

DRAFT

# WSDOT POSITION PAPER

**DRB Hearing - Protest 006 - DSC 006 Clay Layer ESU 2C (PCO 123)**

Contract 9727 - I-405, Brickyard to SR 527 Improvement Project

**Submitted by:** Washington State Department of Transportation

**Date:** {{DATE}}

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## 1 Introduction

Pursuant to Request for Proposal (RFP) Chapter 1 General Provisions Section 1-04.5(1), Disputes, WSDOT hereby submits this position paper and supporting documents to the Dispute Review Board (DRB) for the upcoming DRB hearing on PCO 123 - DSC 006 Clay Layer ESU 2C.

This dispute concerns whether an unanticipated clay layer (Engineering Soil Unit 2C) beneath retaining walls (23.80R, 23.72R, 23.73R, 23.74R) and I-405 Mainline Bridge Abutment 10 in the Sammamish River Valley constitutes a Differing Site Condition (DSC) under RFP Section 1-04.7. The Design-Builder claims the settlement behavior observed at these structures differs materially from the contract baseline and was not reasonably foreseeable. WSDOT has twice denied the claim as without merit (WSDOT SL 9727-162, September 18, 2025, and WSDOT SL 9727-242, January 16, 2026).

The procedural history is as follows. Skanska first notified WSDOT of a potential DSC at Wall 23.80R in Skanska LTR 171 (April 9, 2025). Skanska expanded the DSC notice to all affected structures in Skanska LTR 226 (September 4, 2025). WSDOT denied the DSC in WSDOT SL 9727-162 (September 18, 2025). Skanska filed a Notice of Protest in Skanska LTR 246 (October 1, 2025) and submitted supplemental information in Skanska LTR 291 (December 8, 2025). WSDOT reaffirmed its denial in WSDOT SL 9727-242 (January 16, 2026). Skanska filed a Notice of Dispute in Skanska LTR 336 (January 30, 2026), filed on behalf of AECOM and GeoEngineers. WSDOT acknowledged the dispute in WSDOT SL 9727-257 (February 6, 2026).

The central question is whether the observed settlement constitutes a DSC under RFP Section 1-04.7, or whether those conditions fall within the Design-Builder's contractual risk allocation under RFP Section 1-02.4(2) and GBR Section 3.2.7. This paper summarizes the relevant contract requirements, the technical issues, the sequence of events, and WSDOT's position on Protest 006.

## 2 Project Summary

The I-405/Brickyard to SR 527 Improvement Project enhances four and a half miles of the corridor, primarily in Bothell, from just south of the State Route 522 interchange and ending at the SR 527 interchange. WSDOT, Sound Transit and design-build contractor Skanska USA Inc. will deliver improvements that benefit all users, while addressing aging infrastructure, opening upstream fish habitat, and connecting communities, freight and Regional Growth Centers throughout the corridor.

Since implemented in 2015, express toll lanes (ETL) have helped improve reliability of trips on the north end of the I-405 corridor. However, the single-lane section still experiences heavy congestion, especially for people traveling south during the morning commute. The project will extend the dual-express toll lane system on the north end of I-405 and improve access to the voter-approved Stride bus rapid transit service to address congestion and help keep all vehicles moving efficiently.

The DSC 006 dispute involves structures located in the Sammamish River Valley Area, approximately MP 23.59-24.00 along the I-405 corridor. This area encompasses retaining walls 23.80R, 23.72R, 23.73R, and 23.74R, and the I-405 Mainline Bridge Abutment 10. The Design-Builder's ground improvement program at these structures included stone column installation and surcharging to manage settlement in the soft soils underlying the Sammamish River Valley. The dispute centers on whether the settlement behavior observed during and after construction at these locations constitutes a DSC.

## 3 Relevant Contractual Requirements

### 3.1 RFP Section 1-02.1 - Responsibility for Design

RFP Section 1-02.1 establishes that:

*"the Design-Builder undertakes full responsibility for delivery of the Project"*

The provision further states:

*"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, 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."*

This provision assigns comprehensive design responsibility to the Design-Builder.

### 3.2 RFP Section 1-02.2 - Reference Documents

RFP Section 1-02.2 provides:

*"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. ... Unless stated otherwise in the Contract, the Design-Builder is not entitled to rely on the Reference Documents."*

*"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."*

The GDR is classified as a Reference Document for this Design-Build contract per Appendix A1.

