



**Washington State
Department of Transportation**

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Secretary of Transportation

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W. Michael Anderson
Assistant Secretary of Marine Operations
Executive Director

DATE: DECEMBER 8, 2006
TO: INTERESTED PARTIES
RE: NEW 144 - AUTO FERRIES
DESIGN - BUILD CONTRACT NO. 00-6674

NOTICE NO. 20

A letter from Todd Pacific Shipyards Corporation dated November 21, 2006 is attached. For record purposes, this letter is designated Question No. 16.

A copy of WSF's response dated December 8 2006 is also attached.

Sincerely,

David H. Humphreys
Vessel Project Engineer
New 144-Auto Ferries Project
Washington State Ferries

Attachments



Question #16
11-21-06 2:29pm

TODD PACIFIC SHIPYARDS CORPORATION

1801 - 16th Avenue Southwest, Seattle, WA 98134 • P.O. Box 3806, Seattle, WA 98124

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ISO 9001 Certificate Number 33332

November 21, 2006

Mr. Dave Humphreys
Washington State Ferries
2901 3rd Avenue, Suite 300
Seattle, WA 98121-1042

Dear Mr. Humphreys,

Todd Pacific Shipyards believes it is time to get down to the bare, hard facts regarding the revisions we must have in the 144-auto ferry program in order to stay in the RFP process. We believe it is in our mutual interest to be exceptionally clear and specific about the changes we have concluded are necessary to make this program commercially viable. Todd acknowledges that WSF has made a number of changes already, and we do appreciate the progress marked by those adjustments. We have sidelined a number of issues of great concern to us, but which do not rise to the level of those addressed here.

Although Todd is very interested in building the next generation of ferries for Puget Sound, there must be major improvements in the areas of Changes and Drawings in the Contract and Specifications if we are to do so. Without a positive response, we will have to conclude the terms of the RFP are not commercially reasonable and reluctantly find it necessary to withdraw. In our opinion, RFP revisions reflecting the attached proposals will also reflect commercial norms for this type of project. Conversely, without such revisions, we find the RFP unreasonable and outside commercial norms. We respectfully request a definitive response by December 8th, 10 workdays from this letter. In the meantime, if we can respond to questions, we will be pleased to do so.

Rightly or wrongly, we believe that on the Jumbo Mk II project WSF actions in these two areas of the contract drove Todd off our planned Build Strategy. This directly resulted in a major financial loss that was never fully recovered and which we cannot countenance revisiting. Todd has concluded that excessive numbers and inappropriate pricing of Changes and unreasonable requirements for and reviews of Drawings are the areas of greatest program risk. Whether WSF agrees with that assessment or not, without revisions to those elements, we cannot continue.

We acknowledge that our risk evaluation and business decision whether to go forward ultimately is an internal matter. But WSF will share in the consequences, including the potential need to reconstitute the entire new build program and the possibility of a year or more of delay while addressing new legislation. In short, WSF and the citizens of Washington will be directly,

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Mr. Dave Humphreys
Washington State Ferries
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significantly, and positively or negatively affected by your decisions relative to the enclosed proposals.

We believe these proposed revisions are rational and preserve the necessary rights and legitimate responsibilities of WSF and are therefore reasonable for WSF to accept. The attached two documents, one on Changes, and one on Drawings, present our needs. Todd looks forward to concluding these matters by December 8th as requested above, so that the design work of Phase II can begin as soon as possible.

Sincerely,



Stephen G. Welch
Chief Executive Officer
Todd Shipyards Corporation

Enclosure:

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CHANGES

Changes were a major source of project cost increase and disruption on the Jumbo Mk II project. There were more than four hundred (400) individual changes identified during the course of the project. It is impossible to effectively manage the design and construction of a complex shipbuilding project in an environment of constant and excessive change.

Four (4) sub-topics within the realm of Changes need revision. The Summary at the end itemizes the Contract revisions sought. The four (4) sub-topics are:

- Quantity and Size of Changes
- Change Order Rates and Fees
- Acceleration, Delay and Disruption
- Schedule Float

Quantity and Size of Changes:

History shows that Changes on WSF projects have been too large and there have been too many. Their disruption to the establishment of a stable, orderly design, procurement and manufacturing process is exceedingly difficult to quantify and the costs are never entirely recovered. In some other public agency ferry construction contracts, Changes are quite limited, nearly prohibited. Todd seeks a balance between excessive Changes, and none.

