

## **1-02 Certifications and Representations**

### **1-02.1 *Responsibility for Design***

It is the intent of the Contract Documents that the Design-Builder undertake full responsibility for delivery of the Project. The Contract Documents do not provide details of the design necessary to carry out the intent of the Contract Documents. Such detailed designs are the sole responsibility of the Design-Builder to develop. If the Contract Documents omit or misdescribe the Work necessary to be performed in order to deliver the Project in accordance with the intent of the Contract Documents and the standards and criteria for performance of the Project, the Design-Builder shall not be excused from performing such omitted Work (no matter how extensive) or misdescribed details of the Work, and such Work shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a Change Order hereunder except as specifically allowed by the Contract Documents.

Design-Builder specifically acknowledges and agrees that:

- a) The Conceptual Design is preliminary and conceptual in nature and has not been signed or sealed.
- b) The Design-Builder is responsible for correcting any errors, omissions, inconsistencies, and other defects in the Conceptual Design through the design and construction process. There will be no increase in the Contract Price or extension of the Contract Time for correcting any errors, omissions, inconsistencies, and other defects in the Conceptual Design, except as provided herein with respect to Necessary Basic Configuration Changes.
- c) The Design-Builder's Warranties and indemnities hereunder cover errors, omissions, inconsistencies, and other defects in the Project, even though they may be related to errors, omissions, inconsistencies, and other defects in the Conceptual Design, except as otherwise provided herein with respect to Necessary Basic Configuration Changes.

Notwithstanding anything in the Contract Documents to the contrary, no field explanations or interpretations provided by WSDOT at any meetings, and no comments by WSDOT on Design Documents or Released for Construction (RFC) Documents, shall be deemed, construed, or interpreted to (a) amend, supersede, or alter the terms, requirements, limitations, or meaning of any Contract Document or (b) release or relieve the Design-Builder from full responsibility for the design of the Project in accordance with the Contract Documents. (However, Written Interpretive Engineering Decisions from WSDOT pursuant to Section 1-03.5 may be relied upon to provide information, clarifications and interpretations of ambiguous or uncertain design requirements set forth in the Contract Documents.)

### **1-02.2 *Disclaimer Regarding Documentation***

The Design-Builder is not entitled to rely on any document or information provided by WSDOT, except to the extent expressly provided otherwise in the Contract Documents. The Design-Builder may rely on the Conceptual Design only to the extent it describes the Basic Configuration. WSDOT does not represent or warrant that the information

1 contained in the Conceptual Design is either complete or accurate or that such  
2 information conforms to the requirements of the Contract Documents, except as  
3 otherwise provided herein with respect to the Basic Configuration. Unless stated  
4 otherwise in the Contract, the Design-Builder is not entitled to rely on the Reference  
5 Documents.

6 The Design-Builder understands and agrees that WSDOT shall not be responsible or  
7 liable in any respect for any loss, damage, cost, or expense whatsoever suffered by the  
8 Design-Builder or any Related Entity by reason of any use of any information contained  
9 in the Conceptual Design or Reference Documents or any action or forbearance in  
10 reliance thereon, except to the extent that the Contract Documents provide that the  
11 Design-Builder shall be entitled to an increase in the Contract Price, extension of  
12 Contract Time, or both with respect to such matter. The Design-Builder further  
13 acknowledges and agrees that (a) if and to the extent the Design-Builder or anyone on the  
14 Design-Builder's behalf uses any of said information in any way, such use is made on the  
15 basis that the Design-Builder, not WSDOT, has approved and is responsible for said  
16 information, and (b) the Design-Builder is capable of conducting and is obligated  
17 hereunder to conduct any and all studies, analyses and investigations as it deems  
18 advisable to verify or supplement said information, and that any use of said information  
19 is entirely at the Design-Builder's own risk and at its own discretion.

### 20 **1-02.3 Design Professional Licensing Requirement**

21 All design services furnished by the Design-Builder shall be performed by or under the  
22 supervision of personnel licensed to perform such services in accordance with  
23 Washington law, by personnel who are careful, skilled, experienced, and competent in  
24 their respective trades or professions, who are professionally qualified to perform the  
25 Work in accordance with the Contract Documents and who shall assume professional  
26 responsibility for the accuracy and completeness of the Design Documents and RFC  
27 Documents prepared or checked by them.

28 WSDOT does not intend to contract for, pay for, or receive any design services that are in  
29 violation of any professional licensing laws, and by execution of the Contract Form, the  
30 Design-Builder acknowledges that WSDOT has no such intent. It is the intent of the  
31 parties that the Design-Builder is fully responsible for furnishing the design of the Project  
32 through Subcontracts with licensed design firm(s) as provided herein. References in the  
33 Contract Documents to the Design-Builder's responsibilities or obligations to "perform"  
34 the design portions of the Work shall be deemed to mean that the Design-Builder shall  
35 "furnish" the design for the Project. The terms and provisions of Section 1-02.3 shall  
36 control and supersede every other provision of all Contract Documents.