### 3.3 RFP Section 1-02.4 - Examination of Site of Work

RFP Section 1-02.4 provides:

*"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."*

*"The Design-Builder is solely responsible for all Site conditions discoverable from a reasonable Site examination."*

This provision establishes a broad investigation obligation encompassing the full range of geotechnical evaluation activities.

### 3.4 RFP Section 1-02.4(1) - General (Investigation Obligation)

RFP Section 1-02.4(1) provides:

*"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."*

### 3.5 RFP Section 1-02.4(2) - Subsurface Information

RFP Section 1-02.4(2) provides three critical rules:

*"WSDOT makes no representation or warranty expressed or implied that: 1. The Design-Builder's interpretations from the GBR or GDR are correct."*

*"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 behavior of such conditions may be dependent upon and influenced by the means and methods selected by the Design-Builder to perform the Work."*

These three rules are central to the DSC analysis in this dispute.

### 3.6 RFP Section 1-03.5 - Ambiguities (Duty to Report)

RFP Section 1-03.5 provides:

*"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 provision establishes the Design-Builder's duty to report apparent errors or inconsistencies before proceeding with affected Work.

### 3.7 RFP Section 1-04.7 - Differing Site Conditions

RFP Section 1-04.7 provides:

*"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 ... provided in all cases that the Design-Builder had no actual or constructive knowledge of such conditions as of the Proposal Due Date."*

Both elements must be satisfied: a material difference from baseline, and that the conditions were not discoverable through reasonable investigation.

### 3.8 RFP Section 1-04.7(1) - Burden of Proof

RFP Section 1-04.7(1) provides:

*"The Design-Builder shall bear 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."*

The burden falls on the Design-Builder to prove both elements.

### 3.9 RFP Section 2.6 and Section 2.6.2.1 - Geotechnical and GDM Modifications

RFP Section 2.6.5.2 provides:

*"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."*

RFP Section 2.6.2.1 (Design-Build Modifications to the GDM) identifies provisions that do not apply to this Design-Build contract:

*"WSDOT has identified the following provisions of the WSDOT Geotechnical Design Manual that do not apply to design-build contracts: ... Chapter 22, Geotechnical Project Development, Reports, and Support for Design-Build Projects"*

GDM Chapter 22 defines the GDR as a "contract document," but that designation applies to traditional Design-Bid-Build projects. Section 2.6.2.1 excludes GDM Chapter 22 from this Design-Build contract. For this contract, the GDR is classified as a Reference Document per Appendix A1.

### 3.10 GBR Section 3.2.7 and Table 1 - Poor Ground and Sammamish Valley Baseline

GBR Section 3.2.7 defines poor ground conditions and provides:

*"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."*

The GBR is a Contract Document (not a Reference Document). GBR Table 1 identifies baselined areas where poor ground conditions are likely to be encountered. The DSC 006 structures (Walls 23.72R-23.80R and Abutment 10) are located in the Sammamish River Valley Area (MP 23.59-24.00). Table 1 baselines poor ground in this zone without Footnote 3's 10-foot depth limit. Poor ground at all depths is a baseline condition at these wall locations. Footnote 3 ("As a baseline condition, poor ground is not present deeper than 10 feet below the existing ground surface") applies only to portions of the Brickyard Area

(MP 21.40-22.74) and Canyon Park (MP 25.50-26.10), not the Sammamish River Valley. This is verified from GBR Table 1 and Figure 3, Sheet 6.

## 4 Discussion of Settlement and Clay Layer Conditions

This section provides a plain-language explanation of the technical issues for the Board's reference. It is intended as background. WSDOT's arguments are presented in Section 6.

### 4.1 Background on ESU 2C and Affected Structures

Engineering Soil Unit 2C (ESU 2C) is a clay layer encountered beneath retaining walls 23.80R, 23.72R, 23.73R, 23.74R, and I-405 Mainline Bridge Abutment 10 in the Sammamish River Valley. The Design-Builder's ground improvement program at these structures included stone column installation and surcharging. The Design-Builder's settlement predictions indicated the settlement would be manageable within the design and construction timeline. Observed settlement exceeded those predictions.

### 4.2 GDR Overburden Value Discrepancy

The GDR consolidation test results for two samples (NE-30vw-19 S-12 and NE-32p-19 S-10) used overburden values of 1060 psf and 1065 psf, which imply a saturated unit weight of approximately 75 pcf. Laboratory-tested saturated unit weight averaged 113 pcf (WSDOT SL 9727-162, Attachment 1 IED V4, pp.2-3). This discrepancy produced overburden error factors of 2.39x and 2.00x, inflating the GDR-reported overconsolidation ratio (OCR) values from corrected values of approximately 1.49 and 1.00 to the reported 3.57 and 1.99.