Todd acknowledges WSF's need and right to direct Changes in certain circumstances. We seek establishment of a structured means in the Contract to better manage the process and to preclude Changes from taking control of the project.

Looking at the nature of past Changes, some were driven by regulatory requirements, and some by necessity to realize meaningful system functionality. However, some were driven by pure preference, internal WSF turf-wars, or low-level needs for marginal improvements ("better, easier, faster" vs. "good enough, meets the Spec.").

Todd proposes that the Contract be revised to create a two-tiered system of Changes. One set is designated as "Essential" and one set as "Non-essential."

Essential Changes are those that cannot be deferred or declined if the ship is to be certified to enter service and function in a safe manner. Essential Changes are those required by Regulatory Agency, or certified by the WSF Project Engineer to be essential for the safety of the vessel. All other Changes will be designated Non-Essential.

All Changes (with perhaps an exception of a most unique situation) should be fully priced and any schedule impact negotiated before initiation. Directed Changes, in the absence of written mutual agreement, should be a last resort, should therefore require the written approval of a WSF authority greater than the Project Engineer, and must be limited only to Essential Change". WSF should not have the right to direct Non-essential Changes.

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If the nature of the Change (Essential or Non-essential) or the cost or schedule cannot be agreed upon through bona fide good faith negotiations, then the issue should be directed to the Disputes Resolution Board. If it is not fully resolved there, the parties will follow the steps already provided for disputes.

Change Order Rates and Fees:

Setting Change rates and fees unilaterally on a long-term construction Contract, without reference to the nature and timing of such Changes, is not appropriate and is not acceptable to Todd. Change Order rates should be a bid value, and should be evaluated as part of the total evaluated price for Contract Award.

WSF should establish a quantity of hours, and a quantity of material and/or subcontractor dollars, against which the bidder's stated rates are applied and extended to create a dollar value to be added to the basic ship construction price. Thus the bidder's rates will be evaluated in the total price to determine the low bidder. This is very similar to WSF practice on prior projects. There is no necessity that the quantity of hours or material / subcontractor dollars used for this evaluation purpose have any other meaning in the Contract; they do not set a limit, or establish a pool that would enable new rates to be applicable when the pool is exhausted. They should of course be commensurate and reasonable in terms of the size and duration of the Contract. They should be a set on a per ship basis. For clarity, the following table exhibits the intentions stated above:

A	B *	C *	D *	E **	F **	G **	H
Ship	MH Rate for ST only	MH Rate for OT only	% Mark-up Rate of Materials and Subs	Assumed Number of ST MH	Assumed Number of OT MH	Assumed Materials & Subs Dollars	Extended \$\$ Per Ship: B x E + C x F + (1 + D) x G
Ship 1							
Ship 2							
Ship 3							
Ship 4							
							SUM

* Values in these columns are provided by the Bidder.

** Values these columns are provided by WSF.

The method illustrated above is in common use in shipbuilding and repair contracts. As WSF is well aware, that includes many of your own contracts. Conversely, we are not aware of a single shipbuilding contract anywhere that allows the Owner to determine the Changes rates unilaterally. We surmise the rates calculation in the WSF contract came from the roads and bridges world of the DOT. Those may work well in that industry, but they do not reflect the shipbuilding industry and are not acceptable to Todd.

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Acceleration, Delay & Disruption:

The Contract states that the Fee, however developed, covers all Contractor entitlement, including acceleration, delay and disruption (A, D&D). Many Changes will have no A, D&D. Some may have quite large impacts that could never be adequately addressed by simply asserting it is included in the rates. The present approach is not acceptable commercial terms, and to our knowledge has never been accepted in any shipbuilding contract. A, D&D must be negotiated for each Change individually and include a provision for the cumulative impacts.

