

August 6, 2025

Patrick Prendergast, P.E.
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18911 North Creek Parkway, Suite 300
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WSDOT SL No. 9727-134

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

Subject: **RE: Response to WSDOT SL No. 9727-123, Notice of Protest 002: Owner
Delayed BRT Station Design Delivery**

Reference: **\$1-04.5 (2) Procedure, Protest, and Dispute by the Design-Builder**

Mr. Prendergast:

WSDOT is in receipt of Skanska serial letter No. 213, Response to WSDOT SL No. 9727-123, Notice of Protest 002: Owner Delayed BRT Station Design Delivery, dated July 16, 2025.

WSDOT has reviewed the information provided along with the Skanska serial letter 213, and the determination stated in WSDOT Serial letter 100 remains unchanged that no adjustment for cost or delays is available. Focusing on two items cited in WSDOT SL 100 from RFP Section 1-04.4(5) Matters Not Eligible for Change Orders, items b and k state the following:

“b. Any design changes required by WSDOT as part of the process of reviewing the Design Documents for consistency with the requirements of the Contract Documents, except to the extent directly attributable to errors, omissions, inconsistencies, or other defects in the Basic Configuration as provided herein.

k. Failure by the Design-Builder to comply with Contract requirements.”

The Package 7 Submittal titled “Final Design Intent”, dated Oct. 9, 2024, provided to WSDOT on Nov. 13, 2024, did not fully meet the Contract Requirements for both package contents and level of development. Final Design Submittal is described in the Contract as “prepared when the design for a given element or area is complete” and “it is anticipated that there will be very few revisions or changes at this stage, including completing fill-ins for all applicable Special Provisions” (ref.: RFP Section 2.28.3.4.3 Final Design Submittal). The package had been submitted twice before (10/10/24 and 11/5/24) and rejected both times for deficiencies identified to the Design-Builder. Since the original package submittal on 11/13/24, the Brickyard BT230 package has grown from 220 sheets to 277 sheets (57 sheet increase) and the specification package has been revised from 128 individual specifications down to 109. The

change in the number of sheets and specifications, and number of comments are indicative of the level of development and that does not match the contract definition of the Final Design Submittal.

In an effort to support the advancement of the project, WSDOT agreed to review the 11/13/24 submittal Package 7 submittal as noted in the 11/25/24 email if additional required content was provided by 11/26/24. Before all the specified content was identified or provided on or after 12/4/24, WSDOT proceeded to distribute the package for review and drive to providing comments back to Skanska, returning draft comment on 12/3/24 and remaining comments provided by 12/11/24, with exception of the following:

1. 12/16/24 – 25 mixed calculation and plan comments spread across BT230 (BY) & BT250 (CP) subpackages.
2. 1/21/25 – 65 comments spread across BT230 (BY) & BT250 (CP) plan sheets.
3. 1/31/25 – 1 comment on BT 230 (BY) plan sheets.

Review of the BT230 Brickyard subpackage generated 982 comments. Of the 982 original comments, the Skanska team has concurred that 946 comments are valid and agreed to revise the package to resolve the comment (i.e., this comment received a code of “A”, or “Accepted Comment – Correct, Add to, or Clarify document”). The design development of the package submitted in Nov. 2024 continues as of the writing of this letter driven by comments based on Contract requirements. The 982-comment resolution is broken out as follows:

- 946 comments were accepted with “A”
- 17 comments were deleted (resulting in no further actions with “D”)
- 19 comments are pending further discussion

Regarding the 40 comments that were re-opened on 3/12/25, this process was initiated by WSDOT as the closure of the 40 comments didn’t follow the agreed to process. The WSDOT Design Manager had a verbal agreement with Skanska’s Design Manager regarding the means to close comments from the original submittal package that generated new design elements, which then generated additional comments (i.e.: comments in addition to the original 972). The process to resolve for a review comment that required adding new drawing detail(s) was described approximately as follows:

1. Skanska - Provide new detail(s) for Over-the-Shoulder (OTS) review
2. WSDOT – Review and provide OTS comments on new detail(s)
3. Skanska - Resolve OTS comments in coord. with WSDOT
4. WSDOT/Skanska – Close original comment.

WSDOT requested clarification on 3/6/25 on the process based on challenges the reviewers were having but received no clarification and there was no change to the agreed to process. Without clarification or change, WSDOT followed the process, and when the 40 comments were closed without closing the subsequent OTS comments WSDOT perceived this as an error, and identified these comments were not closed.

On 3/26/25 the WSDOT Design Manager provided a summary of the 40 comments and agreed to take over closure of 27 of the 40 comments, leaving 13 that needed actions by the Design-

Builder to close. Of the 40 comments opened, as of 8/1/25 only one (#432) remains open pending specification review.

Regarding the Building/Non-building comments, WSDOT provided three comments on the Package, one for each of the Station structures: Brickyard Station East, Brickyard Station West, and Canyon Park Station. Each of the comments was identical:

“The structure contains several features typical of a ‘building’ as defined by ASCE 7-16 Chapter 11 as ‘Any structure whose intended use includes shelter of human occupants.’ Examples of such features include: multiple rooms including a restroom, multiple floors and a roof that could behave as diaphragms, and exterior walls around its entire perimeter. Provide a justification for the classification of the stair tower as a ‘non-building structure’ or design the stair tower as a ‘building’. Additionally, if the structure is designed as a ‘building’ the main seismic force resisting systems chosen (Steel OCBF & Steel OMF) are likely not permitted for the current structure height and seismic design category per ASCE 7-16 Table 12.2-1.”

At no time did WSDOT direct the Design-Builder to take another direction or cease design effort, rather WSDOT worked with Skanska to resolve the comments. WSDOT coordinated with Sound Transit and clarified that the approach chosen by the Design-Builder was allowed by the Contract and that answer was provided on 3/31/25, within the timeline defined by the Design-Builder.

For the 50 escalated comments, once WSDOT was made aware of the outstanding comments, the WSDOT Design Manager took immediate action and contacted commentors to close the comments that were identified as a “debate between commenter and EOR or are people not responding.”

The Contract does not specify the timeline to close comments with the understanding that some topics may take longer than others to reach a conclusion in conformance with the Contract. However, the Contract does require that per *RFP Section 2.28.3.2, WSDOT Design Review*, “The Design-Builder shall address all comments made by the WSDOT Engineer in each submittal and shall include comment resolutions in subsequent submittals.”

In achieving the comment resolution, the Contract also requires (same RFP Section reference), “The Design-Builder shall schedule and maintain minutes of all resolution meetings with the appropriate WSDOT staff to document and resolve the Design-Builder’s responses to the comments. It is intended that all comments shall be resolved at these meetings. If agreement is not reached on any specific comment, it shall be resolved as described in the QMP.”

In response, the Design-Builder did not include the minutes for the comment resolution meetings documenting where the comments were discussed or communication with the WSDOT Engineer (or WSDOT Design Manager).

Also related to the escalated comments, our records show that only two comments are currently open (#274 and #751). Comment 274 is pending resolution of the energy code and comment 751 additional information was requested on 4/21/25 to close the comment.

In accordance with *RFP Section 1-04.5 Procedure, Protest, and Dispute by the Design-Builder* states, “If the Design-Builder does not accept WSDOT’s determination, then Design-Builder

shall pursue the dispute and claims procedures set forth in Section 1-04.5(1). In spite of any protest, the Design-Builder shall proceed promptly with the Work as the WSDOT Engineer Orders.”

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Evelyn C. Pao', written in a cursive style.

Evelyn C. Pao, P.E.
Project Director
EP:dh

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