A higher OCR suggests the clay has been preloaded by historical stresses and would be less compressible under new loading. A lower OCR suggests the clay is normally consolidated or only lightly overconsolidated, making it more compressible. The inflated OCR values in the GDR would lead to less conservative (more optimistic) settlement predictions.

The discrepancy between the unit weights implied by the GDR consolidation test overburden values and the laboratory-measured saturated unit weights was apparent from comparing the Design-Builder's own work products. The GeoEngineers memo attached to Skanska LTR 291 (Section 2.0, item 1, PDF p.14) identifies the same overburden value issue.

### 4.3 Design-Builder's Settlement Predictions vs Observed Settlement

The Design-Builder's settlement predictions relied on parameters selected from the GDR consolidation test data. The Design-Builder selected median values from a variable dataset. Observed settlement exceeded the predictions. The Design-Builder contends this demonstrates a material difference from baseline.

The GeoEngineers Appendix A (Timeline of Activities, Skanska LTR 291, PDF pp.47-49) provides a construction timeline relevant to the sequence of observations. Construction on Wall 23.80R began September 2, 2024. By October 18, 2024 (46 days later), the fascia wall leveling pad was poured in the area that would exhibit excessive settlement. By October 31, 2024, wall panels were tilting 2 to 5 inches. The affected wall sections were torn down November 6-15, 2024 and rebuilt January-February 2025. The Design-Builder's own Figure 21 (GeoEngineers Memo, PDF p.46) shows the pre-award and post-award settlement predictions were virtually identical (both approximately 1 inch of post-construction settlement). This indicates the Design-Builder's post-award investigation program did not cause it to revise or challenge the GDR-derived settlement parameters.

#### 4.4 Stone Column Ground Improvement and CPT Evidence

The Design-Builder installed stone columns as part of its ground improvement program. The Design-Builder's own pre- and post-stone-column CPT (Cone Penetration Test) investigations (Skanska LTR 291, GeoEngineers Memo Figures 1A-1B for locations, PDF pp.23-24, and Figures 12-14 for CPT tip resistance profiles, PDF pp.37-39) show reduced tip resistance within the ESU 2C clay layer following stone column installation. Reduced tip resistance is consistent with construction-induced disturbance to the clay structure.

#### 4.5 Historical Settlement Record (Appendix G03)

Appendix G03 is Reference Information available during procurement. It includes extensive historical settlement analyses from the Woodinville Interchange vicinity. The record spans 60 years and includes:

A December 28, 1966 WSDOT Foundation Design Recommendation by R. V. LeClerc, P.E., Materials Engineer, stating: "Our calculations indicate a settlement of 3.2 ft is possible at this point, with 2 years required for 90 per cent. Therefore it is our opinion that some other form of foundation treatment should be specified" (Appendix G03 Vol 1, p.564). The accompanying Foundation Design Recommendations sheets (pp.567-570) specify "2 yr" preload durations at multiple stations across the Woodinville Interchange.

WSDOT 1959 and 1966 settlement calculations predicting consolidation settlements of 1.4 to 4.0 feet at various interchange locations, with time-settlement curves extending 40+ years (Appendix G03 Vol 1, pp.170-232, pp.661-694).

A Shannon and Wilson, Inc. Location Soils Survey dated March 4, 1966, independently documenting clay deposits of 10-30+ feet thickness with SPT N-values of 2-10 blows/ft and recommending preloading and surcharging (Appendix G03 Vol 1, pp.411-447).

A November 15, 1956 WSDOT inter-office communication confirming: "settlements in the order of 0.5 ft. could be expected at the bridge ends ... from loads imposed by the approach fills" (Appendix G03 Vol 1, pp.60-62).

A January 3, 1967 highway commission communication recommending scheduling a resurfacing project "1 or 2 years after traffic opening" due to anticipated long-term settlement and predicting "an additional 1' to 2' of settlement" during a recommended overload period of "a minimum 4 month period" (Appendix G03 Vol 1, pp.1062-1066).

These documents collectively record settlement magnitudes (up to 4.0 ft), multi-year consolidation timeframes (up to 2 years for 90% primary consolidation), and ground improvement techniques (preloading, sand drains, staged construction) at this interchange. These records were available as Reference Information during procurement.