### 37 **1-02.4 Examination of Site of Work**

#### 38 **1-02.4(1) General**

39 The Design-Builder has, prior to submitting its Proposal, in accordance with prudent and  
40 generally accepted engineering and construction practices, reviewed all Contract and  
41 Reference Documents provided by WSDOT; inspected and examined the Site and  
42 surrounding locations; and undertaken other appropriate activities sufficient to familiarize

1       itself with surface and subsurface conditions discernible from the surface affecting the  
2       Project, to the extent necessary for submittal of a Proposal. Because of such review,  
3       inspection, examination, and other activities; the Design-Builder is familiar with and  
4       accepts the physical requirements of the Work, including:

- 5       1.    The nature and location of the Work.
- 6       2.    The general and local conditions that can affect the Work or its cost, including:
  - 7           (a)   Conditions bearing upon acquisition, transportation, disposal, handling, and
  - 8               storage of materials
  - 9           (b)   The availability of labor, materials, water, electric power, and roads.
  - 10          (c)   Uncertainties of weather, river stages, tides, or similar physical conditions at the
  - 11               Site
  - 12          (d)   The conformation and condition of the ground
  - 13          (e)   The character of equipment and facilities needed preliminary to and during
  - 14               Work performance
  - 15          (f)   The Site biological hazards and associated physical hazards
- 16       3.    The character, quality, and quantity of surface and subsurface materials or obstacles
- 17           to be encountered insofar as this information is reasonably ascertainable from an
- 18           inspection of the Work Site (including material sites), the Geotechnical Baseline
- 19           Report (GBR), Geotechnical Design Report (GDR), and hydrology reports (if any),
- 20           as well as from the Contract and information made a part of the Contract.
- 21       4.    The adequacy of time allowed for the completion of the Work.
- 22       5.    The risk profile conveyed by the Contract including but not limited to the baselines
- 23           identified in the GBR.

24       The Design-Builder is solely responsible for all Site conditions discoverable from a  
25       reasonable Site examination. The Design-Builder further acknowledges and agrees that  
26       changes in conditions at the Site may occur after the date hereof, and that the  
27       Design-Builder shall not be entitled to any increase in compensation or time extension in  
28       connection therewith except as specifically permitted by the Contract. Proposal  
29       submission will be considered conclusive evidence that the Proposer has determined that  
30       it has performed a reasonable Site investigation.

31       The actual locations, shape, and other geometrics of the Project features will be  
32       determined by the Design-Builder within certain constraints set forth in the Contract.  
33       Before commencing any Work on a particular aspect of the Project, the Design-Builder  
34       shall verify all governing dimensions at the Site and shall examine all adjoining work,  
35       which may have an impact on such Work. The Design-Builder shall ensure that the  
36       Design Documents and RFC Documents accurately depict all governing and adjoining  
37       dimensions and conditions.

38       It is the Design-Builder's responsibility to make interpretations and draw conclusions  
39       with respect to the character of the geotechnical materials encountered and their impact  
40       upon its Work, and perform additional explorations and testing, both prior to bid and  
41       post-award, to supplement the GBR and GDR data to design the Project elements.

Any failure of the Design-Builder to take the actions described and acknowledged in this clause shall not relieve the Design-Builder from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or from performance of the Work without additional expense to WSDOT.

The Design-Builder agrees that WSDOT shall not be liable to the Design-Builder on any claim for additional payment or additional time or any claim whatsoever if the claim directly or indirectly results from the Design-Builder's failure to investigate and familiarize itself sufficiently with the conditions under which the Contract is to be performed.

The Design-Builder shall be familiar and comply with all Federal, State, tribal, and local laws, ordinances, and regulations which might affect the Work or those engaged in the performance of the Work. WSDOT will not consider any plea of misunderstanding or ignorance of such requirements.

The Contract Price reflects the cost of completing the Work, including but not limited to design, engineering, Site and home office overhead, temporary facilities, methods, materials, labor, and equipment. Except as the Contract may provide, the Design-Builder shall receive no payment for any costs in excess of the Contract Price.

Prospective Proposers are advised that projects with Work on or adjacent to water may require insurance coverage in compliance with:

1. The Longshore and Harbor Workers' Compensation Act (LHWCA) (administered by the U.S. Department of Labor)
2. The State Industrial Insurance (administered by the Washington State Department of Labor and Industries (State L&I))

The Design-Builder shall bear all cost for such insurance as provided in Section 1-07.10.

