

House Bill 1028 – Support

January 30, 2025

RE: Support of House Bill 1028

Good Morning Chairman Schauer and Members of the GVA Committee:

My name is David Wood. I am the Construction Executive for Roers Construction in Fargo and I'm testifying today in support of House Bill 1028. Roers is a mid-sized General Contractor and Construction Manager with offices in Fargo, Bismarck, Dickinson, and Minot, North Dakota. I support this bill for three primary benefits for the state of North Dakota. Passing House Bill 1028 will:

- 1. INCREASE FAIR-COMPETITION AMONGST CMAR FIRMS**
- 2. REDUCE COST OF CMAR PUBLIC IMPROVEMENT PROJECTS FOR TAXPAYERS**
- 3. STANDARDIZE BID FORMS TO MAKE FEES TRANSPARENT FOR SELECTION COMMITTEE**

Let's review these benefits in more detail:

BENEFIT 1: INCREASE FAIR-COMPETITION AMONGST CMAR FIRMS

Currently, how North Dakota Century Code 48-01.20 subsection 5 is written, the CMAR selection criteria is based on:

- a. The person's experience on any similar project;
- b. The person's existing workload and availability capacity;
- c. The person's key personnel experience on any similar project;
- d. The person's safety record;
- e. The person's familiarity with the location of the public improvement;
- f. The person's fees and expenses;
- g. The person's compliance with state and federal law; and
- h. Any reasonable information the selection committee deems necessary

Subsection 6 clarifies that each of these items needs to be weighted, with no item being weighted at more than 20% and no item less than 5%.

Figure 1.1 on Page 2 of the packet I provided shows the scoring criteria for the most recent RFP we submitted a proposal on just last week at NDSU:

Figure 1.1

Section 2.	Similar Project Experience (20 points)
Section 3.	Workload & Availability (20 points)
Section 4.	Key Personnel (20 points)
Section 5.	Safety Record (5 points)
Section 6.	Familiarity with Location (15 points)
Section 7.	Fees and Expenses (5 points)
Section 8.	Compliance with State/Federal Laws (10 points)
Section 9.	Other reasonable information the selection committee deems necessary (5 points)

As you can see from Figure 1.1, the fees and expenses are only weighted 5% of the total score and is typical of what we are seeing on RFPs for CMAR public improvement projects. This has resulted in the same 5 large national firms primarily being selected for all the CMAR public improvement projects. I have been with Roers for almost 7-years, and we have submitted proposals for approximately 30 CMAR RFPs for the state over that time. We have only been selected once and that was because we scored high due to the familiarity of the elementary school in the small town that my children attended. In that same timeframe we have been extremely successful on projects we have pursued on hard bid projects that were solely based on price. Roers has also been successful on multiple CMAR RFPs with private companies, just not on state public improvement projects. We always score high on the fees and expenses section. The main reason we are unsuccessful for the overall score is that we do not score well on experience on similar projects; our personnel's experience on similar projects; and familiarity with location because the same 5 large national firms continue to be selected and have many more projects they can showcase (often times the RFP asks for experience within past 3-5 years).

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Roers isn't the only construction management firm being overlooked either. There are multiple reputable companies like us who have built some really impressive structures; have qualified personnel with decades of experience; have the bonding capacity; and can effectively manage the schedule and budget, yet get overlooked as the CMAR for public improvement process. The competitive nature of the CMAR selection process is flawed and it has resulted in many of the mid-sized construction firms no longer choosing to submit proposals. This reduction of competition results in higher prices for the taxpayers.

By weighting the fees and expenses to a minimum of 20% of the selection criteria it will require the top 5 national firms to tighten up their belt when submitting fees and expenses and by leveling the playing field we may see some of the local mid-sized companies willing to submit proposals again.

BENEFIT 2: REDUCE COSTS OF CMAR PUBLIC IMPROVEMENT PROJECTS FOR TAXPAYERS

If costs were a more significant factor in the CMAR selection process it would save the taxpayers money. **Figure 2.1** on Page 3 of the packet I provided shows an example of actual fees that were submitted for an approximately \$9.0 Million construction project at one of the universities in the state. Out of respect for the University and the other construction management firms involved I kept the project and names anonymous.