#### 4.6 Appendix N2 Deep Foundations in the Vicinity

Appendix N2 Bridge As-Built includes drawings showing that bridges in the vicinity bear on deep foundations. The use of deep foundations at nearby structures indicates the area was recognized as having challenging settlement and bearing capacity conditions.

### 5 Sequence of Events and Chronology

Date	Party	Event
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2023-10-06	Skanska	Design submittal: Subsurface Investigation Plan Phase 1, RFC'd. Includes explorations for structures impacted by DSC 006. Reviewed by WSDOT for contract compliance.
2024-04-19	Skanska	Design submittal: Segment 2, Early Design Package 1B Geotechnical Report released for construction (RFC). Design OCR value of 2.0 selected for ESU 2C (Appendix L1).
2024-09-02	Skanska	Construction: Skanska begins construction on Wall 23.80R at the north end near wall Station 20+00.
2024-10-18	Skanska	Construction: Fascia wall leveling pad poured for Wall 23.80R south of Station 15+50. This area would exhibit settlement significantly in excess of design estimates.
2024-10-31	Skanska	Field observation: Skanska notices several wall panels tilting outward 2 to 5 inches in the station range of interest.
2024-11-06 to 2024-11-15	Skanska	Construction: Skanska tears down affected portions of Wall 23.80R. Begins surveying the fascia panel leveling pad.
2025-01-07 to 2025-02-06	Skanska	Construction: Skanska rebuilds torn-down portions of the MSE wall on new load transfer pad.
2025-03-22	Skanska	Engineering: GeoEngineers recommends stopping work on Abutment 10 and vicinity of Walls 23.72R and 23.73R. Concern that ESU 2C settlement may affect other design elements.
2025-04-01	Skanska	Field observation: Skanska (Kyle Sharrer) emails WSDOT (Sonia Berriz) reporting atypical settlement performance at Wall 23.80R. GeoEngineers issues Corrective Action Plan.
2025-04-08 to 2025-06-13	Skanska	Construction: Three-foot gravel surcharge placed on Wall 23.80R to accelerate settlement before finishing construction.
2025-04-09	Skanska	<b>Skanska LTR 171:</b> DSC 006 Potential Differing Site Condition at Wall 23.80R. Formalizes the April 1 email as initial DSC notice for a single structure.
2025-04-23	WSDOT	<b>WSDOT SL 9727-103:</b> Initial response to DSC notice for Wall 23.80R. Establishes WSDOT's initial position on DSC 006.
2025-04-26 to 2025-05-13	Skanska	Investigation: Three new borings drilled at GeoEngineers' recommendation to evaluate ESU 2C material.
2025-05-21 to 2025-12-04	Skanska	Investigation: Instrumented gravel preload test constructed near Wall 23.72R for larger-scale settlement performance evaluation.
2025-06-13 to 2025-06-20	Skanska	Field observation: Settlement under gravel surcharge at Wall 23.80R appears stabilized. Surcharge removed.
2025-08-27	Skanska	Technical report: GeoEngineers memorandum documenting post-issue investigations (new borings, in-situ vane shear testing, full-scale field surcharge load test). Concludes soil unit properties vary from Contract Documents.
2025-09-04	Skanska	<b>Skanska LTR 226:</b> Expanded DSC notice to all affected structures (Walls 23.80R, 23.72R, 23.73R, 23.74R, and Abutment 10).
2025-09-04	WSDOT	<b>WSDOT SL 9727-149:</b> WSDOT Laboratory Testing Package 01. Transmits consolidation and triaxial testing. Closes with "We make no other warranty, expressed or implied."
2025-09-18	WSDOT	<b>WSDOT SL 9727-162:</b> Written determination denying DSC 006 across all walls and abutment. Establishes risk allocation framework citing RFP Section 1-02.4(2) and GBR Section 3.2.7. Includes IED V4 (Attachment 1).
2025-09-30	Skanska	<b>Skanska LTR 244:</b> Response to WSDOT SL 9727-149. Flags dry/moist density discrepancy. Asks if lab data "may be relied upon as factual data."
2025-10-01	Skanska	<b>Skanska LTR 246:</b> Notice of Protest 006. Protests WSDOT SL 9727-162. Reserves all rights including DRB.
2025-10-10	WSDOT	<b>WSDOT SL 9727-175:</b> Acknowledged protest. Granted 59-day extension for supplemental information (deadline: December 8, 2025).
2025-10-17	WSDOT	<b>WSDOT SL 9727-180:</b> Response to Skanska LTR 244. Provides corrected consolidation test report. Reaffirms "no other warranty, expressed or implied." Characterizes lab work as "a courtesy to Skanska" under Skanska's direction.
2025-12-08	Skanska	<b>Skanska LTR 291:</b> Supplement to Notice of Protest 006. Presents four arguments: (1) GDR overburden errors are factual misrepresentations, (2) 245+ explorations meet the reasonable investigation standard, (3) settlement behavior meets the DSC definition, (4) GBR "poor ground" classification does not address magnitude. Includes GeoEngineers Technical Memorandum (dated August 27, 2025) and AECOM Response Letter.
2026-01-16	WSDOT	<b>WSDOT SL 9727-242:</b> Response to Supplement. Protest 006 denied as without merit. Addresses all four supplement arguments.
2026-01-30	Skanska	<b>Skanska LTR 336:</b> Notice of Dispute. Filed on behalf of AECOM and GeoEngineers. Intends DRB referral per RFP Section 1-04.5(1).
2026-02-06	WSDOT	<b>WSDOT SL 9727-257:</b> Acknowledged dispute. Awaiting written DRB referral per RFP Section 1-04.5(1).1.8.