The universe of A, D&D includes all impacts to the planned performance of the Contract Work. Assuming entitlement to an extension of a major milestone, until the extension is negotiated and settled, the Contractor must work to achieve the current major milestones, or risk damages. Consequently, the Contractor is forced to accelerate. Acceleration may mean added manning, overtime, extra shifts, etc. All of these have incremental costs. Contractor entitlement to reasonable, incremental costs of acceleration must be accepted within the Contract, provided the entitlement to extension is upheld in negotiation.

We propose the Contract language be modified to remove A, D&D from the rates, establish separate entitlement to be negotiated by the parties in light of the details of each case, and establish a Memorandum of Agreement process in the Contract, to codify a mutually satisfactory structured approach to A, D&D discussions.

While hardly the only method in commercial use, Todd and WSF have successfully used NAVSEA's A, D&D calculation method on prior contracts. We will entertain other methods that achieve similarly structured approaches to quantification of impact.

Schedule Float:

The present Contract provides that WSF has no exposure, no consequences, if they drive the Contractor off his schedule. That is patently inequitable and cannot be accepted.

An obvious example would be the delivery by WSF of OFE that is not part of the propulsion system, such as the diesel-generator (DG) sets. DG-set delivery is not a major milestone. Consequently, under the current terms of the RFP, WSF could *never* deliver these items and would escape all liability for such an omission. Obviously, creating one more major milestone to address this example, does not remedy the problem.

If WSF is materially responsible by acts or omissions for disrupting the Contractor's schedule, there must be a reasonable avenue for cost recovery associated with such WSF actions. Todd does not expect recovery of costs other than bona fide incremental costs of actual impact – there should not be a Contractor windfall. But there also cannot be a free pass for WSF. The Contractor has performed risk assessments, established a plan and a Build Strategy, created a detailed schedule, integrated its actions with a myriad of subcontractors and suppliers, relied upon the obligations of WSF to perform their portion of the Contract requirements, and based on these elements, has assembled a cost estimate. The pricing developed from that is the Contractor's bid, and is an expression of the

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totality of that overall plan. WSF cannot consume the float, or require the contractor to alter its planned work sequences or methods embedded within the schedule, without bearing the cost consequences of such actions or omissions.

In the WSF reply letter of 9/15/06, it was stated that WSF must “preclude any claim based on a delay to early completion...” We do not seek an entitlement to a claim for delaying an early ship completion. But if we have work planned, in sets we find attractive for managing and meeting cost, schedule, and quality objectives, and WSF actions preclude that planned work from occurring, or delay or disrupt it, breaking a chain of planned, interlocking events, we must and should be entitled to recover the incremental costs of WSF’s actions. It is unreasonable for WSF to require precise planning and scheduling by the Contractor throughout the Contract and then assert that WSF is immune from any of its actions affecting the program, other than impact to a very limited number of major milestones.

In determining what liability, if any, WSF might have in a given case, a retrospective view of how the Contractor “might have done things differently” is irrelevant. Refer to Contract 26.1 (3)); Todd acknowledges the obligation to proactively respond, mitigating undesirable situations that may arise, but we reject the notion that a retrospective creation of imaginary alternative schedules to those actually planned, has any relevance to entitlement. The Contractor should have to provide reasonable documentation and evidence of what the plan was, show that it was reasonable to have expected substantial achievement, and show that specific acts or omissions by WSF were substantially, but not solely, the cause of impact to the established plan.

If the Contractor solely disrupts himself, because of failures to plan, control, or execute sufficiently, or any other reasons, then we bear the costs of that ourselves. The shorthand phrase is that the Contractor “owns the float” in the schedule.

Todd proposes the Contract be revised to remove statements that exempting WSF from all responsibility for acceleration, delays and disruptions.

SUMMARY:

The following are the revisions we require, summarized in brief:

1. Quantity and Size of Changes
 - a. Establish and define “Essential Changes” and “Non-essential Changes”.
 - b. Limit WSF right to only direct “Essential Changes”.
 - c. Require approval of an authority higher than the WSF Project Engineer to direct Changes except by mutual agreement with the Contractor.
2. Change Order Rates and Fees
 - a. Provide for Change Order Rates to be a bid values, per ship
 - b. Provide reasonable quantities per ship to be used for Total Bid Evaluation.