Figure 2.1

ND University Project (Cost of Work ~\$9,000,000)				
CM Firm	Gen. Conditions	Preconstruction Fee	CMAR Fee	Total Fees
Roers	\$ 225,829	\$ 22,500	\$ 427,500	\$ 675,829
Selected CMAR	\$ 229,100	\$ 28,000	\$ 665,100	\$ 922,200
2nd Place CMAR	\$ 323,982	\$ 18,900	\$ 764,100	\$ 1,106,982
Difference of \$246,371 to Selected Firm and \$431,153 (2nd Place CMAR)				

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As you can see from **Figure 2.1**, the fees and expenses Roers proposed were lower than other two top scoring CMAR firms by \$246,371 and \$431,153 respectively. This project was a student housing project. Roers has successfully constructed hundreds of student housing units near university campuses in North Dakota over the past five years. We were more than qualified to perform the CMAR services on the project, had the lowest fee, and were not even shortlisted to interview for this project due to the flawed scoring system. **Figure 2.2** on Page 4 of the packet provided shows the actual scores received for the University Housing Project.

Figure 2.2

ND University Project				
Firm's name		Selected CMAR	2nd CMAR	Roers
Scoring Criteria	Maximum Points			
The firm's experience on any similar project	20 points max per committee member	73	68	59
The firm's existing workload and available capacity	20 points max per committee member	70	69	65
The firm's key personnel experience on any similar project	20 points max per committee member	67	62	58
The firm's safety record	5 points max per committee member	19	20	13
The firm's familiarity with the location of the project	15 points max per committee member	56	55	58
The firm's fees and expenses	5 points max per committee member	18	13	20
The firm's compliance with state and federal law	10 points max per committee member	40	39	40
Other pertinent information that CMR Contractors is able to provide	5 points max per committee member	18	16	13
Totals	400	361	342	326

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As you can see highlighted in **Figure 2.2**, there are areas in which Roers could improve compared to the competition. However, we might not ever be able to compete with the national firms on similar experience and key personnel. However, what Roers and other construction managers similar to us can do is provide exceptionally qualified personnel and do it at a fair yet profitable fee. The lower fees and expenses proposed by Roers on the ND University project shown in **Figure 2.2** only gained us a 2-point differential out of a possible 400 points and a 10% difference in overall scoring even though our costs were \$250,000 less, which equates to a 27% lower fee than the top scoring CMAR. The fees and expenses essentially resulted in a negligible difference of 0.5% of the total scoring. This is just one of many examples of the additional CMAR costs our state is incurring on public projects; and this project was relatively small in comparison to other CMAR projects.

The taxpayers are literally paying millions of additional CMAR fees every year than are necessary. Putting more weight on the fees and expenses elements of the scoring criteria should drastically reduce this problem. Speaking as a North Dakota taxpayer, 20% is not nearly enough, but it is considerably better than the current 5% minimum.

BENEFIT 3: STANDARDIZE BID FORMS TO MAKE FEES TRANSPARENT FOR SELECTION COMMITTEE

On CMAR projects, there are typically three different sources of fees and expenses:

1. Design Fee: fees and expenses related to services provided during the design/preconstruction phase
2. Construction Fee: fees and expenses related to services provided during the construction phase of the project (construction management, contract administration, overhead, profit, etc.)
3. General Conditions/Site Management Fees: fees and expenses related to costs incurred on-site excluding subcontractor bid packages (superintendent, vehicles, equipment, office trailers, temporary facilities, etc.)

The three types of fees can be drastically different based on how the contracts are written. For example, the General Conditions could require the Owner to pay actual cost of what the CMAR is

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paying a Superintendent, which could be approximately \$50/hour, or they could charge a labor rate of \$150/hour. Additionally, a CMAR could charge the owner \$10,000/pickup truck during the duration of the project, or another could charge \$50,000/pickup truck.

The Construction Fee could vary substantially too based on the contract. For example, the project manager could be included in the CMAR fee, or they might be charged by an hourly rate at up to \$180/hour. It is important to create a standardized form to make fees transparent to the owner and selection committee to avoid manipulation of the CMAR fees.

