

Different Site Condition (DSC) Location:

Wall 23.80R, Wall 23.72R, Wall 23.73R, and Wall 23.74R, and I-405 Mainline Abutment 10.

Different Site Condition (DSC) Statement from Design Builder:

Skanska Serial Letter dated 9/16/2025:

“AECOM, under its design subcontract with Skanska, issued a Supplemental Notice of Differing Site Condition dated September 2, 2025 (AESK-0010, R2), which updates its prior notice AESK-0003. AECOM reports that differing site conditions originally identified at Wall 23.80R may also extend to the I-405 Mainline Bridge Abutment 10, Wall 23.72R, Wall 23.73R, and Wall 23.74R.

Additionally, GeoEngineers issued a Memorandum dated August 27, 2025, documenting subsurface conditions differing materially from those indicated in the Geotechnical Data Report (GDR). Their investigations, including new borings, in-situ vane shear testing, and a full-scale field surcharge load test, contend that the soil unit properties (particularly ESU 2C) vary significantly from the Contract Documents. These Findings indicate potential for increased settlement and deeper soil strata than previously identified”.

Design Builder’s interpretation and supporting document for DSC:

GeoEngineers Memorandum dated 8/27/2025:

- 1) The unit weight laboratory tests performed on the most recent samples suggest a significantly higher saturated unit weight than the average values that would have calculated overburden values as presented on two particular consolidation test reports that were provided by WSDOT in the GDR. The provided consolidation test reports in question are from the Sample S-12 in Boring NE-30vw-19 and Sample S-10 in Boring NE-32p-19. The recent unit weight test results support that the subgrade between the ground surface and these two samples is heavier and this leads to calculating a higher overburden value at those two test locations than what was provided on those test reports. The effective overburden stress values tie directly into determination of the Over-Consolidation Ratio (OCR) which is a primary factor in estimating the potential magnitude for a soil unit like ESU 2C (i.e. a soil unit susceptible to long-term consolidation settlement) to settle upon loading as described below.

No back-up calculations for the overburden values presented on the consolidation test reports were presented by WSDOT in the GDR. A back-calculation that we performed (assuming a consistent groundwater elevation of +24.3' and consistent soil properties in the other granular ESUs) on those overburden values suggest the following values for saturated unit weight in pounds per cubic foot:

	NE-30vw-19, Sample S-12	NE-32p-19, Sample S-10
Overburden Value Provided by WSDOT in the GDR in Pounds per Square Foot (psf)	1060 psf	1065 psf
Depth of Sample below Ground Surface in Feet	31.5 to 31.9'	25.7'
Estimate of ESU 2C Saturated Unit Weight from Back-Calculation in Pounds per Cubic Foot (pcf)	75 pcf	75 pcf

The lab testing results thus far have yielded four lab tests that provided a value of actual saturated unit weight in the ECU 2C material. The values were very consistent, ranging from 111 pcf to 115 pcf with an average value of saturated unit weight of approximately 113 pcf. Using these lab testing results alone, we estimate that the actual overburden calculations for the two consolidation test reports in question would be as follows:

	NE-30vw-19, Sample S-12	NE-32p-19, Sample S-10
Overburden Value Provided by WSDOT in the GDR in Pounds per Square Foot (psf)	1060 psf	1065 psf

Depth of Sample below Ground Surface in Feet	31.5 to 31.9'	25.7'
Average Saturated Unit Weight of ESU 2C from Post-Issue Lab Testing in Pounds per Cubic Foot (pcf)	113 pcf	113 pcf
Approximate Corrected Calculation for Overburden in the Consolidation Tests Provided by WSDOT (psf)	~2534 psf	2134 psf
Approximate Factor of Error in the Overburden Value Provided by WSDOT in the GDR	~2.39x	~2.00x

The resulting difference in Overconsolidation Ratio (OCR) between what WSDOT provided in the GDR and what is more accurately suggested by the recent lab testing results is as follows:

	NE-30vw-19, Sample S-12	NE-32p-19, Sample S-10
OCR Calculated from the Overburden and P_c' values Provided by WSDOT in the GDR	3.57	1.99
Approximate Corrected OCR Calculation as Informed by the recent Laboratory Testing Results	~1.6	~1.0