No Certified Claim shall be allowed because of any ambiguity in the Contract if:

1. The Design-Builder discovers an ambiguity but fails to notify WSDOT
2. The Design-Builder failed to discover a patent ambiguity that would be discovered by a reasonably prudent design-build contractor in preparing its Proposal

#### **1-02.4(2) Subsurface Information**

When the Contract includes a GBR or GDR, including any supplements to a GBR or GDR, WSDOT makes no representation or warranty expressed or implied that:

1. The Design-Builder's interpretations from the GBR or GDR are correct.
2. Moisture conditions and groundwater elevations will not vary from those identified in the GDR.
3. The ground and subsurface conditions as represented in the GBR and GDR have not been physically disturbed or altered after the documents were prepared.

The GBR describes geotechnical baseline conditions with respect to certain subsurface and site conditions that may be encountered during the performance of the Work. These baseline conditions were developed based upon consideration of geotechnical information and data gathered through subsurface explorations, predictions, and

1 evaluations concerning anticipated means and methods that may likely be used by the  
2 Design-Builder, and the interpretation of that information, data, and other relevant  
3 factors. These baseline conditions or lack of baseline conditions establish a contractual  
4 basis for the allocation of risk for subsurface and site conditions and for the determination  
5 if a Differing Site Condition exists.

6 A description of the various subsurface and site conditions in the GBR, while based on  
7 geotechnical investigations included in the GDR shall not be understood or interpreted as  
8 guaranteeing or warranting that those conditions actually will be encountered while  
9 performing the Work. No amount of investigation and analysis can precisely predict the  
10 characteristics, quality, or quantity of subsurface and site conditions, or the behavior of  
11 such conditions during the performance of the Work. The behavior of such conditions  
12 may be dependent upon and influenced by the means and methods selected by the  
13 Design-Builder to perform the Work.

14 The baseline conditions described in the GBR are not intended to represent, describe, or  
15 constitute any warranty, or indication, whether expressed or implied, of the actual  
16 conditions that are encountered during the Design-Builder's performance of the Work.  
17 The Design-Builder shall not rely exclusively upon the baseline conditions described in  
18 the GBR as the only input for planning or performing the Work. Planning and performing  
19 the Work by the Design-Builder, includes, at minimum, the following: designs, means  
20 and methods, equipment, techniques, sequences, and procedures chosen to meet the terms  
21 of the Contract.

22 Whenever there is an inconsistency between geotechnical conditions described in the  
23 GBR and the information in the GDR, then the geotechnical conditions described in the  
24 GBR shall take precedence and shall be the geotechnical conditions against which actual  
25 geotechnical conditions encountered are compared for the purpose of determining if a  
26 Differing Site Condition exists.

27 The Design-Builder acknowledges that the Contract Price and the Contract Schedule  
28 were developed with full consideration given to the contents and the risk allocation of the  
29 GBR and GDR, and that the Design-Builder shall not be entitled to an adjustment in the  
30 Contract Price or Contract Time as the result of encountering conditions consistent with  
31 those described.

32 The availability of subsurface information provided by WSDOT shall not relieve the  
33 Design-Builder from any risks or of any duty to make examinations and investigations as  
34 required by Section 1-02.4(1) or any other responsibility under the Contract or as may be  
35 required by law.

36 The geotechnical information in the Contract does not represent Site conditions for an  
37 Alternative Technical Concept (ATC). As noted in the Instructions to Proposers (ITP),  
38 the Design-Builder is responsible for conducting its own geotechnical investigation, prior  
39 to the Proposal Due Date, for changes to the Conceptual Design or Basic Configuration,  
40 if any, that are approved as part of any ATC included in the Proposal. As part of the  
41 ATC, the Design-Builder shall identify and include geotechnical baselines. The  
42 Design-Builder proposed baselines shall be the geotechnical conditions against which  
43 actual geotechnical conditions encountered are compared for the purpose of determining  
44 if a Differing Site Condition exists with respect to the ATC. The geotechnical

1 investigation, including the geotechnical baselines accepted by WSDOT as part of an  
2 approved ATC incorporated in a Proposal will form the basis upon which Differing Site  
3 Conditions will be addressed pursuant to Section 1-04.7 for Work implemented as part of  
4 said ATC.

5 **1-02.4(3) Hazardous Materials**

6 The Hazardous Materials Report or the asbestos GFI report do not represent Site  
7 conditions for an ATC. As noted in the Instructions to Proposers (ITP), the  
8 Design-Builder is responsible for conducting its own Hazardous Materials investigation,  
9 prior to the Proposal Due Date, for changes to the Conceptual Design or Basic  
10 Configuration, if any, that are approved as part of any ATC included in the Proposal. The  
11 Hazardous Materials investigation, as part of an approved ATC incorporated in a  
12 Proposal, will form the basis upon which Differing Site Conditions will be addressed,  
13 pursuant to Section 1-04.7 for Work implemented as part of said ATC.

14 **1-02.5 Further Assurances**

15 The Design-Builder shall promptly execute and deliver to WSDOT all such instruments  
16 and other documents and assurances as are reasonably requested by WSDOT to further  
17 evidence the obligations of the Design-Builder under the Contract Documents, including  
18 assurances regarding the assignments of Subcontracts contained herein.