2025 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1028

2025 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Pioneer Room, State Capitol

HB 1028
1/30/2025

Relating to the selection process for construction management at-risk planning and design phase services and the procurement of architect, engineer, construction management, and land surveying services.

11:24 a.m. Chairman Schauer opened the hearing.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Bahl, Brown, Christy, Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, VanWinkle, Vetter, Wolff

Discussion Topics:

- Construction management
- Manipulation potential
- Proposed amendments to minimum scoring percentage
- Unnecessary changes
- Most qualified groups

11:25 a.m. Representative Koppelman, District 16, introduced the bill.

11:49 a.m. David Wood, Construction Executive for Roers Construction, testified in favor.

11:59 a.m. Russ Hanson, Associated General Contractors of North Dakota, testified in opposition.

12:05 p.m. Mike Dunn, Business Development Manager with Construction Engineers of Grand Forks, testified in opposition.

12:13 p.m. David Wood Construction Executive for Roers Construction in Fargo, testified in favor and submitted testimony, #32977.

12:14 p.m. Alan Dostert, President of EAPC Architects Engineers, testified in opposition.

12:18 p.m. Lonni Fleck, President of the Board of Directors of the City of Jamestown, testified in opposition.

12:24 p.m. Matt Linneman, Deputy Director for Engineering of the North Dakota Department of Transportation, testified in opposition and submitted testimony, #32551.

12:27 p.m. Darin Scherr, Business and Operations Manager of the Bismarck Public Schools, testified in opposition and submitted testimony, #32674.

12:28 p.m. Jolene Rieck, Nebraska-Dakotas Chapter of the American Society of Landscape Architects, testified in opposition.

12:30 p.m. Representative Koppelman, District 16, answered questions.

12:32 p.m. Russ Hanson, Associated General Contractors of North Dakota, testified in opposition.

Additional written testimony:
Cole Higlin, Public Policy Chair of the North Dakota Parks and Recreation Association, submitted testimony in opposition, #32657.
James Hand, Director of Facilities of the Fargo Public School District, submitted testimony in opposition, #32755.
Jason Tomanek, City Administrator of the City of Bismarck, submitted testimony in opposition, #32777.

12:33 p.m. Chairman Schauer closed the hearing.

Jackson Toman, Committee Clerk

NORTH Dakota | Transportation
Be Legendary.

House Bill No. 1028

Government and Veterans Affairs
Pioneer Room | January 30, 2025, 11 a.m.
Matt Linneman, Deputy Director for Engineering

Greetings, Chair and members of the Committee. I am Matt Linneman, Deputy Director for Engineering at the North Dakota Department of Transportation (NDDOT). I am here to provide opposition to HB 1028.

House Bill 1028 proposes changes to North Dakota Century Code (NDCC) Chapter 54 concerning selection criteria for procurement of architect, engineer, and land surveying services. The NDDOT routinely procures consultants for architect, engineer, and land surveying services with federal aid to deliver roadway and bridge infrastructure projects in the form of both preliminary engineering (PE), construction engineering (CE), and architectural services.

Section 5 of the bill changes *NDCC 54-44.7-03 Procurement Procedures* by adding an evaluation criterion for "*Fees and expenses*" when selecting a consultant. This is a direct conflict with the federal requirements in 23 Code of Federal Requirements (CFR) 172.7. On projects that use federal funding, the NDDOT must follow the federal selection requirements that states: *"Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria."*

However, after the selection of a consultant, Subsection 7 of NDCC 54-44.7-03 requires the NDDOT to enter a contract negotiation phase. If the fees, costs, or rates are too high and cannot be agreed upon during contract negotiation, then we can terminate negotiations with the selected consultant and move on to contract negotiations with the next most qualified firm. So, in essence, costs are considered prior to signing a contract.

The NDDOT is in opposition to the House Bill 1028 as written as we will be unable to use federal dollars to fund the PE portion of many projects. It should also be noted that the department does not have substantial state funds proposed in its budget to pay for the PE cost with state funds.

This concludes my testimony, and I would be happy to answer any questions. Thank you.

Testimony of Cole Higlin
North Dakota Recreation & Park Association
To House Government and Veterans Affairs Committee
In Opposition to HB 1028
Thursday, January 30, 2025

Chairman Schauer and members of the Committee, my name is Cole Higlin, and I am the public policy chair of the North Dakota Recreation & Park Association (NDRPA). We represent more than 900 members, primarily park districts, and work to advance parks, recreation and conservation for an enhanced quality of life in North Dakota.

