



March 10, 2026

Letter No. 372
BY-CRE-04882

Washington State Department of Transportation
I-405/SR 167 Program
18911 N Creek Pkwy S, Suite 150
Bothell, WA 98011

Attention: Evelyn Pao, P.E.
Project Director

Project: I-405/Brickyard to SR 527 – Improvement Project
Contract No.: 009727

Subject : Notice of Protest 019 – Issue SKA-0303 - Juanita Creek Lateral Migration

References:

1. WSDOT SL No. 9727-280, dated February 24, 2026 (Interpretive Engineering Decision)
2. Skanska Letter No. 337, dated January 30, 2026
3. Contract Chapter 1, Section 1-04.5 – Procedure, Protest, and Dispute by the Design-Builder
4. Contract Chapter 1, Section 1-03.5 – Interpretive Engineering Decision
5. Contract Chapter 2, Section 2.30.5.2.1 – Certain Structure and Channel Design Characteristics
6. Contract Table 2.30-B – Structure and Channel Design Characteristics
7. Contract Section 1-02.1
8. WAC 162-08-017 – Usage and Definitions
9. WSDOT RCSR Comments (Nos. 40, 41, 129, 188, 191, 195, 196)
10. WSDOT East Portal Preliminary Comments 3 and 4 (HQH)

Dear Ms. Pao:

Skanska USA Civil ("Skanska" or "Design-Builder") hereby provides this written notice of protest pursuant to Contract Section 1-04.5 in response to WSDOT's letter issued as WSDOT SL No. 9727-280, dated February 24, 2026. Skanska does not accept WSDOT's determination and will continue to pursue this matter in accordance with the Contract's dispute resolution provisions.

Skanska will supplement this protest with a detailed written statement and supporting documents within the time period prescribed by Section 1-04.5. As AECOM is preparing supporting technical documentation and has requested a 14 calendar day extension from WSDOT to complete their response, Skanska respectfully requests that WSDOT grant a corresponding extension for Skanska's supplemental submission to allow for coordination and alignment of the technical record.

1. PRELIMINARY MATTER: WSDOT'S LETTER IS NOT A PROPER INTERPRETIVE ENGINEERING DECISION

As a threshold matter, Skanska notes that WSDOT has characterized its letter as an "Interpretive Engineering Decision pursuant to RFP Section 1-03.5." However, WSDOT's letter does not constitute a proper Interpretive Engineering Decision under the Contract.

Section 1-03.5 provides that "*The Design-Builder may, from time-to-time, request in writing that WSDOT provide information, clarifications, and interpretations of ambiguous or uncertain design requirements set forth in the Contract Documents (an Interpretive Engineering Decision).*" The IED process is designed for

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the Design-Builder to seek clarification of ambiguous Contract requirements. WSDOT may then "issue a Written approval of the Design-Builder's proposed Interpretive Engineering Decision (if any), may issue its own Interpretive Engineering Decision or may disapprove any Interpretive Engineering Decision the Design-Builder proposes."

Skanska's Letter No. 337 was not a request for an Interpretive Engineering Decision. It was a Request for Direction identifying a change condition and seeking acknowledgment of WSDOT's directive to incorporate lateral migration. WSDOT's response does not provide any interpretation of ambiguous Contract requirements—it simply denies liability. This is a coverage letter, not an IED. WSDOT's mischaracterization of its response does not change the substance of the dispute or Skanska's entitlement to pursue this matter through the protest and DRB processes.

2. BASIS FOR PROTEST

Skanska protests WSDOT's determination on the following grounds:

2.1 RCSR Comments Using "Shall" Language Constitute Commands Under Washington Law

WSDOT asserts that RCSR comments were merely "requests for clarification" and did not constitute direction. This characterization is inconsistent with the mandatory language used in the comments and with Washington law.

WAC 162-08-017 establishes the legal meaning of key terms under Washington law: "*Shall* expresses a command. *May* expresses permission." This distinction is critical.

East Portal Preliminary Comments 3 and 4 (HQH) stated that the Design-Builder **"shall confirm that the bottom of wall is 2 feet below total scour at check flood elevation; including lateral migration (structural)"** and explicitly referenced BDM Figure 8.1.10-2 (Scour WITH Lateral Migration). Under WAC 162-08-017, the use of "shall" in these comments constitutes a **command**—not a request, not a suggestion, and not a "request for clarification."

These structural comments are the most directive evidence in the record. They explicitly required the Design-Builder to confirm compliance with BDM 8.1.10-2, which is the scour methodology that includes lateral migration. The Design-Builder incorporated lateral migration in the structural design to satisfy these comments. The structural design then drove beam procurement and other downstream scope growth.

WSDOT's characterization of these comments as mere "requests for clarification" is legally incorrect. WSDOT used command language ("shall") and directed compliance with a specific BDM figure. These are written directives, and the Design-Builder complied with them.