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- c. Provide that these quantities have no meaning other than for use in bid evaluation, and do not create a pool, or grounds for new rates if and when the quantities are exceeded.
 - d. Revise the Bid Form to suit this approach.
 - e. Provide that A, D&D are not included in these rates or fees.
 - f. Delete after-the-fact re-pricing of agreed Changes by WSF as allowed in 17.6.5
3. Acceleration, Delay & Disruption
- a. Provide that A, D&D are not included in the rates or fees.
 - b. Provide that A, D&D will be negotiated in the context of each Change.
 - c. Provide for development by the parties, post-award, of Memoranda of Agreement, establishing a structured means of quantifying A, D&D, including cumulative impacts.
 - d. Provide that costs of A, D&D cannot exceed those actually incurred or reasonably anticipated to occur.
4. Schedule Float
- a. Provide that WSF is financially responsible if it causes the Contractor to deviate from his planned work organization and schedule.
 - b. Provide that causing schedule disruption and need for schedule acceleration is not to be defined solely as impact to Major Milestones.
 - c. Provide that only costs incurred or reasonably expected to be incurred can be recovered.
 - d. Provide that in assessing impact, a retrospective analysis of how the Contractor might have planned the work differently, and might therefore not have been impacted, is completely immaterial – planning the work is our right and obligation, the Contractor “owns the float” and our plan and our pricing are mirror images of one another.

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Todd provided our concerns regarding drawings in our letter of 9/6/06. The WSF letter of 9/15/06 replied in effect saying Todd was simply over-stating the case, embellishing the potential for problems. In fact, the Jumbo Mk II drawing approval program was exceedingly costly and disruptive for both Todd and WSF. The drawing approval process directly added many millions of dollars in cost to the project and created project delays. Those delays required tens of millions of dollars of acceleration and other costs to overcome the impacts. We are trying to bring forward into this program some of the lessons learned in that one.

Three (3) sub-topics need attention to resolve the Drawing issue. The Summary at the end itemizes the Contract revisions sought. The three (3) sub-topics are:

- Clarifying Approval And Review
- Limit The Definition Of Working Drawings
- Relieve The Constraints On Design Sequence

Clarifying Approval and Review:

The Contract as part of Definitions and at Article 10.1 addresses drawing submittal for approval by WSF. Specification Sections 1.C.9 and 100.3 also refer to approvals (not reviews). In the Contract and in the Specification, there are subsequent events that hinge on the approval of drawings.

However, "approval" is not one of the available specified outcomes of the review process as addressed in Specification Section 100.15, or anywhere else we can find. In fact, there are precisely four (4) defined outcomes of the WSF review process:

- Reviewed
- Reviewed, Returned With Comment
- Returned, Not Substantially Complete
- Returned, For Revision

None of these are "approved". This contractual ambiguity must be cleared up.

The consequences of the current uncertainty will be significant if Todd thinks "Reviewed and returned with comments" is the functional equivalent of approval, but WSF thinks only "Reviewed" qualifies as approval. These seemingly mundane issues were the source of great confusion, disagreement, emotion, and financial impact on the Jumbo Mk II project. No doubt both Todd and WSF agree this process should be simple, the outcomes easy to understand, and the expectations mutual.

Todd requests the Specifications be revised to define "approval" of working drawings as what is presently defined as "Reviewed" or "Reviewed, and Returned with Comments." "Reviewed and Returned With Comments" is defined as "minor" discrepancies. The entire production and procurement effort reflected by a given drawing must not be held in abeyance for minor discrepancies.

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To address minor discrepancies in an orderly and timely manner, we propose a requirement that the Contractor either acknowledge the comments as legitimate and/or identify any with which he disagrees, in a written reply to WSF, before proceeding with any work associated with the drawing in question.

Items not immediately and affirmatively resolved through mutual discussion within five (5) work days (total, following submittal of the written reply) should become the subject of a "situation" and reported according to Contract Section 9, Contract Reports. Items acknowledged as legitimate and which affect the physical product, will have an ECN issued. Items acknowledged as legitimate, but which do not affect the physical product will be addressed at the next revision; the Contractor's acknowledgement constitutes a commitment to address the problem at that time.

