

January 16, 2026

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WSDOT SL No. 9727-242

Reference: **Contract No. 9727**
I-405, Brickyard to SR 527 Improvement Project

Subject: **Response to Supplement to Notice of Protest 006 – DSC 006 for Clay Layer ESU2C**

Mr. Prendergast:

WSDOT acknowledges receipt of Skanska Serial Letter No. 291, *Supplement to Notice of Protest 006 – DSC 006 for Clay Layer ESU 2C*, dated December 8, 2025.

After careful review of the supplemental information provided pursuant to RFP General Provisions Section 1-04.5 *Procedure, Protest, and Dispute by the Design-Builder*, WSDOT has determined that Protest 006 (DSC 006) is without merit. Accordingly, WSDOT denies the requested adjustment to the Contract Price and/or Contract Time for this matter.

Skanska's supplement addresses four items, WSDOT responds as follows:

I. Reliance on a Reference Document (GDR) at the Design-Builder's risk

Skanska asserts that alleged "incorrect overburden values" in the GDR are factual misrepresentations rather than matters of professional judgment. WSDOT does not agree that the supplemental information establishes entitlement on that basis.

WSDOT's position remains that the alleged issue was discoverable through reasonable investigation and engineering review. In particular, discrepancies between unit weights used in design analyses and values reported in the GDR should have been recognized and addressed during geotechnical evaluation and design development.

This allocation of responsibility is consistent with the Contract's requirements governing Design-Builder design responsibility and Site investigation obligations, including:

- **Section 1-02.4(1) Examination of Site of Work:** “It is the Design-Builder's responsibility to make interpretations and draw conclusions with respect to the character of the geotechnical materials encountered and their impact upon its Work, and perform additional explorations and testing, both prior to bid and 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.”
- **Section 1-03.5 Ambiguities:** “The Design-Builder shall not take advantage of any apparent error, omission, inconsistency, or other defect in the Contract Documents. The Design-Builder shall promptly notify WSDOT of any error, omission, inconsistency, or other defect that the Design-Builder may discover in the Contract Documents, and shall obtain specific instructions in writing from the WSDOT Engineer regarding any such error, omission, inconsistency, or other defect before proceeding with the Work affected thereby.”

This allocation of responsibility is further consistent with Section 1-02.1 Responsibility for Design, which requires the Design-Builder to undertake full responsibility for delivery of the Project and does not excuse omitted or misdescribed work necessary to deliver the Project in accordance with the Contract’s intent and performance requirements.

II. Lack of evidence showing a reasonable effort to verify geotechnical assumptions

Skanska emphasizes the volume of post-award explorations and testing performed. WSDOT acknowledges that substantial work was performed. However, the question for entitlement is whether the Design-Builder’s investigation, interpretation, and resulting design assumptions were reasonable and appropriately conservative given the variability and information available.

WSDOT notes that the Design-Builder’s supplemental materials and the additional data and testing collected in Q2 through Q4 of 2025 acknowledge variability in key settlement parameters and that the observed field behavior deviated from the Design-Builder’s settlement predictions. In variable soil conditions, it is standard practice to evaluate the sensitivity of settlement predictions to reasonable ranges of key parameters in order to inform design values and risk management during design development. The issue here is whether the Design-Builder’s parameter selection and interpretation appropriately accounted for that variability and risk.

WSDOT also notes that Appendix G03 Reference Information (Volume 1: 1950–1979), made available during procurement, includes historical settlement calculations in the vicinity of the Work that discuss settlement magnitudes attributable to approach fill loading and construction staging/rate considerations tied to settlement behavior. In addition, Appendix N2 Bridge As Built, contains drawings showing the bridges in the vicinity bear on deep foundations. This information bears on what could reasonably have been anticipated and evaluated during design development under Section 1-02.4(1).

III. Absence of any physical site condition that meets the contractual definition of a DSC

Skanska contends the observed behavior satisfies both the “material difference” and “unusual nature” elements of the DSC clause.

WSDOT’s position remains that the supplemental information does not establish a Differing Site Condition as defined by the Contract, including the requirement that qualifying conditions were not discoverable from a reasonable investigation and analysis.

Section 1-04.7 defines Differing Site Conditions, in part, as actual subsurface or latent physical conditions that are substantially or materially different from the baseline conditions identified in the GBR and the data in the GDR as set forth in Section 1-02.4(2), and which are not discoverable from a reasonable investigation and analysis of the Site, or physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the type of Work and Work Site characteristics.

Under Section 1-04.7(1) Burden of Proof, the Design-Builder bears the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around the Differing Site Condition so as to avoid additional cost.

WSDOT also notes that the Design-Builder’s selected means and methods can influence soil behavior. For example, the stone column layout and installation introduced disturbance to the clay layer based on pre- and post-CPT investigations performed by the Design-Builder, which can exacerbate settlement behavior and should be accounted for in design.

IV. The GBR baselined poor ground conditions in this area

Skanska contends that while the GBR may have baselined “poor ground” generally, it did not baseline OCR values as low as 1.0–1.3 or compressibility characteristics inconsistent with the GDR consolidation test data, and that the clay layer behavior observed during construction therefore differs materially from the contract baseline.

WSDOT’s position remains that the Contract baseline and risk allocation assign the Design-Builder the responsibility to assess poor ground conditions and their related significance to design performance, and to develop a sufficient exploration/testing program to support design assumptions.

As stated in WSDOT SL 162, poor ground conditions are defined in GBR Section 3.2.7, which concludes that where such physical conditions are encountered, ground behavior will be controlled by the design and construction decisions of the Design-Builder. Therefore, it is the Design-Builder’s responsibility to assess poor ground conditions and their related significance to the structure and the overall design performance to be achieved.

Additionally, under Section 1-02.4(2), when there is an inconsistency between geotechnical conditions described in the GBR and the information in the GDR, the geotechnical conditions described in the GBR take precedence and are the conditions against which actual geotechnical conditions encountered are compared for purposes of determining whether a Differing Site Condition exists.

The allocation of risk for subsurface characterization is clearly assigned to the Design-Builder. Under Section 1-02.4(1) Examination of Site Work, it was the Design-Builder's responsibility to develop and execute an exploration and testing program sufficient to properly characterize subsurface conditions and support the selected design assumptions. Decisions regarding the extent of testing, parameter selection, and interpretation of variability fall within that responsibility.

History in the immediate area also reflects the need to manage settlement through construction sequencing, including the use of preloaded embankments sitting for extended periods (up to two years) prior to service and/or the use of deep foundations.

Accordingly, WSDOT's position remains that the outcomes observed are a result of design and investigation decisions made by the Design-Builder within the Contract's risk framework and do not constitute a Differing Site Condition. WSDOT denies the requested adjustment for DSC 006.

If you have any questions, please contact me at (425) 495-1577.

Sincerely,



Evelyn Pao, P.E.
Project Director
EP:sb

cc: L. Hodgson, R. Woeck, A. Fiske, D. Case, D. Holmquist, J. Slavicek, J. Zimmerman, S. Berriz, B. Kane, N. Bergeman, R. Gehrlein, E-File