2.2 Comment 196 Explicitly Stated "NOT Low" and Required Revision

WSDOT asserts that "no written direction was issued requiring Juanita Creek to be treated as 'not low.'" This is incorrect. Comment 196 (DJS) explicitly stated:

"Based on what I read, it seems like this should be your summary. 'Based on the available geologic and geomorphic understanding described in section 2, the risk of lateral migration is NOT low.'"

This is a written statement directly contradicting Table 2.30-B's "low" designation for Juanita Creek. The comment further directed revision to incorporate this determination. While WSDOT now quotes the phrase "if this is not correct, please revise" as evidence that the Design-Builder had discretion, this ignores the practical reality: **the comment would not be closed unless the Design-Builder either (a) incorporated the "NOT low" determination as directed, or (b) provided justification for a different**

conclusion that satisfied the reviewer. The Hydraulic Design Report Section 7.1 incorporated the lateral migration analysis in response to WSDOT direction to resolve this comment, and this analysis then fed the structural design.

2.3 Section 1-02.1 Does Not Insulate WSDOT From Directive Comments

WSDOT relies on Section 1-02.1 to assert that review comments cannot amend Contract requirements. However, Section 1-02.1 does not grant WSDOT authority to issue directive comments using mandatory "shall" language that exceed Contract requirements while simultaneously disclaiming responsibility for those directives.

The Design-Builder had no practical ability to close comments and proceed to RFC without incorporating the requirements specified in WSDOT's comments. WSDOT cannot issue commands through the RCSR process—using "shall" language that under Washington law "expresses a command"—and then disclaim responsibility by citing Section 1-02.1. If WSDOT's interpretation were correct, it would render the RCSR process meaningless: WSDOT could direct any scope growth through mandatory comment language and then deny responsibility for the consequences. WSDOT's RCSR comments constituted constructive direction, and WSDOT cannot disclaim responsibility for the cost and time impacts of that direction by invoking Section 1-02.1 after the fact.

2.4 "Full Discretion" Was Not Available in Practice

WSDOT asserts that the "Design-Builder retained full discretion to design in accordance with Table 2.30-B." This assertion ignores the practical reality of the RCSR process. Comments were not closed until the Design-Builder incorporated lateral migration. The Design-Builder could not proceed to RFC with open comments.

Accordingly, the Design-Builder's "discretion" was limited to either: (a) incorporating lateral migration as directed and achieving comment closure, or (b) refusing to incorporate lateral migration and being unable to proceed to RFC. This is not "full discretion"—it is direction with consequences for non-compliance. The comments were accepted by the design team because compliance was required for comment resolution and RFC release.

2.5 Timeline and Design Chain Supports Owner Direction

WSDOT's timeline omits critical context regarding the design chain. The sequence demonstrates cause and effect:

1. WSDOT issued RCSR comments on the Hydraulic Design Report requiring lateral migration analysis (Comment 196 and others);
2. The Design-Builder's designer (AECOM) incorporated lateral migration in FHD Section 7.1 to resolve these comments;
3. WSDOT issued structural comments (East Portal Comments 3 and 4) using "shall" language directing compliance with BDM 8.1.10-2;
4. The structural design incorporated lateral migration per the FHD analysis and WSDOT's structural comments;
5. The structural design drove beam procurement and downstream scope growth;
6. Comments were closed after incorporation;
7. Design proceeded to RFC based on the design developed in response to WSDOT direction.

WSDOT's assertion that the Design-Builder "proceeded to RFC after lateral migration was clarified as 'low'" mischaracterizes the sequence. By July 28, 2025, the design incorporating lateral migration was already substantially complete. The clarification came after the design was developed in reliance on WSDOT's prior direction. The Design-Builder cannot reasonably be expected to abandon completed

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design work and restart based on a belated clarification that contradicted months of prior WSDOT direction through the RCSR process.

2.6 WSDOT's Position Creates an Inconsistent Standard

WSDOT has applied the "low" vs. "not low" lateral migration designation inconsistently across this Contract. At the Sammamish River, WSDOT has drawn a hard line enforcing the "not low" designation and requiring the Design-Builder to apply lateral migration analysis. At Juanita Creek, WSDOT directed the Design-Builder through RCSR comments to apply lateral migration analysis despite the "low" designation, and now seeks to disclaim responsibility for that direction.

WSDOT cannot use the lateral migration designation to its advantage at both locations while placing all risk on the Design-Builder. If the Contract's Table 2.30-B designations control, they must control consistently—WSDOT cannot enforce them where they benefit WSDOT and disregard them (through directive RCSR comments) where they benefit the Design-Builder.

