from Portland Coatings.

The investigation has been underway for nearly two years but had not attracted attention until now, even as it spilled into Multnomah County Circuit Court, where Terezia and Michael Nyland filed suit to thwart a city subpoena. In the process, the couple cast the city investigation as an abuse of power and a "sexist" ploy against a successful woman entrepreneur.

Investigators' court filings lay bare what they say are signs of fraud pointing to the Nylands. Officials say the duo's attempts to quash the subpoena is part of what they called an effort of "calculated interference" to stymie their search for the truth.

"The city takes serious issue with firms that cheat the system to get ahead," said Lester Spitler, Portland's chief procurement officer, and the overseer of city contracts.

If Portland Coatings is found to have broken the rules, the city will use the case as a reminder to contractors that "the city does pay attention," Spitler said, and will hold violators accountable.

Though not a household name, Portland Coatings has painted some of Oregon's most recognizable real estate: University of Oregon athletic facilities, Portland's ritzy Benson Hotel and even Powell's Books. It has also done many taxpayer-funded jobs across the state.

Court records reviewed by The Oregonian/OregonLive also reveal the city's view that the state agency tasked with certifying woman- and minority-owned businesses, Business Oregon, may be easily fooled by deceptive firms.

Terezia Nyland's attorney, Matthew Colley, issued a statement on her behalf, saying she "flatly denies" wrongdoing, that the city "has unfairly targeted" her and "is abusing its subpoena power."

In a legal declaration, Nyland said insinuations that she “engaged in fraud” or does not “actually run” her company are “hurtful and insulting.”

The city’s investigators, Simon Whang and Nikesh Patel, declined to comment, citing limits on what they can say about ongoing investigations and litigation.

Whang and Patel work in the City Attorney’s Office; their typical repertoire includes legal action against tax scofflaws and defending the city against lawsuits.

Portland’s government has had a policy of promoting women- and minority-owned businesses since 1997. Those rules require construction companies awarded government contracts to make an effort to subcontract with certified disadvantaged businesses, of which women-owned companies is one category.

Firms must be independent from other companies and the day-to-day operations must be managed by a woman, person of color or veteran to obtain and keep state certification.

Once approved, certified businesses gain a significant leg up against competitors. Portland Coatings, for example, used the accreditation to land millions of dollars of painting contracts awarded by the city and state of Oregon, according to court filings.

Among its work under scrutiny: A \$506,000 job to paint affordable apartments in the Pearl District, \$347,000 to paint Portland State University’s student rec center; \$280,000 to paint the city-funded Grove Hotel renovation, and \$125,000 to work on the Kelly Butte reservoir.

‘ILLUSORY DISTINCTION’

The city investigation into the company started in 2017, when a tipster contacted Portland’s ombudsman office, which fields complaints about problems within city government.

Whang and Patel were put on the case and issued a subpoena to the Nylands in May 2017. They demanded documents from nine city-funded projects for which Portland Coatings was paid \$2.2 million.

Of particular interest to the investigators: tax records, bank statements and other detailed financial records.

The Nylands initially cooperated, according to court filings, and provided officials with more than 2,500 pages from three projects. But they did not provide the financial records investigators believe would hold conclusive evidence of fraud, if it occurred.

Documents handed over by Nylands have already led investigators to contend in court filings that they have unearthed the initial evidence of fraud. Court papers list what the city says are numerous warning signs.

Washington's business certifier, for example, denied Portland Coatings' application in 2011 and alerted Oregon to the denial. At the time, a Washington official said in an email that Portland Coatings shared employees, office space, and a phone number with Williamsen & Bleid, a painting company owned by Michael Nyland, and implored Oregon to "remove" Portland Coatings' woman-run certification.

Portland officials also say Terezia Nyland gave a "false" address for Portland Coatings that in fact was for a side entrance of a building occupied by Williamsen & Bleid.

Portland Coatings did not have a "true storefront," according to investigators, but instead "used a loading station off the side of Williamsen & Bleid's building as its address to create an illusory distinction between the two companies."

The Nylands' attorney argued the separate address was meant to signal the companies were "distinct entities." The city shot back that the argument the Nylands were separate while sharing employees, a phone number and a location "strains credulity."

Investigators said there are other signs of "fraud and violations" but did not detail those claims in court filings.

COURT BATTLE

The Nylands filed suit to stop the city's subpoena in April 2018. Their attorney, Colley, argued that enough documents had been produced and the investigation was dragging on unfairly. The investigation implied Terezia Nyland could not be a successful businesswoman without breaking the rules, he wrote.

The city said in response that investigators have an obligation to thoroughly examine complaints of fraud. Issuing a subpoena to get financial records is a lawful way to do that, the city argued.

"The city is not motivated by sexism, but to combat sexism by promoting women (and minorities) through a legitimate certified contracts program," investigators wrote in legal filings.

Multnomah County Circuit Judge Eric Bloch ultimately threw out the Nylands' suit. They appealed, and the Oregon Court of Appeals has not yet weighed in.

After Bloch's ruling, the city filed its own suit, asking a judge to force the Nylands to hand over financial records. That suit is pending.

NOT THE FIRST SUCH CASE

The city's court filings also paint Business Oregon's accreditation office as an extremely weak regulator, saying officials have "little confidence" in the state's "ability or willingness to investigate fraud."

It wasn't the first time the city has raised questions about Business Oregon's Certification Office for Business Inclusion and Diversity.

Elkins Masonry Restoration, a certified minority-owned firm, came under city scrutiny in 2013, when officials suspected it was not actually controlled by a person of color. The company had been paid \$88,000 by the city for work on a soup kitchen in Old Town.

Business Oregon threw out a complaint about Elkins from Margie Sollinger, the Portland ombudsman, saying the company broke no rules. Even so, Elkins later settled with the Oregon Department of Justice for a \$15,000 fine and agreed to give up its minority ownership certification.

Business Oregon's failure to regulate Elkins led Sollinger to seek a change in state law allowing municipalities to conduct their own investigations of certified firms. The Legislature adopted the change unanimously, and it's under the new law that the city is investigating Portland Coatings – the first probe of its kind.

The city still contends Business Oregon's performance is "unsatisfactory," according to court records, with the state "refusing" to investigate and decertify companies that abuse the rules.

Carrie Baxandall, director of the state certification office, said her agency is not a regulator but "a positive" that helps businesses get certified even if they don't initially qualify.

"When we have a situation where it appears the business does not qualify, we don't just say, 'Nope you're out of here,'" Baxandall said. "We work with that business to see if it is something that down the road could be certified."

Asked about the alarming 2011 email from Washington's certifier, Baxandall said other states are not authorized to guide Oregon's actions. Similar notifications from other states are routine, she said, and she does not act on them. The one about Portland Coatings did not trigger a state review of the company's certification, she said.

Court records show Business Oregon reviewed Portland Coatings' certification in 2017, after it took over control of Willamsen & Bleid. Baxandall said its accreditation was re-examined after the merger and deemed above board.

Baxandall said her office hired two investigators in 2018 who have been active in monitoring certified businesses. Businesses owners seeking certification cannot easily snow the state, she said. They are interviewed, visited at their place of business and may have tax documents looked over to prove their firms are independent.

Still, Baxandall said she was unsure if any company had been removed for certification fraud. Most voluntarily relinquish their certification if found to be violators, she said.

There is a need for additional oversight of a government program if it “becomes abused,” Baxandall said, but “at this point we are not a regulatory agency.”

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