## 6 WSDOT Position

### 6.1 The GBR Baseline Is Dispositive

**Skanska's Argument:** The GBR may have baselined "poor ground" generally, but it did not baseline OCR values as low as 1.0-1.3 or compressibility characteristics inconsistent with the GDR consolidation test data. The clay layer behavior observed during construction differs materially from the contract baseline.

**WSDOT's Response:** The Contract establishes that the GBR, not the GDR, is the baseline for DSC comparison. Under RFP Section 1-02.4(2), when there is an inconsistency between geotechnical conditions described in the GBR and information in the GDR, the GBR takes precedence. The Design-Builder's arguments repeatedly compare observed conditions to GDR data rather than the GBR baseline. This comparison is inconsistent with the contractual framework.

GBR Section 3.2.7 does not merely "classify" ground as poor. It expressly assigns the Design-Builder responsibility to "assess these poor ground conditions and their related significance to the structure and the overall design performance to be achieved" (GBR p.9). "Significance to the structure" and "design performance" inherently encompass magnitude and behavior. The Design-Builder's argument that the GBR only classifies ground without addressing magnitude misreads the provision. The GBR's language requires the Design-Builder to assess the full range of settlement characteristics, not merely acknowledge that poor ground exists.

As described in Section 3.10, GBR Table 1 baselines poor ground in the Sammamish River Valley Area (MP 23.59-24.00) without Footnote 3's 10-foot depth limit. Poor ground at all depths is a baseline condition at the DSC 006 structure locations.

The very conditions Skanska is complaining about were anticipated by the Contract and placed within the Design-Builder's risk allocation. The Contract assigned that responsibility to the Design-Builder.

### 6.2 GDR Overburden Values: Section 1-03.5 Duty, Not WSDOT Warranty

**Skanska's Argument:** The "incorrect overburden values" in the GDR are factual numerical miscalculations in consolidation test results stamped by WSDOT, not matters of professional judgment. RFP Section 1-02.4(2).1 therefore does not apply. WSDOT cannot avoid responsibility for factual misrepresentations by re-labeling the document. (Skanska LTR 291, GeoEngineers Memo Section 2.0, item 1, PDF p.14.)

**WSDOT's Response:** Even if GDR values contain errors, the Contract establishes two separate obligations that the Design-Builder has not satisfied.

First, RFP Section 1-02.4(2) makes no representation or warranty that the Design-Builder's interpretations from the GBR or GDR are correct. The GDR is a Reference Document provided at the Design-Builder's risk per RFP Section 1-02.2.

Second, RFP Section 1-03.5 required the Design-Builder to promptly notify WSDOT and obtain written instructions upon discovering apparent errors, omissions, or inconsistencies. As described in Section 4.2, the discrepancy between the implied unit weights (approximately 75 pcf) and laboratory-measured values (113 pcf) was apparent from comparing the Design-Builder's own work products. The GeoEngineers

memo itself raises the overburden value issue (Skanska LTR 291, GeoEngineers Memo Section 2.0, item 1, PDF p.14), confirming the Design-Builder was aware of the discrepancy. However, no Section 1-03.5 notification was filed. The Design-Builder did not seek written instructions from WSDOT before proceeding with affected Work.