Our final design value of OCR was selected from three consolidation test results that were provided by WSDOT in the GDR. The OCR values in those three tests (Sample S-14 from Boring NE-21p-19, Sample S-12 from NE-30vw-19, and Sample S-10 from NE-32p-19) ranged from 1.63 to 3.57 with an average value of approximately 2.4. We selected our final design OCR value for this soil unit to be 2.0 for ESU 2C as presented in Appendix L1 of our RFC'd Segment 2, Early Design Package 1B Geotechnical Report dated April 19, 2024. Had we selected a higher design value of OCR (possibly more in line with the average value from the tests provided by WSDOT of 2.4), the resulting calculations would have suggested even less settlement than our calculations did. The resulting changes in settlement estimates by adjusting the OCR value in our settlement calculations are as follows:

	Estimated Settlement Under Wall 23.80R
Using the Selected Design Value of OCR (=2.0) as informed by the Overburden and P_c' values Provided by WSDOT on Three Consolidation Test Reports provided in the GDR	~1.12"
Using a New Design Value of OCR (=1.3) as informed by the Recent Lab Test Results	~8" to 9"

Chapters 1 and 2 of the RFP and the Geotechnical Design Manual (“GDM”), which are each identified as a “Contract Document,” require that we use the boring logs and lab testing data contained in the GDR for our design. The following contract sections support the required use of the GDR data during the post-award geotechnical design:

- 1) RFP Section 1-04.7 states, “For Work unrelated to an ATC, Differing Site Conditions shall mean (a) actual subsurface or latent physical conditions encountered at the Site 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 (b) physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the type of Work provided for in the Contract and the Work Site characteristics, or (c) the discovery of Hazardous Materials, or asbestos, not identified in the Hazardous Materials Report, asbestos GFI report, or not ordinarily encountered and generally recognized in the type of Work provided for in the Contract and the Work Site characteristics provided in all cases that the Design-Builder had no actual or constructive knowledge of such conditions as of the Proposal Due Date.” (Emphasis added.)

The excessive settlement observed after construction began on Wall 23.80R suggested that something in the in-situ soil properties did not match the geotechnical design assumptions for Wall 23.80R. The subsequent laboratory testing program reveals that the OCR value selected for ESU 2C in the RFC’d design was too high. At this point, we believe that the root cause of this over-estimation of OCR was a difference in the overburden value that we now calculate as compared to the overburden value presented on the WSDOT consolidation test results for Sample S-12 in Boring NE-30vw-19 and Sample S-10 in Boring NE-32p-19.

- 2) RFP Section 2.6.4 states, “The Design-Builder shall review the available information in the GDR and perform subsurface investigations to meet the requirements of applicable laws, permits, and the Contract.”
- 3) RFP Section 2.6.5.2 states, “Geotechnical engineering and analyses shall be based on the findings from subsurface field investigation explorations and laboratory tests performed by the Design-Builder and information contained in the GDR.”
- 4) GDM Section 22-2 states, “Geotechnical documents provided as part of or in support of a DB project include the Geotechnical Data Report (GDR), the Geotechnical Baseline Report (GBR), Geotechnical Reference documents, and other related Reference Documents. A GDR only presents factual geotechnical and geological information obtained through site and subsurface investigation, and laboratory testing, for the project, and should not include interpretive information. The GDR is a contract document.”

WSDOT’s interpretation and supporting document for determining DSC:

Appendix G02 Geotechnical Data Report (According to Appendix A1, a Reference Document):

- *App_A Project-Logs* related to this area are NE21p-19, NE30VW-19, NE31p-19
- *App_B-4 Consolidation Test Report* related to this area are NE21p-19, NE30VW-19, NE31p-19

Appendix G05 Geotechnical Baseline 1 Report (According to Appendix A1, a Contractual Document):

- Section 3.2.7 *Poor Ground* states:

“Variable and poor ground conditions will be encountered within the Project limits. Poor ground conditions are defined as loose granular soil, soft cohesive soil, and organic soil (i.e., including but not limited to peat) that can create the likelihood of immediate and long-term settlement, inadequate bearing strength, and instability during or following the completion of construction. Baseline areas where poor ground conditions are likely to be encountered are identified in Table 1. Poor ground conditions are defined to occur where uncorrected standard penetration resistance (SPT) blow counts are less than or equal to 10 for non-cohesive soils and less than or equal to four for cohesive soils and all organic soils. Where these physical conditions are encountered, the ground behavior will be controlled by the design and construction decisions of the Design-Builder. Therefore, it shall be the Design-Builder’s responsibility to assess these poor ground conditions and their related significance to the structure and the overall design performance to be achieved.”

