



November 17, 2025

Letter No. 277
BY-CRE-04006

Evelyn Pao, P.E., Project Director
Washington State Department of Transportation
18911 N Creek Pkwy S, Suite 150
Bothell, WA 98011

Contract No.: 9727

Project: I-405, Brickyard to SR 527 Improvement Project

Subject: Supplement to Protest - House Bill 2081 – Business and Occupation Tax

Dear Ms. Pao:

In accordance with General Provisions Section 1-04.5, Skanska hereby supplements its November 3, 2025 Protest regarding House Bill 2081 – Business and Occupation Tax – with the following information:

(a) The date and nature of the protested order, direction, instruction, interpretation, or determination.

On October 20, 2025, WSDOT issued SL No. 9727-181, determining that Skanska is not entitled to an equitable adjustment as a result of increased taxes arising from HB 2081, which will become effective on January 1, 2026. WSDOT reasoned that Skanska's request for additional compensation in SL-248 did not meet the first condition for entitlement to an adjustment for tax increases under RFP section 1-07.1(5).2 - Taxes: "the changes shall involve Federal or State taxes on materials or fuel used in or consumed for the Project."

(b) A full discussion of the circumstances which caused the protest, including names of Persons involved, time, duration and nature of the Work involved, and a review of the Contract Documents/Design Documents referenced to support the protest.

In anticipation of HB 2081 Sections 201 (.5% surcharge on taxable income above \$250,000,000 annually, codified at RCW 82.04.288) and 207 (increase in B & O tax from .484% to .5%, codified at 82.04.280) becoming effective on January 1, 2026 and January 1, 2027, respectively, Skanska Vice President Pat Predergast, P.E. submitted SL-248 on October 8, 2025, requesting an increase in the Contract price in accordance with General Provisions Section 1-07.1(5).2 – Taxes. On October 20, 2025, WSDOT's Deputy Project Director Dan Holmquist issued WSDOT SL No. 9727-181, denying



Skanska's request for equitable adjustment on the grounds that Skanska did not meet the first requirement of Section 1-07.1(5).2.

Section 1-07.1(5).2 contains three conditions within which "WSDOT will adjust compensation by the actual dollar amounts of increase or decrease caused by the tax changes." WSDOT's denial did not address the second or third conditions—that the changes increase or decrease the taxes by more than \$500 or that the change occurred after the proposal opening—as those conditions are clearly met.

Skanska has also met the first condition for additional compensation, that "the changes shall involve Federal or State taxes on materials or fuel used in or consumed for the Project." The surcharge in RCW 82.04.288 as well as the B & O tax increase in RCW 82.04.280 "involve" state taxes on materials and fuel used in and consumed for the Project. A substantial portion of Skanska's revenue that will be taxed under RCW 82.04.280—and further subjected to the surcharge under RCW 82.04.288—relates directly to materials and fuel required for and consumed in the execution of the Project. These costs are unavoidable and integral to completing the remaining scope of work. Skanska must procure significant quantities of fuel to operate construction equipment throughout the Project, as well as temporary and permanent materials essential to performing the contractual scope. Section 1-07.1(5).2 does not say the changes must *exclusively* involve taxes on materials or fuel—or that equitable adjustment will only be provided *to the extent* the changes involve materials or fuel. Rather, the section provides for additional compensation as long as the changes "involve" materials or fuel—which they do in a significant way.

Moreover, General Provisions Section 1-07.2, State Taxes, provides, "The Design-Builder shall pay all applicable Federal, State and Local sales, consumer, use, and similar taxes, property taxes, and any other taxes, fees, charges, or levies imposed by a governmental entity, whether direct or indirect, relating to, or incurred in connection with, the Project or performance of the Work, including that portion of the Contract Price relating to design services. The Design-Builder shall include all the Design-Builder paid taxes in the Contract Price unless a specific exception applies." At the time the parties entered the Contract, the applicable Business and Occupation tax was .484% under RCW 82.04.280 and there was no surcharge at all under RCW 82.04.288. Skanska could not have anticipated the B & O tax rate would be increased to .5%, as RCW 82.04.288 will do, or that there would be any surcharge under RCW 82.04.288. Therefore, Skanska could not have included the increased amounts in its Contract Price when it entered the Contract.

Section 1-07.2 further provides, "WSDOT will not adjust its payment if the Design-Builder based its Proposal on a misunderstood tax liability." Skanska is not seeking an adjustment based on any misunderstood tax liability. Skanska understood its tax liability at the time it entered the Contract and had no reason to expect an increase in such liability.



Finally, as WSDOT is a Department of the State of Washington, the change that will be imposed by RCW 82.04.288 – a law enacted by the State – is tantamount to a WSDOT-Initiated Change for which Skanska would be entitled to compensation under General Provisions Section 1-04.4(1). It would be unfair to allow a State Agency to benefit from a State tax increase on revenue it pays to its Contractor, where the Contractor had no opportunity to include the tax increase in the contract price.

(c) The estimated dollar cost, if any, of the protested Work and a detailed breakdown showing how that estimate was determined.

The attached Excel spreadsheet shows the breakdown of income attributable to this Project, as well as to the SR 520 I-5 to Montlake – I/C and Bridge Replacement (“Portage Bay”) Project, as well as the increased B & O taxes under RCW 82.04.280 and surcharges under RCW 82.04.288. The surcharges should be recoverable under the Contract for this Project in proportion to amount of annual income earned on this Project—in proportion to the amount of income earned on the Portage Bay Project in the same year.

(d) An analysis of the progress schedule showing the schedule change or disruption.

Skanska does not anticipate any schedule change or disruption as a result of the tax increase under RCW 82.04.280 or the surcharge under RCW 82.04.288.

Skanska respectfully asks WSDOT to reconsider its denial of Skanska’s request for additional compensation based on increased costs associated with RCW 82.04.280 and RCW 82.04.288.

If you have any questions or concerns, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Prendergast".

Patrick Prendergast, Project Executive

Skanska USA Civil
18911 N Creek Pkwy S, Suite 300
Bothell, WA 98011

0.0160% B&O Tax Increase

0.500% New Surcharge

\$ 250,000,000.00 Surcharge is applicable on revenue generated over this value

| Year | BY Yearly Projected Revenue | BY B&O tax Increase | PBB Yearly Projected Revenue | PBB B&O tax Increase | New Surcharge on Skanska |
|-------------------------|-----------------------------|------------------------|------------------------------|----------------------|--------------------------|
| 2026 | \$ 285,021,584.09 | | \$ 200,665,165.69 | | \$ 1,178,433.75 |
| 2027 | \$ 143,104,834.11 | \$ 22,896.77 | \$ 199,174,330.28 | \$ 31,867.89 | \$ 461,395.82 |
| 2028 | \$ 27,937,919.00 | \$ 4,470.07 | \$ 237,608,108.65 | \$ 38,017.30 | \$ 77,730.14 |
| 2029 | | | \$ 238,268,294.56 | \$ 38,122.93 | |
| 2030 | | | \$ 187,187,081.40 | \$ 29,949.93 | |
| 2031 | | | \$ 34,707,607.99 | \$ 5,553.22 | |
| Total--> | | \$ 27,366.84 | | \$ 143,511.27 | \$ 1,717,559.71 |
| Total increase in taxes | | \$ 1,888,437.82 | | | |