### 6.3 Section 2.6 Does Not Create a Warranty or Override Risk Allocation

**Skanska's Argument:** RFP Section 2.6 states that "geotechnical engineering and analyses shall be based on ... information contained in the GDR." The Design-Builder therefore had a contractual right to rely on GDR values without independent verification. WSDOT directed reliance on GDR data.

**WSDOT's Response:** RFP Section 2.6 requires the Design-Builder to review and use available GDR information as part of its overall geotechnical evaluation. The requirement to "use" information is not the same as a right to "rely" on it without question. Section 2.6 does not convert the GDR into a warranty by WSDOT of Design-Builder interpretations. It does not shift the risk allocation established by RFP Section 1-02.4(2). The Design-Builder retains the obligation to reconcile inconsistencies and exercise engineering judgment in selecting design parameters.

RFP Section 2.6.2.1 (Design-Build Modifications to the GDM) explicitly lists "Chapter 22, Geotechnical Project Development, Reports, and Support for Design-Build Projects" among provisions that "do not apply to design-build contracts." GDM Chapter 22 defines the GDR as a "contract document," but that designation applies to traditional Design-Bid-Build projects. For this Design-Build contract, the GDR is classified as a Reference Document per Appendix A1. RFP Section 1-02.2 provides that Reference Information is at the Design-Builder's risk.

The Design-Builder's reliance on GDR data without independent verification remains at the Design-Builder's risk. Section 2.6 does not alter this allocation.

### 6.4 "Reasonable Investigation" Requires Interpretation, Not Just Data Collection

**Skanska's Argument:** The Design-Builder performed 245+ additional explorations, SIPs, extensive laboratory testing, and a long-term monitoring program. This volume of post-award testing meets or exceeds the "reasonable investigation" standard in RFP Section 1-02.4(1).

**WSDOT's Response:** "Reasonable investigation" under RFP Section 1-02.4(1) requires the Design-Builder to "make interpretations and draw conclusions with respect to the character of the geotechnical materials encountered and their impact upon its Work." This is a contractual obligation that encompasses analysis and interpretation, not merely data collection. The Design-Builder's obligation extends beyond gathering data to evaluating, reconciling, and interpreting that data in the context of all available information.

The question 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 the following:

The Design-Builder selected median values from a variable dataset without demonstrating that it evaluated the sensitivity of settlement predictions to reasonable ranges of key parameters. In variable soil conditions, evaluating sensitivity to reasonable parameter ranges informs design values and risk management during design development. This is a component of the "interpretations and conclusions" required by RFP Section 1-02.4(1), not merely a professional standard of practice. The absence of demonstrated sensitivity analysis undermines the Design-Builder's claim that settlement behavior was

unforeseeable.

The Design-Builder did not reconcile discrepancies between unit weights used for other design analyses and values reported in the GDR. This reconciliation is part of the interpretation obligation under RFP Section 1-02.4(1).

The Design-Builder's own Figure 21 (GeoEngineers Memo, Skanska LTR 291, PDF p.46) illustrates this point. The figure compares post-construction settlement estimates at Abutment 10 across four analysis phases. The pre-award analysis and the post-award analysis produce virtually identical predictions (both approximately 1 inch). The post-award line does not diverge from the pre-award line despite 245+ additional explorations. This indicates the Design-Builder's post-award investigation program did not prompt it to revisit, challenge, or independently verify the GDR consolidation parameters. The volume of explorations is not at issue. The adequacy of interpretation is.

## 6.5 Settlement Behavior Was Foreseeable and Discoverable

**Skanska's Argument:** Surcharge settlement data and backcalculated soil parameters demonstrate a material difference from the GDR/GBR baseline under RFP Section 1-04.7(a) and unusual nature under RFP Section 1-04.7(b). The encountered conditions satisfy both DSC prongs and were not reasonably anticipated.

**WSDOT's Response:** Even if the Design-Builder could demonstrate a material difference from baseline under RFP Section 1-04.7(a) or (b), the DSC definition requires that the conditions were "not discoverable from a reasonable investigation and analysis of the Site." The Design-Builder has not established this element.