2.7 Scope Growth is Not Limited to Footings

WSDOT's observation that "footing elevations have not changed between preliminary, final, and RFC submittals" is not responsive to Skanska's claim. The scope growth attributable to lateral migration is in the wingwalls, headwalls, fascia wall depth, beam upsizing, micropile shoring, additional excavation, backfill, tie-backs, tunnel interfaces, and buried riprap countermeasures—not in footing elevations. WSDOT's focus on footings does not address the \$5,466,392 in additional scope identified in Skanska's Letter No. 337.

2.8 Buried Riprap Countermeasures

WSDOT requests clarification regarding the design basis for buried riprap. As stated in Skanska's Letter No. 337, the buried riprap scour countermeasures were developed at WSDOT's direction to protect an existing MSE wall outside the limits of the Structure Free Zone. This constitutes additional scope for multiple reasons: (1) scour countermeasures are not required for existing structures under the Contract, only for new structures; (2) the location is designated as "low" lateral migration risk per Table 2.30-B; and (3) requiring the Design-Builder to obtain subsurface easements for countermeasures protecting existing infrastructure is additional scope not contemplated by the Contract. Skanska is prepared to discuss this matter further as requested by WSDOT.

3. REQUESTED RELIEF

Skanska respectfully requests that WSDOT:

- a) Reconsider its determination and acknowledge that WSDOT's RCSR comments—particularly the structural comments using mandatory "shall" language—directed incorporation of lateral migration requirements that exceeded the Contract scope established in Table 2.30-B;
- b) Process an Owner-Initiated Change (OIC) for the costs and time impacts resulting from the directed design changes, in the amount of \$5,466,392 as detailed in Skanska's Letter No. 337;
- c) Provide direction on the buried riprap countermeasures as a potential mitigation opportunity; and
- d) Grant a 14 calendar day extension for Skanska's supplemental written statement to allow for coordination with AECOM's technical documentation (Requested supplemental due date: 4/7/2026)

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4. RESERVATION OF RIGHTS

Should WSDOT's determination remain unchanged following this protest, Skanska intends to refer this matter to the Disputes Review Board (DRB) pursuant to Contract Section 1-04.5(1).1. The DRB is eligible to consider disputes regarding interpretation of the Contract and entitlement to additional compensation and/or time for completion per Section 1-04.5(1).1.2.

Pursuant to Contract Section 1-04.5, Skanska will continue to proceed with the Work as directed while this protest is being resolved. Skanska reserves all rights under the Contract and at law, including but not limited to the right to pursue this matter through the DRB process and any subsequent dispute resolution procedures available under the Contract.

Please contact me if you have any questions or require additional information.

Regards,



Patrick Prendergast, Vice President

Skanska USA Civil
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Bothell, WA 98011

Attachments:

AECOM Notice of Protest – Juanita Creek Lateral Migration - dated March 09, 2026

3/9/2026

Via E-mail

Kyle Sharrer
Skanska USA Civil West California
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**Re: Response to WSDOT SL No. 9727-280 and Notice of Protest per RFP Section 1-04.5
I-405/Brickyard to SR 527 Improvement Project (the "Project")
AECOM Project No. 60713342
Notice of Protest
PCN-00153 – Juanita Creek Lateral Migration**

Dear Kyle:

AECOM acknowledges receipt of WSDOT's correspondence (WSDOT SL No. 9727-280), dated February 24, 2026. In said letter, WSDOT stated, "No written direction was issued requiring application of a 'not low' methodology," and "No Owner-Initiated Change is warranted based on the information present."

AECOM disagrees with the WSDOT Engineer's Written Determination set forth in the aforementioned letter and hereby submits a formal notice of protest in accordance with Section 1-04.5 (1) of the RFP. It is AECOM's opinion that there is entitlement to an equitable adjustment to the Contract Price and Contract Time due to direction provided by the owner of a "not low" methodology and RCSR comments provided that were necessary for the design team to progress their design in a timely manner. This preferential direction was above and beyond contract requirements but was required for design to progress.

Furthermore, pursuant to Section 1-04.5 (2) of the RFP, AECOM intends to supplement this written protest. Given the substantial time required to prepare a comprehensive report detailing the relevant facts and their impacts, the standard timeframe of 14 calendar days is insufficient. Therefore, AECOM respectfully requests an extension of 14 calendar days to ensure the development of an exhaustive and detailed supplemental submission.

This letter is without prejudice to, and with a full reservation of, AECOM's rights, remedies, causes of action, and defenses under the Subcontract, at law, in equity, or otherwise. Nothing in this letter shall be interpreted as a modification or waiver, or an estoppel of AECOM's right to assert the same.

I appreciate your prompt attention to this matter. If you have any questions, please do not hesitate to contact me directly. **Please promptly provide this notice of protest and request for an extension of time to WSDOT per the Design-Build Contract.**



Yours sincerely,

AECOM Technical Services, Inc.

A handwritten signature in black ink, appearing to read 'Jon Guerrero', is positioned below the company name.

Jon Guerrero, PE

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cc: Evan Grant (AECOM)

Richard Patterson (AECOM)