Washington State Department of Transportation

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W. Michael Anderson
Assistant Secretary of Marine Operations
Executive Director

DATE: **SEPTEMBER 15, 2006**

TO: **INTERESTED PARTIES**

RE: **NEW 144 - AUTO FERRIES**
DESIGN - BUILD CONTRACT NO. 00-6674

NOTICE NO. 12

Following are recently received Questions with Answers:

Q: [Paraphrased] Will WSF accept design responsibility for critical parameters of the vessel, specifically including the lines plan, weight, speed, maneuvering, wake and stability?

A: If a proposer commits to use the WSF optional hull form in their Technical Proposal, WSF will take limited responsibility for vessel parameters meeting the requirements of the Technical Specification as described in revisions to the RFP Volume III, Part 3, Design - Build Contract, "Scope of Work" Article provided in **Addendum No. 18**.

Q: [Paraphrased] Will WSF decrease the scope of deliverables within Phase II?

A: WSF will not decrease the scope of deliverables in the Phase II, Technical Proposal requirements. A correction to one deliverable requirement in RFP Volume IV, Technical Specification, Plumbing Fixtures and Accessories Section, is described in **Addendum No. 18**.

Q: [Paraphrased] On what authority has WSF issued the current 144-car ferry RFP?

A: Attached is the September 8, 2006, response from the Office of the Attorney General of Washington.

Sincerely,

David H. Humphreys
Vessel Project Engineer
Washington State Ferries

Attachment

Rob McKenna
ATTORNEY GENERAL OF WASHINGTON
Transportation & Public Construction Division
PO Box 40113 • Olympia WA 98504-0113 • (360) 753-6126

September 8, 2006

John E. D. Powell
Stafford Frey Cooper
601 Union Street
Suite 3100
Seattle, WA 98101-1374

Re: New 144-Auto Ferries (RFP)
Design-Build Contract No. 006674
Martinac Second Request for Clarification

Dear Mr. Powell:

This letter responds to your correspondence to me dated August 23, 2006, described as Martinac's second request for clarification in connection with the above RFP.

WSF has authority to establish the current 144-car capacity for the new vessels to be procured under the RFP for the following reasons among others:

- We agree with the statement in your letter that the "SHB 1680 competitive design-build process remains in effect." That legislation does not dictate or specify the capacity of the new ferry vessels. Rather, determination of appropriate technical specifications for the new vessels, including passenger and auto capacity, was delegated by the legislature to DOT/WSF. For example, RCW 47.60.812 directs DOT/WSF to initiate the RFP process for the new ferries by publishing appropriate notices containing certain information including "the number of auto ferries to be procured, the auto and passenger capacities, the delivery dates, and the estimated price range for the contract..." RCW 47.60.812(1). Similarly, the legislature directed DOT/WSF to prepare "Outline specifications" that would "provide the requirements for the vessels including, but not limited to...capacities for autos and passengers..." RCW 47.60.814(5). Further, the legislature granted DOT/WSF the authority to "modify any component of the request for proposals, including the outline specifications, by addendum at any time before the submittal of bids in phase three." RCW 47.60.814(3). The authority and discretion granted to DOT/WSF to determine the appropriate capacity for the ferries and other requirements remains unchanged. There has been no modification or amendment to SHB 1680. Accordingly, WSF has revised the initially contemplated capacity

requirement of the RFP from 133 to 144 cars, based on its determination that a 144 car capacity ferry will better serve the needs of the public and the ferry system as a whole.

- Legislative funding of DOT/WSF budgets for the new ferry vessels prior to SSB 6241 has never reflected or been tied to a specific auto capacity for the new vessels. Transportation Project Lists published by the legislature in connection with 2003-2005 Biennial Transportation Budget through the 2005 Supplemental Transportation Budget simply describe the project as "replacement auto-passenger ferries" without reference or limitation to a specific capacity. Martinac's apparent assertion that the legislature's funding of the project has been limited to a 130 car capacity design is inaccurate.

- Martinac incorrectly interprets the effect of the Governor's veto of Section 307(8) of SSB 6241. That bill reflected the 2006 Supplemental Transportation Budget which at Section 307 approved a total appropriation of $244,180,000 for the Department of Transportation's Washington State Ferries Construction Program W 2005-2007 biennial budget. As noted in the LEAP Transportation Document 2006-1 as developed on March 8, 2006, within that approved appropriation is funding for "Four 144-Car Replacement Auto-Passenger Ferries." Nothing in the Governor's veto of sub-section (8) of Section 307 of the bill rejected or disturbed the Legislature's appropriation for WSF's construction program. To the contrary, the Governor's veto made clear such funding was preserved and stated as follows:

> Section 307(8) provides funding for auto-passenger ferry vessels using the process identified in Substitute Senate Bill 6853, which did not pass the Legislature. While the Legislature considered the ferry vessel procurement process in Substitute Senate Bill 6853, it was not its intent to eliminate funding for ferry vessels. Therefore, I have vetoed Section 307(8) with the understanding that the funding remains available to the Department of Transportation for the procurement of ferry vessels.

The opening statement of Section 307 states:

> The appropriations in this section are provided for improving the Washington state ferry system, including, but not limited to, vessel construction, major and minor vessel preservation, and terminal preservation, construction, and improvements. The appropriations in this section are **subject to the following conditions and limitations:** (emphasis added)

Contrary to Martinac's contention, once sub-section (8) was vetoed by the Governor, it was simply removed as a condition/limitation to the overall appropriation. As such, the funds addressed in sub-section (8) were thus made available without any of the designated restrictions.

We trust the above addresses Martinac's concerns. Please note future requests for clarification in connection with the current RFP should be submitted directly to WSF's project engineer, David H. Humphreys, as required by Volume II Section 1.4 of the RFP.

Sincerely,

Daniel W. Galvin, P.E.
Assistant Attorney General

cc: David H. Humphreys
Steve Reinmuth
J.M. Martinac Shipbuilding Corporation (via. e-mail)