We oppose the following changes to HB 1028:

Section 2: Identify fees on bid form and submit them to office of management. Why should we have to share fees with OMB to proceed with a construction project at the local level? We are required to do an RFP for qualifications and select the construction manager at risk based on experience on our projects and not on price currently. I must get approval from our Park Board of Commissioners with a summary of proposals while making a recommendation for the Park Board to approve. As required by NDCC, fees are public information and if requested, we would have to share that fee.

Section 4: Awarding subcontractor bids to lowest responsible bidder.

Item 1: This change makes it difficult because we could have a minimal difference in bid and the low bidder may lack experience. If you were remodeling your home and a contractor has never done a remodeling project before, but his bid was slightly less compared to a seasoned contractor. Wouldn't you want some flexibility to do your research/reference check and decide as to what is in your best interest? Especially using tax dollars for a project?

For example: I had a difference of $25,000 on a roofing contractor bid, a company from Minnesota on paper was the low bid. The local contractor could start right away, while the out of state contractor stated that he wasn't sure when he could start. Then we have the most important issue is warranty work. It's very difficult to get out of state contractors back to fulfill their warranty obligations. This amendment will lead to low bids being from out of state. Please understand if the difference in the bid is substantially lower, we will due our diligence and make accurate and appropriate decisions. If this amendment passes, you make the decision for us.

Item 2: The best park for construction manager at risk is the ability to self-perform and keep our project on schedule. They currently have to submit a bid for any self-performing work like all subcontractors. The owner can decide which subcontractor to accept. I have seen situations where the subcontractor was lower than the construction manager at risk bid, and it was recommended to accept their bid.

In conclusion, we respectfully urge the committee to oppose HB 1025.

HB 1028 – School Construction – by Darin Scherr, Business and Operations Manager, Bismarck Public School District.

I am here today to testify in opposition to HB 1028. I believe the current law as written works well for school districts. I have been involved for over 25 years with construction procurement and management. For the past 20 years I have been with Bismarck Public Schools and have been involved with over 125 projects totaling $250 million.

Bismarck may not approach a project the same as Ellendale, but that decision is made by the local School Board based on input from their team. For example, in Bismarck we don't allow our Construction Manager to self-perform but require them submit a bid for any work they are able to do but you may need to allow self-performing in a remote school district based on industry wiliness and availability. I also have a concern about the change to the selection committee. You are asking potentially unsuccessful Architects and Engineers to sit on your selection committee. This may be awkward, and this will likely cause unneeded expenses for their time. I also have an issue of changing from most responsible to lowest responsible bidder. For example, is a lower bidder from Minneapolis acceptable when we know from experience that that contractor may not come back for any one-year warranty work.

In closing, are these changes needed? We have successfully completed multiple projects under the current language. I recommend a do not pass and I would stand for any questions.

James Hand
Director of Facilities, Fargo Public School District
handj@fargo.k12.nd.us
701-446-1023

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.

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.

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.

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.

House Government and Veterans Affairs

HB1028

January 30, 2025

Representative Austen Schauer, Chair

Summary of Points:

- The City of Bismarck **opposes** excluding our architect or engineer of record from participating in the Construction Manager at Risk (CMAR) selection process.
- The City of Bismarck **opposes** the requirement to weigh the CMAR manager's proposed fee at 20% during the selection process.
- The City of Bismarck **opposes** the requirement for the CMAR manager to take the lowest bid.

My name is Jason Tomanek, and I am the City Administrator of the City of Bismarck. On behalf of the City of Bismarck, I am providing testimony in opposition to HB1028 and respectfully request a "**Do Not Pass**" recommendation. As a political subdivision of the state of North Dakota, we have several concerns with the language in HB1028 and the negative affects it will have on the Construction Management at Risk (CMAR) project delivery method if HB 1028 passes.

First, we are opposed to the language excluding the architect or engineer of record from participating on the CMAR selection committee. These consultants are extremely familiar with our organization's policies, resources, structure, past projects, and future needs. By excluding the architect or engineer of record from being able to participate in the selection, the selection committee is losing the valuable insight they have on the project.

Second, we are opposed to the requirement that CMAR Manager's fee must be weighed at twenty percent in the selection process. The owner should have the ability to weigh the selection criteria according to their priorities. Also, it appears that the State Office of Management and Budget (OMB) will need to approve our selection forms. We feel that political subdivisions should have the ability to control and develop their own forms and processes that follow the North Dakota Century Code without having to gain approval from OMB.