As described in Section 4.5, historical reference information in Appendix G03 (provided at the Design-Builder's risk per RFP Section 1-02.2) documents settlement magnitudes up to 4.0 feet, consolidation periods of up to 2 years for 90% primary consolidation, and ground improvement techniques (preloading, sand drains) in the project vicinity. The 1966 Foundation Design Recommendation alone predicts 3.2 feet of settlement with "2 years required for 90 per cent" (Appendix G03 Vol 1, p.564). The same letter recommends sand drains "18 in. in diameter on 10-ft spacing" to hasten consolidation, a direct predecessor to the stone column treatment used in the current project. These conditions were discoverable through the reasonable investigation and analysis required by RFP Section 1-02.4(1). The "not discoverable" element of RFP Section 1-04.7 is not met.

As described in Section 4.6, nearby bridges bear on deep foundations (Appendix N2), further indicating the area was recognized as having challenging settlement conditions. Where deep foundations were selected for nearby bridges, a prudent Design-Builder would evaluate whether shallow-supported structures and ground improvement programs at the same location would encounter similar settlement challenges.

The Design-Builder's own construction timeline further supports discoverability. The GeoEngineers Appendix A (Skanska LTR 291, PDF pp.47-49) shows that GeoEngineers recommended stopping work on Abutment 10 and Walls 23.72R/23.73R on March 22, 2025, ten days before the April 1 email to WSDOT. GeoEngineers' concern was that "the ESU 2C may be settling more than expected and the issue could affect those other design elements also." This stop-work recommendation confirms that the Design-Builder's own geotechnical consultant recognized the settlement risk was broader than the initial Wall 23.80R observation. The settlement behavior became apparent during construction, not because of unforeseeable subsurface conditions, but because the Design-Builder's pre-construction analysis had not

accounted for the full range of clay compressibility at these locations.

As described in Section 4.4, the Design-Builder's own pre- and post-stone-column CPT investigations reflect disturbance to the clay layer from stone column installation. RFP Section 1-02.4(2) provides that subsurface behavior may be influenced by the Design-Builder's means and methods. The backcalculated OCR values on which the Design-Builder's settlement predictions rely may reflect the combined effects of soil properties and construction-induced disturbance, not solely in-situ conditions.

## 6.6 Burden of Proof Not Met

Under RFP Section 1-04.7(1), the Design-Builder bears the burden of proving that a DSC exists and that it could not reasonably have worked around the condition to avoid additional cost. The Design-Builder has not met this burden. The Design-Builder's supplemental materials do not address:

- 1. The GBR baseline.** The Design-Builder does not acknowledge that under RFP Section 1-02.4(2), the GBR (not the GDR) establishes the geotechnical baseline for DSC comparison. The Design-Builder's arguments compare observed conditions to GDR data rather than the GBR baseline.
- 2. Sensitivity analysis.** The Design-Builder has not provided evidence that it evaluated the sensitivity of settlement predictions to reasonable ranges of key parameters in variable soil conditions.
- 3. Section 1-03.5 duty.** The Design-Builder does not address its duty under RFP Section 1-03.5 to seek written instructions upon discovering apparent errors or inconsistencies. If the Design-Builder believed the GDR overburden values were erroneous, Section 1-03.5 required prompt notification.
- 4. Means and methods influence.** The Design-Builder does not analyze how stone column installation influenced settlement behavior. The Design-Builder's own CPT data reflects disturbance from stone column installation, yet the supplemental materials do not discuss this influence. The choice of ground improvement method, installation sequence, and spacing are means-and-methods decisions within the Design-Builder's risk framework per RFP Section 1-02.4(2).

## 6.7 WSDOT's Procedural Response

WSDOT SL 9727-242 was issued January 16, 2026, which is 39 days after receipt of Skanska LTR 291 (December 8, 2025). WSDOT's obligation under RFP Section 1-04.5 is 21 days. WSDOT's late response does not affect the merits of the determination or the Design-Builder's procedural rights. The Design-Builder timely filed its Notice of Dispute (Skanska LTR 336, January 30, 2026) within 14 days of receiving the determination, confirming no prejudice to the Design-Builder's dispute rights.

## 7 Conclusion

The contract framework is clear. The GBR, not the GDR, is the baseline for DSC comparison under RFP Section 1-02.4(2). GBR Section 3.2.7 baselined poor ground conditions at the DSC 006 structure locations and assigned the Design-Builder responsibility to assess those conditions and their "significance to the structure and the overall design performance to be achieved." GBR Table 1 baselines poor ground in the Sammamish River Valley Area without the 10-foot depth limit that applies to other zones.