Since there is not currently a standardized form on how to submit CMAR fees it can make it difficult for the selection committee to understand how much difference they are actually paying for the CMAR services. Roers submitted an open records request for some of the higher education CMAR projects throughout the state and were graciously provided that information from the North Dakota Legislative Council. **Figures 3.1, 3.2, and 3.3** on Pages 6 and 7 of the provided packet show the CMAR fees on multiple projects completed at our state’s universities

Figure 3.1

NDSU					
Sudro Hall		Fee (%)	Dunbar Hall		Fee (%)
Cost of Work	\$28,000,000.00		Cost of Work	\$51,200,000.00	
Design Fee	\$36,000.00	0.13%	Design Fee	\$45,000.00	0.09%
Const. Fee	\$1,336,203.82	4.77%	Const. Fee	\$2,156,125.16	4.21%
Gen. Conditions	\$2,652,732.55	9.47%	Gen. Conditions	\$1,893,080.26	3.70%
Indoor Practice Facility		Fee (%)	Agricultural Products		Fee (%)
Cost of Work	\$50,000,000.00		Cost of Work	\$85,000,000.00	
Design Fee	\$40,000.00	0.08%	Design Fee	\$50,000.00	0.06%
Const. Fee	\$2,075,924.47	4.15%	Const. Fee	\$3,445,223.61	4.05%
Gen. Conditions	\$2,012,275.29	4.02%	Gen. Conditions	\$2,905,607.31	3.42%

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Figure 3.2

UND					
HPR		Fee (%)	Memorial Union		Fee (%)
Cost of Work	\$19,758,281.00		Cost of Work	\$69,308,839.00	
Design Fee	Comb. w/const	0.00%	Design Fee	Comb. w/const	0.00%
Const. Fee	\$2,392,800.00	12.11%	Const. Fee	\$6,439,600.00	9.29%
Gen. Conditions	\$1,070,400.00	5.42%	Gen. Conditions	\$2,563,600.00	3.70%
Merrifield Hall		Fee (%)	Gamble Hall		Fee (%)
Cost of Work	\$40,724,432.00		Cost of Work	\$46,547,994.00	
Design Fee	Comb. w/const	0.00%	Design Fee	Comb. w/const	0.00%
Const. Fee	\$3,940,000.00	9.67%	Const. Fee	\$5,460,000.00	11.73%
Gen. Conditions	\$2,240,000.00	5.50%	Gen. Conditions	\$3,276,000.00	7.04%

Figure 3.3

VCSU					
Center for Arts		Fee (%)	McCarthy Hall		Fee (%)
Cost of Work	\$32,000,000.00		Cost of Work	\$13,500,000.00	
Design Fee	Comb. w/const	0.00%	Design Fee	Comb. w/const	0.00%
Const. Fee	\$823,428.00	2.57%	Const. Fee	\$257,636.00	1.91%
Gen. Conditions	\$2,552,454.00	7.98%	Gen. Conditions	\$988,089.00	7.32%

Reviewing **Figures 3.1, 3.2, and 3.3**, you can see a substantial difference in fees between the three universities. I highlighted some concerns I have as a taxpayer of North Dakota. For these size projects, the General Conditions and Construction fees should both be below 5.0% per industry standards. In fact two projects at UND having a 12% construction fee is actually astonishing. CMARs are in the business to make a profit, but it’s up to our legislatures, state employees, and the selection committee to ensure that is a fair profit and competitive in nature. A 12% CM fee is not responsible spending.

Recently, we have noticed some of the RFPs are only asking for fees and expenses for the Design/Preconstruction phase of the project and they negotiate fees for the construction phase after the CMAR has already been awarded the project by the selection committee. In order for the selection committee to make an informed decision it is important that the design fees, site

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management fees, and construction fees all be part of the standardized bid form during the selection process in the future.

SUMMARY:

The state of North Dakota is currently grossly over-paying for CMAR fees and it's time to curb spending on our public projects. By creating a standardized process of submitting a bid form combined with weighting a minimum of 20% of the CMAR scoring to fees and expenses, House Bill 1028 gets us closer to solving the over-spending problem on CMAR projects.

I understand Representative Koppelman has proposed some amendments to the bill and Roers is in support of those amendments. In my opinion the 20% minimum scoring requirement for fees and expenses are not quite enough, but it is definitely a move in the right direction. Selecting a CMAR with ample qualifications, bonding capacity, and the lowest fees for both the design and construction phases of the project is what we should be aiming for as a state.

Chairman Schauer and Committee Members, I hope my testimony helps you better understand how passing House Bill 1028 will benefit the state of North Dakota by:

- 1. INCREASING FAIR-COMPETITION AMONGST CMAR FIRMS**
- 2. REDUCING COSTS OF CMAR PUBLIC IMPROVEMENT PROJECTS FOR TAXPAYERS**
- 3. STANDARDIZING BID FORMS TO MAKE FEES TRANSPARENT FOR SELECTION COMMITTEE**

Thank you for your time and support Chairman Schauer and Members of the GVA Committee. I'm happy to answer any questions you may have.

Sincerely,



David Wood, Construction Executive at Roers