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I appreciate the opportunity to provide my testimony on House Bill No. 1028. While I recognize the bill's intent is to enhance transparency and consistency in public project procurement, the proposed changes raise several concerns that I have outlined in specificity below.

## **Section 1: Selection Committee Exclusion**

### **Concern**

House Bill No. 1028 excludes project-specific architects and engineers from serving on the selection committee. As someone who has overseen numerous public improvement projects, I find this exclusion counterproductive to the goal of assembling the most qualified project team.

### **Reasoning**

#### **1. Project Expertise and Alignment**

Architects and engineers contracted for the project already have deep familiarity with the project goals, constraints, and design requirements. Their first-hand understanding is critical to evaluating proposals that align with the project's vision and technical demands.

#### **2. Continuity**

Cohesiveness from initial concept to final construction is essential. Removing key design professionals can fracture communication and introduce gaps in understanding the project's evolving needs.

#### **3. Preventing Bias Influence on Selection**

Any professional can bring inherent biases, whether they are part of the project team or not. Century Code already prevents a legal conflict of interest by prohibiting firms with shared ownership from providing both architectural design and construction management services on the same project. Additionally, architects and engineers have a fiduciary duty to act in the best interest of the project owner, which helps safeguard against improper bias. Excluding these professionals—who are bound by ethical and legal standards—may open the door to decisions driven by existing relationships or less transparent considerations.

#### **4. Motivation for Project Success**

The contracted project team is already invested in seeing the project succeed. Their reputation and professional credibility hinge on delivering quality outcomes. By removing them from the selection committee, you lose input from those with perhaps the strongest incentive to ensure the project's viability.

Excluding project-specific architects and engineers can undercut the selection process by removing knowledgeable professionals who already have a vested interest in the project's success.

Their expertise, continuity of vision, and fiduciary obligations are critical assets in forming the best possible project team.

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## **Section 2: Standardized Bid Form**

### **Concern**

The proposed creation of a single, standardized form for fees and expenses is well-intentioned but may inadvertently overlook the unique requirements of individual projects.

### **Reasoning**

- 1. Project Variability**

Public improvement projects differ significantly in scope, complexity, site conditions, and regulatory constraints. A rigid form may prevent submitting firms from accurately tailoring bids to a project's specifics.

- 2. Risk of Overpayment**

Public projects are often planned with an initial budget that turns out to be incomplete or underestimated. When fees—especially those calculated as a percentage—are locked in too early, owners risk overpaying if the project scope and budget expand down the line. A standardized form that fails to account for this evolution can inadvertently lead to higher costs than necessary.

While uniformity and clear baselines have benefits, a single rigid form can undermine cost accuracy and flexibility. Allowing some project customization—supported by example templates and historical data—balances transparency with the practical realities of public projects.

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## **Section 3: Fee Criteria Weight Concern**

House Bill No. 1028 mandates that fees must comprise no less than 20% of the selection criteria, overshadowing other factors that typically range between 5% and 20%. This imposes a heavy emphasis on cost at a time when critical project details are still undeveloped.

### **Reasoning**

- 1. Premature Emphasis on Fee**

In a Construction Manager at Risk (CMAR) delivery method, the construction manager is selected during early design—often before the final schedule, budget, and phasing plan are established. At this juncture, firms lack sufficient information to calculate general conditions, overhead, and profit with any real accuracy. Elevating fee to a minimum 20% weight in the selection criteria forces construction managers to protect their margins by estimating higher rates to cover risks they cannot yet quantify.

- 2. Risk of Paying More**

Early in the process, budgets are notoriously underestimated. If a CMAR bases its fee on a

smaller initial budget and that budget later expands, the owner may end up paying a premium because the fee—set too soon—doesn't adjust downward. By waiting until the budget and scope are clearer, fees can be negotiated more accurately, possibly leading to lower overall costs.

### 3. **Fit vs. Fee**

The primary goal of a Request for Qualifications (RFQ) is to find a firm that best fits the project in terms of expertise, track record, and innovation—not solely on cost. Overemphasizing fee at this stage undercuts the holistic evaluation that owners need to identify the right construction partner.

Requiring no less than 20% of the selection criteria be allocated to fees at this early stage can lead to inflated or inaccurate cost proposals and increased total project expenses. A more balanced, flexible approach—where a CMAR's fee is negotiated once project parameters are better established—would ultimately result in more accurate pricing and a superior alignment of contractor capabilities with project needs.

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### **Final Thoughts**

In conclusion, while House Bill No. 1028 seeks to promote consistency and fairness in public construction projects, it could inadvertently have detrimental results on public projects:

- **Excluding project-specific architects and engineers** removes the most informed and ethically bound parties from pivotal decisions, compromising both continuity and expertise.
- **Imposing a rigid, one-size-fits-all bid form** can lead to cost inaccuracies and block crucial project-specific information.
- **Mandating a minimum 20% fee weight in early selection** compels inflated, imprecise estimates and may ultimately inflate overall project costs.

I strongly urge the Committee to give HB 1028 a Do Not Pass.