

Exhibit	"B"
Port Commission	Regular
Meeting of	Jan. 5, 2010

MEMORANDUM

TO: Port of Seattle Commissioners

FROM: Ralph B. Ibarra, President
DiverseAmerica Network

DATE: January 5, 2010

RE: Draft Resolution No. 3618

Background

For the record, my name is Ralph Ibarra and my company is DiverseAmerica Network, and my family and I have lived in the Port's jurisdiction since moving to Washington State in 1980. I have been an advocate and activist for small and diverse businesses in Washington State for more than 20 years, and I own and operate a consultancy that has contracted with the Port of Seattle in the past. Specifically, I consider myself the architect of the Port's Small Business Initiative and it was I and Charles Blood who proposed the Port of Seattle Small Business Plan to the Commission on May 13, 2003, that resulted in Resolution No. 3506 being passed on May 27, 2003.

I commend the Commissioners, CEO Tay Yoshitani, Elaine Ko and the staff of the Office of Social Responsibility for their steadfast commitment to crafting Resolution No. 3618 as the first phase in providing fair and equitable access to procurement and contracting opportunities for small businesses. As such, I have examined the draft resolution and I have prepared this memorandum to provide the Commission with specific observations and relevant information. Wording in particular provisions from the resolution has been extracted and underlined for your reference, with accompanying commentary in **bold**.

Observations & Information (O&I)

Section 2. PROGRAM ELEMENTS

a. Pricing Incentive for Goods and Purchased Services:

The CEO shall develop a tool to give a 5% pricing incentive and to authorize a contract award to a SCS (Small Contractor and Supplier) firm that is within 5% of the lowest price submitted by a non-SCS firm. This pricing incentive shall apply to goods and purchased services only where price is the determining factor. The incentive shall begin at the time the new Port SCS certification program is established, which is estimated to be first quarter of 2011.

O&I #1: A successful model is in place in California that encompasses Small Business Certification Benefits and Eligibility Requirements, as well as a 5% bid preference on applicable state solicitations. As such, Section 2, subsection "a." could be fulfilled in 60 days by adopting the California model. Furthermore, it does not in any way violate RCW 49.60.400, because Proposition 209 passed in California in 1996 was used by anti-affirmative action promoters in crafting I-200. Moreover, the California Small Business Certification Programs do not rely on race, ethnicity or gender in qualifying small businesses for the 5% bid preference; rather, the eligibility requirements

are based on annual gross receipts, number of employees, principal office location and residency of the owners.

e. Small Business Size Standard and Port Certification:

Many of the national Small Business Administration (SBA) revenue size limits for small businesses are quite large and do not accurately reflect the actual revenue size range of our local small businesses. The Port hereby establishes a small business revenue size standard based on 50% of the current SBA size standard and a limit on personal net worth of \$750,000 of the business owner. (See SBA size standards as set forth in Title 13, Code of Federal Regulations, and Part121.)

O&I #2: The “Small Business Survival: Joint Report to the Governor” by the Departments of Community, Trade and Economic Development, Employment Security, Labor and Industries, and Revenue issued on October 5, 2007, revealed a number of circumstances that reinforce the assertion that the SBA Size Standards are completely out of sync with the actual average size of small firms in Washington State. Among the findings of the report is this excerpt: *“About 93 percent of the businesses that register to pay taxes in Washington meet the definition of a small business used in this report: these firms employ 20 or fewer workers or are solely operated by the owner and earn \$3 million or less in annual gross income.”*

Furthermore, analysis of Gross Business Income for Calendar Year 2008 provided me by the Washington State Dept. of Revenue clearly shows that the average revenue reported by most firms categorized by NAIC codes (North American Industry Classification System) is substantially below the 50% threshold of the SBA Size Definitions being proposed. For example, 90.06 percent of all firms in NAICS Code 23 (Construction-Specialty Trade Contractors: SBA Size is \$14 million) reporting 2008 annual revenue of less than \$10 million have average annual revenues of \$158,298 (43,488 firms reporting). Another example, 92.31 percent of all firms in NAICS Code 54 (Professional, Scientific, and Technical Services – Computer Systems Design Services: SBA Size is \$25 million) reporting 2008 annual revenue of less than \$10 million have average annual revenues of \$130,399 (43,659 firms reporting).

Section 4. MONITORING AND REPORTING

a. Monitoring and Reporting: The CEO shall require OSR to create the necessary tools to monitor and report activities associated with the Program.

b. Annual Goal Setting: OSR shall assist Divisions in establishing SCS annual goals for each Division and shall monitor and track annual Port-wide goals.

Item c. Annual Reports to the Port Commission and the CEO: OSR shall report annually to the Port Commission and the CEO about the Program’s annual goal setting, monitoring and reporting of the Program. Reports on the Program’s progress and results shall include results from outreach, programming, and community partnering efforts.

O&I #3: The Port’s Enterprise Resource Planning system PeopleSoft is capable of being queried to generate reports on demand if individual vendor profiles have data fields that indicate their small business classification. As such, progress reports to the Port Commission and CEO can occur much more frequently than once a year.

Section 6. DEFINITIONS

a. Small Contractor and Supplier (SCS) – Small businesses certified by the Port or King County that fall within a revenue size cap of 50% of SBA's national size standards as well as owner's personal net worth cap of \$750,000 (three year average).

O&I #4: The proposed Personal Net Worth (PNW) cap of \$750,00 is taken from the U.S. Dept. of Transportation (DOT) Disadvantaged Business Enterprise (DBE) program and has never been adjusted for inflation. Furthermore, the current DBE \$750,000 PNW cap was "borrowed" by DOT from a cap set for SBA programs in 1989. For this reason, the Airport Minority Advisory Council (AMAC) supports an initial inflationary adjustment going back to 1989 and then an annual inflationary adjustment going forward. H.R. 915 as passed this year by the U.S. House of Representatives contains a provision that makes these adjustments. As such, adopting a PNW limit of \$750,000 without an adjustment clause is inconsistent with eventual adjustments.

Section 6. DEFINITIONS

O&I #5: Veteran Business Enterprises – i.e. Veteran Owned Small Business (VOSBs) and Service-Disabled Veteran Owned Small Business (SDVOSB) – have been acknowledged by Federal and State statues and should be included in Section 6. DEFINITIONS. After all, veterans of military service and their families have sacrificed to protect the United States of America and the Greatest Economy in the world; as such, shouldn't they be afforded due consideration in Section 6?

Thank you for your thoughtful consideration and I am available to the Commissioners for any questions you may have about this memorandum.