- Table 1: Baseline Condition:

Table 1: Baseline Conditions

Areas	Approximate Mileposts ¹		Baseline Conditions to be Encountered ²						
	From	To	Obstructions	Abandoned Structures	Liquefaction	Slope Stability	Groundwater	Poor Ground	Reuse of Soil
Brickyard									
	21 40	21 85			NP	NP		✓ ³	✓ ⁴
Juanita Creek fish passage	21 85	21 95	✓		✓	✓	✓	✓	No Reuse
	21 95	22 40			NP	NP		✓ ³	✓ ⁴
Brickyard Transit Station	22 40	22 50			NP	NP		✓ ³	✓ ⁴
	22 50	22 74			NP	NP		✓ ³	✓ ⁴
	22 74	23 10			✓	✓	✓	✓	No Reuse
Hillside ⁵									
	23 10	23 59	✓	✓	✓	✓		✓	No Reuse
Samamish River Valley									
	23 59	24 00	✓	✓	✓	✓	✓	✓	No Reuse
Canyon Park									
	24 00	24 95			✓	NP	✓	✓	No Reuse
Stream 25	24 95	25 10			✓	✓	✓	✓	No Reuse
	25 10	25 50			✓	✓	✓	✓	✓ ⁴
	25 50	26 10			NP	✓	✓	✓ ³	✓ ⁴
228th St SE	26 10	26 40			✓		✓	✓	No Reuse
	26 40	27 10			✓		✓	✓	No Reuse

NP - Not present

1 - See outlines on Figures 2 and 3

2 - If a part of the table is blank, this condition is not baselined; see Section 1.1. All conditions must be evaluated for design according to the Contract even if a condition is noted in the table as not present.

3 - As a baseline condition, poor ground is not present deeper than 10 feet below the existing ground surface

4 - As a baseline condition, soil may be reused if it meets WSDOT specifications and design assumptions for its use. All soil moisture conditions are fully the responsibility of the Design Builder.

5 - See Technical Requirements. Section 2.6

RFP Chapter 1 General Provisions:

- Section 1-01.3 *Definitions*, states:

“Reference Documents – Reference Documents are for information purpose only and the Design-Builder shall rely upon Reference Document at its own risk. These Reference Documents are designated in Appendix A1”

- Section 1-02.2 *Disclaimer Regarding Documentation* states:

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

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

- Section 1-03.2, *Order of Precedence*, states:

“Should conflicts appear between any of the following parts of the Contract, a listed part shall take precedence over all those listed below it:

1. *Change Orders*
2. *Design-Build Contract (Contract Form), excluding Exhibit B - WSDOT Identified Betterments*
3. *WSDOT Identified Betterments (Exhibit B), from the Design-Builder’s Proposal*
4. *General Provisions – Contract Chapter 1*
5. *Technical Requirements – Contract Chapter 2*
6. *All other documents listed as Contract Documents in Contract Appendix A1*
7. *Design-Builder’s Proposal*

Notwithstanding the order of precedence listed above:

1. Additional details and more stringent requirements contained in a lower priority document will control, unless the requirements of the lower priority document present an actual conflict with the requirements of the higher-level document.
2. In the event of a conflict among any Mandatory Standards, the order of precedence designated in the Technical Requirements regarding said standards shall prevail. The Technical Requirements shall take precedence over all Mandatory Standards listed within the Technical Requirements.
3. If the Proposal includes statements or incorporates approved ATC(s) that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the Contract Documents or to perform services in addition to those otherwise required, or otherwise contains terms that are more advantageous to WSDOT than the requirements of the Contract Documents, Design-Builder's obligations hereunder shall include one compliance with all such statements, offers, and terms.