Finally, we oppose the requirement that a CMAR Manager must issue to the lowest responsible bidder. An advantage of the CMAR delivery method is it allows the owner to have one contract with a CMAR Manager that allows the CMAR Manager to effectively manage the project. The language adding a requirement to take the lowest responsible bidder is removing the CMAR Manager's flexibility to manage the project in the best interest of the owner. There may be times when the lowest bid is not in the best interest of the project and a higher bid may need to be selected.

In closing, CMAR is one the most transparent project delivery methods for political subdivisions. The changes suggested in HB1028 create additional bureaucracy for political subdivisions. During an interim study focusing on CMAR, all affected stakeholder groups, including the American Institute of Architects of ND, ACEC of ND, Associated General Contractors of ND, ND Association of Counties, ND League of Cities, recommended no changes to the CMAR statue because the current CMAR delivery method is mutually beneficial for contractors, sub-contractors, design professionals, and political subdivisions.

Again, we respectfully request a "**Do Not Pass**" recommendation on HB1028. Any questions can be directed to me at 701-355-1300 or jtomanek@bismarcknd.gov

Respectfully,

Jason Tomanek

Jason Tomanek
City Administrator

Greg Haug

Greg Haug
Airport Director

Gabe Schell

Gabe Schell
City Engineer

Michelle Klose

Michelle Klose
Director of Utility Operations

Steve Salwei

Steve Salwei
Director of Service Operations

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).

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)				

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

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

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%

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

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

2025 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Pioneer Room, State Capitol

HB 1028
2/20/2025

Relating to the selection process for construction management at-risk planning and design phase services and the procurement of architect, engineer, construction management, and land surveying services.

9:44 a.m. Chairman Schauer opened the meeting.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Bahl, Brown, Christy, Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, VanWinkle, Vetter,
Members absent: Representative Wolff

Discussion Topics:

- Committee action
- Proposed amendments relating to fees and expenses

9:44 a.m. Representative Koppelman, District 16, introduced proposed amendments LC#25.0375.04001, #44954 and 45387.

9:51 a.m. Russ Hanson, Associated General Contractor, testified and answered questions.

9:52 a.m. Vice-Chairman Satrom moved to adopt amendment LC#25.0375.04001.

9:52 a.m. Representative Steiner seconded the motion.

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	Y
Representative Landon Bahl	Y
Representative Collette Brown	Y
Representative Karen Grindberg	Y
Representative Karen Karls	N
Representative Carrie McLeod	Y
Representative Karen Rohr	Y
Representative Mary Schneider	Y
Representative Vicky Steiner	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y
Representative Christina Wolff	AB

9:53 a.m. Motion passed 11-1-1.

9:53 a.m. Representative Vetter moved a Do Pass as amended.

9:53 a.m. Representative Bahl seconded the motion.

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	Y
Representative Landon Bahl	Y
Representative Collette Brown	N
Representative Karen Grindberg	Y
Representative Karen Karls	N
Representative Carrie McLeod	N
Representative Karen Rohr	Y
Representative Mary Schneider	N
Representative Vicky Steiner	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y
Representative Christina Wolff	AB

10:06 a.m. Motion passed 8-4-1.

Representative Bahl will carry the bill.

10:07 a.m. Chairman Schauer closed the meeting.

Jackson Toman, Committee Clerk

25.0375.04002
Title.05000

Adopted by the Government and
Veterans Affairs Committee
February 20, 2025

2-20-25

JB 1 of 3

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1028

Introduced by

Legislative Management

(Government Services Committee)

A BILL for an Act to amend and reenact subsection 1 of section 48-01.2-20, subdivision f of subsection 5 of section 48-01.2-20, subsection 6 of section 48-01.2-20, section 48-01.2-22, and subsection 5 of section 54-44.7-03 of the North Dakota Century Code, relating to the selection process for construction management at-risk planning and design phase services and the procurement of architect, engineer, construction management, and land surveying services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 48-01.2-20 of the North Dakota Century Code is amended and reenacted as follows:

1. A governing body electing to utilize a construction management at-risk delivery process for a proposed public improvement shall create a selection committee composed of:
   a. An administrative individual from the governing body.
   b. A registered architect, excluding any architect contracted for the project.
   c. A registered engineer, excluding any engineer contracted for the project.
   d. A licensed contractor.