The conditions at issue were foreseeable from reference information available during procurement. Historical settlement records in Appendix G03 document settlement magnitudes up to 4.0 feet and consolidation periods up to 2 years at the same interchange. Nearby bridges on deep foundations (Appendix N2) further indicate the area was recognized as having challenging settlement conditions.

These conditions were discoverable through the reasonable investigation and analysis required by RFP Section 1-02.4(1).

The Design-Builder's position has structural weaknesses. The Design-Builder compares observed conditions to the GDR rather than the GBR baseline. The Design-Builder has not demonstrated sensitivity analysis on variable soil parameters. The Design-Builder did not file a Section 1-03.5 notification regarding the GDR overburden discrepancy. The Design-Builder has not addressed the influence of stone column installation on settlement behavior. And the Design-Builder has not carried its burden of proof under RFP Section 1-04.7(1).

WSDOT maintains 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 under RFP Section 1-04.7.

## 8 Recommendations Sought From the DRB

WSDOT respectfully requests that the Board provide a recommendation on the following question:

*Whether the subsurface conditions encountered at Walls 23.80R, 23.72R, 23.73R, 23.74R, and I-405 Mainline Bridge Abutment 10 constitute a Differing Site Condition under RFP Section 1-04.7, or whether those conditions fall within the Design-Builder's contractual risk allocation under RFP Section 1-02.4(2) and GBR Section 3.2.7.*

## 9 List of Attachments

[To be compiled for DRB hearing submission. Key attachments include:]

1. RFP Appendix A1 - Contract and Reference Document Classification
2. RFP Section 1-02.1 - Responsibility for Design
3. RFP Section 1-02.2 - Reference Documents
4. RFP Section 1-02.4 - Examination of Site of Work
5. RFP Section 1-02.4(1) - General (Investigation Obligation)
6. RFP Section 1-02.4(2) - Subsurface Information
7. RFP Section 1-03.5 - Ambiguities
8. RFP Section 1-04.7 - Differing Site Conditions
9. RFP Section 1-04.7(1) - Burden of Proof
10. RFP Section 2.6 - Geotechnical
11. RFP Section 2.6.2.1 - Design-Build Modifications to the GDM
12. GBR Section 3.2.7 - Poor Ground (extract)
13. GBR Table 1 - Baseline Conditions (extract)

14. GBR Figure 3, Sheet 6 - Sammamish River Valley Area
  15. Skanska LTR 171 - DSC 006 Potential DSC at Wall 23.80R (April 9, 2025)
  16. WSDOT SL 9727-103 - Initial Response to DSC 006 (April 23, 2025)
  17. Skanska LTR 226 - Expanded DSC Notice (September 4, 2025)
  18. WSDOT SL 9727-149 - WSDOT Laboratory Testing Package 01 (September 4, 2025)
  19. WSDOT SL 9727-162 - Written Determination Denying DSC 006 (September 18, 2025)
  20. WSDOT SL 9727-162, Attachment 1 - Initial Engineering Decision V4
  21. Skanska LTR 244 - Laboratory Testing Discrepancies (September 30, 2025)
  22. Skanska LTR 246 - Notice of Protest 006 (October 1, 2025)
  23. WSDOT SL 9727-175 - Acknowledged Protest, Granted Extension (October 10, 2025)
  24. WSDOT SL 9727-180 - Corrected Lab Data, No-Warranty Reaffirmed (October 17, 2025)
  25. Skanska LTR 291 - Supplement to Notice of Protest 006 (December 8, 2025)
  26. WSDOT SL 9727-242 - Response to Supplement, Denial Reaffirmed (January 16, 2026)
  27. Skanska LTR 336 - Notice of Dispute (January 30, 2026)
  28. WSDOT SL 9727-257 - Acknowledged Dispute (February 6, 2026)
  29. Appendix G03, Vol 1, pp.60-62 - 1956 WSDOT Inter-Office Communication
  30. Appendix G03, Vol 1, pp.170-232 - 1959 Settlement Calculations
  31. Appendix G03, Vol 1, pp.411-447 - 1966 Shannon and Wilson Location Soils Survey
  32. Appendix G03, Vol 1, pp.563-570 - 1966 Foundation Design Recommendations (LeClerc, "2 years required for 90 per cent")
  33. Appendix G03, Vol 1, pp.661-694 - 1966 Settlement Calculations
  34. Appendix G03, Vol 1, pp.1062-1066 - 1967 Highway Commission Communication
  35. Appendix N2 - Bridge As-Builts (Vicinity Deep Foundations)
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