On plans, Working Drawings, and Standard Plans, calculated dimensions shall take precedence over scaled dimensions.”

- Section 1-02.4, Examination of Site of Work states:

“The Design-Builder has, prior to submitting its Proposal, in accordance with prudent and generally accepted engineering and construction practices, reviewed all Contract and Reference Documents provided by WSDOT; inspected and examined the Site and surrounding locations; and undertaken other appropriate activities sufficient to familiarize itself with surface and subsurface conditions discernible from the surface affecting the Project, to the extent necessary for submittal of a Proposal. Because of such review, inspection, examination, and other activities; the Design-Builder is familiar with and accepts the physical requirements of the Work, including:

1. The nature and location of the Work
2. The general and local conditions that can affect the Work or its cost, including:
 - (a) Conditions bearing upon acquisition, transportation, disposal, handling, an storage of materials
 - (b) The availability of labor, materials, water, electric power, and roads.
 - (c) Uncertainties of weather, river stages, tides, or similar physical conditions at the Site
 - (d) The conformation and condition of the ground
 - (e) The character of equipment and facilities needed preliminary to and during Work performance
 - (f) The Site biological hazards and associated physical hazards
3. The character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Work Site (including material sites), the Geotechnical Baseline Report (GBR), Geotechnical Design Report (GDR), and hydrology reports (if any), as well as from the Contract and information made a part of the Contract.

4. *The adequacy of time allowed from the completion of the Work*
5. *The risk profile conveyed by the Contract including but not limited to the baseline identified in the GBR*

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

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

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.

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 Worker's 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"*

- Section 1-02.4(2), *Subsurface Information* states:

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

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

The baseline conditions described in the GBR are not intended to represent, describe, or constitute any warranty, or indication, whether expressed or implied, of the actual

conditions that are encountered during the Design-Builder's performance of the Work. The Design-Builder shall not rely exclusively upon the baseline conditions described in the GBR as the only input for planning or performing the Work. Planning and performing the Work by the Design-Builder, includes, at minimum, the following: designs, means and methods, equipment, techniques, sequences, and procedures chosen to meet the terms of the Contract.

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

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

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

The geotechnical information in the Contract does not represent Site conditions for an Alternative Technical Concept (ATC). As noted in the Instructions to Proposers (ITP),.....”

- Section 1-04.7, *Differing Site Conditions* states:

“For Work unrelated to an ATC, Differing Site Conditions shall mean (a) actual subsurface or latent physical conditions encountered at the Site 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 (b) physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the type of Work provided for in the Contract and the Work Site characteristics, or (c) the discovery of Hazardous Materials , or asbestos, not identified in the Hazardous Materials Report, asbestos GFI report, or not ordinarily encountered and generally recognized in the type of Work provided for in the Contract and the Work Site characteristics provided in all cases that the Design-Builder had no actual or constructive knowledge of such conditions as of the Proposal Due Date.”

RFP Chapter 2, Technical Requirement:

- Section 2.6.2.1 *Design Build Modifications to Geotechnical Design Manual*, States:

“When the WSDOT Geotechnical Design Manual refers to an activity that “shall” be done or that “is” done, those activities are mandatory. When the WSDOT Geotechnical Design Manual refers to an activity that “should” be done, those activities are mandatory. All references to the Bridge and Structures Office, Geotechnical Office, Structural Designer, Structural Engineer, Project Designer, Construction Project Engineer, Geotechnical Engineer, Field Exploration Manager, Field Exploration Supervisor, and Geotechnical Designer shall mean the Design-Builder. Where the WSDOT Geotechnical Design Manual requires approval by the State Geotechnical Engineer, the Design-Builder shall be responsible, to request in writing, approval from the WSDOT Engineer. Work completed without the necessary approvals will not be accepted or contractually compliant.