Lastly, Todd seeks a statement of commitment by WSF in Contract Section 10, stating that WSF will not unreasonably withhold working drawing approval, delaying prosecution of the work, due to format or other discrepancies of low importance, or due to Changes not incorporated within reasonable periods following conclusion of the Changes process.

Limit the Definition of Working Drawings

Contract at Definitions and Specifications 100.16 on page 49 require "all Working Drawings" to be as-built. The same is stated in Specifications 100.8 on page 34. Contract Section 10.7 also refers to working drawings becoming as-builts. Contract Section 10.5 says WSF Representatives will review each working drawing submitted. Contract Section 10.1 says the working drawings must be submitted and approved.

Working Drawings are defined in Contract Section 1.1 on page 6, including the phrase "for the purpose of...providing direction to installing workers...". The Jumbo Mk II Contract had a nearly the identical definition. On that program this definition was taken to mean every single instance of work instruction, including lofting sketches, pipe spool drawings, steel cut sheets, HVAC duct spools, etc. It was interpreted to include the very lowest level of detail, and make all of that subject to submittal, approval processing, approval as a pre-requisite to construction, approval tracking, etc. Literally thousands of individual pipe spool drawings, sheet metal bend and form layouts, and cut-sheets for structural stiffeners were subjected to this process, an enormous cost to both parties, for virtually no benefit to anyone. If these "shop" drawings contain a workmanship error, it is without dispute the Contractor's responsibility to correct such an error at no cost to WSF.

Properly complete arrangement and detail Working Drawings will provide WSF with all necessary materials, workmanship, testing, and configuration data to support construction and maintenance throughout the life of the vessel. There is no need or benefit to pushing these lower level details of component fabrication through this arduous and time-consuming process.

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Todd proposes that the definition of working drawings be amended specifically to exclude pipe spools, lofting packages, steel cut sheets and nesting sheets, and other documents reflecting similar, low levels of shop fabrication detail relating to component production. Todd does not object to these shop drawings or sketches becoming available to WSF to assist in the inspection process and the vessel's lifetime maintenance program, but the absolute requirement that they be submitted and approved prior to the start of construction is impractical and is not acceptable.

Relieve the Constraints on Design Sequence

Specifications 1.C.9, page 10, lines 12 -15 require that no work on numerical control tapes for steel cutting can be performed until WSF has approved the lines fairing. Similarly, Specifications 100.12 at page 41, lines 5 – 10 require the composite drawings to be 100% complete, and approved, before working drawings will be reviewed.

Todd is extremely concerned about both requirements unreasonably affecting our ability to progress all dependent design, material, and production tasks in a timely manner, while unimportant or unrelated details are completed and reviewed. The language constrains us to work in serial fashion, when parallel efforts are completely reasonable, appropriate, and necessary. With the existing language, we are not able to cut stiffeners for a bulkhead in one part of the ship, while we wait for light fixture locations to be approved two decks away.

This is completely unacceptable. No Contractor can wait until the entire ship is designed, every cable and stick of pipe, from keel to masthead, before starting production. A single late item of vendor-furnished information would hold up the entire effort. A disagreement between the Contractor and WSF over any one of thousands of details can delay approval of the composites, ship-wide. Neither of us can tolerate this situation.

Todd proposes the subject lines of Specification Section 1.C.9 be replaced with language that says the NC packages and/or frame offsets are subject to WSF sampling to show conformance to the approved, faired lines plan.

Regarding the composites issue, we will use ShipConstructor software. It generates a three-dimensional "product model" that can be cut and sliced to look at the design in many ways. Todd expects to routinely and frequent invite WSF representatives to review design in 3-D "fly-by" joint reviews of the product model prior to working drawing submittal. We believe Todd and WSF are thinking much alike in terms of objectives (i.e. needing a substantive composites effort, avoid rework and unexpected interface issues, etc.), but the Specifications language has not kept up with the tools in place today.

Customarily the design process supports the build sequence by moving from block to block by phase of work. It is imperative the composites and Working Drawings development and approval processes are synchronized to permit review and approvals on a progressive basis. The current Specification requirement is for all composites to be

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completed and approved before any Working Drawings are submitted. This is obviously unworkable and therefore unacceptable.

Todd proposes the following:

- Revise figure 100-1, by replacing the text in two locations that currently refers to “Detailed Construction and Shop Drawings” with the words “Working Drawings”
- Provide an alternative in Section 100.12 to use 3-D CAD software including a “product model” at the same level of detail and including the same ship systems as required in the existing Specification text.
- Revise lines 8 – 10 on page 100-41, to allow development, review and approval of composite and working drawings on a block by block basis consistent with the Contractor’s build strategy.
- Permit review and approval of working drawings if WSF has participated in a product model review meeting focused on the location and systems of interest.

SUMMARY:

The following are the revisions we need, summarized in brief:

- Clarifying approval and review
 - Provide that “Reviewed” and “Reviewed, and Returned with Comments” shall both be considered “approved”.
 - Require the Contractor, upon receipt of comments on drawings, to
 - Provide a written reply to WSF, indicating agreement or disagreement prior to performing any work addressed by the drawing.
 - If agree, and item is related to the physical ship, issue an ECN or drawing revision.
 - If agree, and item is format or similar minor administrative item, no ECN is required, but the Contractor’s written reply indicating agreement is a commitment to address the item at the next revision.
 - If disagree, the item shall be discussed by the parties within three (3) workdays.
 - If there is no agreement within five (5) workdays, the Contractor shall submit a Contract Report iaw Contract Section 9.
 - Contract Section 10 shall be revised to include a statement to the effect that WSF will not unreasonably withhold approval of working drawings, due to format or other issues that do not directly affect the production work depicted by that drawing, or due to Changes not incorporated into the drawings within a reasonable period to do so.
- Limit the definition of working drawings
 - Revise the definition of working drawings specifically to exclude pipe spools, lofting packages, steel cut sheets, nesting sheets, sheet metal lofting and bending sheets, and other documents reflecting similar shop

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- levels of detail relating to component production, provided design and material information is contained on working drawings.
- If WSF desires to see these documents, but not conduct a review and approval process, the Contractor shall provide timely information-only copies.
- Relieve the constraints on design sequence
 - Revise Specifications 1.C.9 to say that NC tape and/or frame offsets are subject to WSF sampling to verify conformance to the approved, faired lines plan.
 - Revise figure 100-1, by replacing the text in two locations that currently refers to “Detailed Construction and Shop Drawings” with the words “Working Drawings”.
 - Provide an alternative in Section 100.12 to the prescribed composite drawings requirements to use 3-D CAD software including a “product model” at the same level of detail and including the same systems as required in the existing Specification text.
 - Revise lines 8 – 10 on page 100-41, to allow development, review and approval of composite and working drawings on a block by block basis consistent with the Contractor’s build strategy.
 - Permit review and approval of working drawings if WSF has participated in a product model review meeting focused on the location and systems of interest.



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Douglas B. MacDonald
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Michael Anderson
Executive Director

December 8, 2006

Stephen G. Welch
Chief Executive Officer
Todd Pacific Shipyards Corporation
1801 - 16th Avenue SW
P.O. Box 3806
Seattle, WA 98124

Re: New 144 - Auto Ferries
Design - Build Project

Dear Mr. Welch,

WSF has considered the concerns raised by Todd in your letter of November 21, 2006.

In regard to Changes, it has always been WSF's intent to attempt to reach agreement with the successful Phase III shipyard on a composite change order rate which would apply to change orders for an agreed period of time. The revisions made to Article 17 of the Design-Build Contract, as reflected in Addendum 22, are intended to make WSF's intent in this regard clear. WSF does not believe any other revisions to the RFP documents relating to Changes are necessary or appropriate.

Addendum 22 also provides for certain revisions to the RFP documents in regard to the content and review of drawings.

We recognize that Todd and WSF have different views on many of the issues addressed in your November 21, 2006 correspondence. However, for the reasons articulated in our prior communications to Todd, we believe that the provisions of the RFP documents are reasonable and appropriate and that Todd has adequate means to guard against or minimize the business risks it perceives to be inherent in the project.

Yours truly,

David H. Humphreys
Project Engineer
New 144-Auto Ferries Project
Washington State Ferries

cc: Mike Anderson
Steve Reinmuth
Daniel W. Galvin