No changes have been made to provisions in the WSDOT Geotechnical Design Manual that do not apply to design-build contracts, (e.g., descriptions of WSDOT divisions and their duties, descriptions of legal authority, or descriptions of internal WSDOT procedures or policies); however, in some cases it may not be clear whether rights or responsibilities in the WSDOT Geotechnical Design Manual are applicable to the Design-Builder. If it is unclear whether specific provisions in the WSDOT Geotechnical Design Manual apply to the Design-Builder, the Design-Builder shall request clarification from the WSDOT Engineer. WSDOT will make that determination at its sole discretion. WSDOT has identified the following provisions of the WSDOT Geotechnical Design Manual that do not apply to design-build contracts:

- Section 1.2.2, Geotechnical Functions Delegated to the Regions*
- Section 1.2.3, Coordination between HQ and Region Regarding Emergency Response*
- Section 1.3, Geotechnical Support within the WSDOT Project Management Process*
- Section 1.6, Geotechnical Consultant Administration*
- Chapter 20, Unstable Slope Management*
- Chapter 21, Material Source Investigation and Report*
- Chapter 22, Geotechnical Project Development, Reports, and Support for Design-Build Projects”*

WSDOT’s Engineering Determination:

The Design-Builder observed settlements greater than estimated at wall 23.80 and attributed it to the Over Consolidation Ratio (OCR) value used during final design. The OCR was calculated using reported values (i.e. pre-consolidation pressure and in-situ effective stress) from one of three consolidation tests included in the Geotechnical Data Report (GDR).

The Design-Builder has suggested that the calculated OCR based on the reported values included in the GDR constitutes a Differing Site Condition (DSC) under the contract.

WSDOT’s Findings:

1. **Reference Document Risk**

Per RFP Chapter 1, the GDR is a Reference Document, not a contractual document. Section 1-02.2 explicitly states that reliance on Reference Documents is at the Design-Builder's own risk.

Design-Builders are expected to exercise due diligence to adequately confirm their design assumptions, including:

- Site investigations
- Verification of data provided
- Independent analysis

WSDOT is not liable for errors in the GDR (a Reference Document).

2. **Responsibility for Subsurface Conditions**

As per Section 1-02.4(2), the Design-Builder was required to:

- Examine the Site and surrounding areas before proposal submission
- Perform reasonable geotechnical investigations
- Interpret data using accepted engineering practices

This means the Design-Builder accepted the risks associated with subsurface conditions not covered in the Geotechnical Baseline Report (GBR), which was not referenced in the letter nor the memo.

3. **Invalid Interpretation of GDR as Contract Document**

The Design-Builder's claim that the GDR is a contractual document (based on GDM Chapter 22) is incorrect. The RFP (Chapter 2, Section 2.6.2.1) explicitly states that GDM Chapter 22 does not apply to design-build contracts.

The GDR is classified as a Reference Document in Appendix A1.

4. **Differing Site Conditions– RFP Section 1-4.07**

- **Part (a): Subsurface Conditions Not Discoverable by Reasonable Investigation:** There is no evidence in the letter or memo that the OCR issue was not discoverable by a reasonable investigation. It appears the Design-Builder used one of the GDR provided consolidation tests to calculate the OCR without clear evidence of Design Builder validating the reported values during proposal or design phase.
- **Part (b): Physical Conditions of an Unusual Nature:** The Design Builder alleges that the issue arose from an incorrect overburden value that led to an incorrect OCR value. This was a design choice by the Design Builder to use unvalidated data from a Reference Document, not a materially different or unusual site condition.
- **Part (c): Hazardous Materials**
Not applicable.

5. Geotechnical Baseline Report (GBR) – Section 3.2.7 – Poor Ground

The GBR baselines poor ground conditions in Table 1. Poor ground conditions are defined in Section 3.2.7 of the GBR. This section concludes with: *Where these physical conditions are encountered, the ground behavior will be controlled by the design and construction decisions of the Design-Builder. Therefore, it shall be the Design-Builder's responsibility to assess these poor ground conditions and their related significance to the structure and the overall design performance to be achieved.*

In Conclusion, WSDOT has determined this **does not constitute a Differing Site Condition** under the contract due to the following findings:

- Reliance on a Reference Document (GDR) at the Design-Builder's risk
- Lack of evidence showing a reasonable effort to verify geotechnical assumptions
- Absence of any physical site condition that meets the contractual definition of a DSC
- The GBR baselined poor ground conditions in this area