SECTION 2. AMENDMENT. Subdivision f of subsection 5 of section 48-01.2-20 of the North Dakota Century Code is amended and reenacted as follows:

f. The person's fees and expenses for the entire project, which must be identified on a standard bid form approved by the director of the office of management and budget and issued by the governing body for the project;

SECTION 3. AMENDMENT. Subsection 6 of section 48-01.2-20 of the North Dakota Century Code is amended and reenacted as follows:

6. The selection committee shall evaluate each submission based on the qualification criteria under subsection 5 without modifying the qualification criteria and shall include the numeric scoring of each criteria item on a weighted basis~~, with~~. Excluding the person's fees and expenses, which must be weighted no less than twenty percent, no item ~~being~~may be weighted at more than twenty percent and no less than five percent. The weighting of the qualification criteria must be done in a manner to ensure no subjective bias and encourage the maximum participation of qualified construction managers at-risk. Each member of the selection committee shall apply the same weighting of qualification criteria for a project.

SECTION 4. AMENDMENT. Section 48-01.2-22 of the North Dakota Century Code is amended and reenacted as follows:

48-01.2-22. Subcontractor bids.

1. An agency construction manager selected for a public improvement shall publicly advertise pursuant to section 48-01.2-04 and publicly open bids pursuant to section 48-01.2-07 from subcontractors for the work items necessary to complete the general construction portions of the improvement. The agency construction manager shall evaluate the bids and award the subcontract to the lowest responsible bidder. The governing body may influence the selection of the subcontractors, but only insofar as the governing body's past experience with a subcontractor or a current legal dispute with a subcontractor.
2. A construction manager at-risk selected for a public improvement shall publicly advertise pursuant to section 48-01.2-04 and publicly open bids pursuant to section 48-01.2-07 from subcontractors for the work items ~~the construction manager at-risk chooses not to perform~~necessary to complete the general construction portions of the improvement. A construction manager at-risk must submit a bid for any work item necessary to complete the general construction portions of the improvement the construction manager at-risk chooses to perform pursuant to this section. The construction manager at-risk ~~then~~ shall evaluate the bids and ~~determine which is the most responsible~~award the subcontract to the lowest responsible bidder. The

governing body may influence the selection of the subcontractors, but only insofar as the governing body's past experience with a subcontractor or a current legal dispute with a subcontractor.

SECTION 5. AMENDMENT. Subsection 5 of section 54-44.7-03 of the North Dakota Century Code is amended and reenacted as follows:

5. a. The agency selection committee shall evaluate each of the persons or firms interviewed on the basis of the following criteria:

~~a.~~ (1) Past performance.

~~b.~~ (2) The ability of professional personnel.

~~c.~~ (3) Willingness to meet time and budget requirements.

~~d.~~ (4) Location, with higher priority given to firms headquartered in North Dakota.

~~e.~~ (5) Recent, current, and projected workloads of the persons or firms.

~~f.~~ (6) Related experience on similar projects.

~~g.~~ (7) Recent and current work for the agency.

(8) Fees and expenses for the entire project, which must be identified on a standard information submission form approved by the director of the office of management and budget and issued by the agency selection committee for the project.

b. This subdivision does not apply to:

(1) Section 24-02-07.3, unless the project is on the state capitol grounds and exclusively involves state funds; or

(2) A project involving federal funds when the use of such funds prohibit this criteria.

c. Based upon these evaluations, the agency selection committee shall select the three which, in its judgment, are most qualified, ranking the three in priority order. The agency selection committee's report ranking the interviewed persons or firms must be in writing and must include data substantiating its determinations. This data must be available to the public upon written request.

REPORT OF STANDING COMMITTEE
HB 1028

Government and Veterans Affairs Committee (Rep. Schauer, Chairman) recommends **AMENDMENTS (25.0375.04002)** and when so amended, recommends **DO PASS** (8 YEAS, 4 NAYS, 1 ABSENT OR EXCUSED AND NOT VOTING). HB 1028 was placed on the Sixth order on the calendar.

25.0375.04001
Title.

Prepared by the Legislative Council
staff for Representative Koppelman
January 29, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1028

Introduced by

Legislative Management

(Government Services Committee)

A BILL for an Act to amend and reenact subsection 1 of section 48-01.2-20, subdivision f of subsection 5 of section 48-01.2-20, subsection 6 of section 48-01.2-20, section 48-01.2-22, and subsection 5 of section 54-44.7-03 of the North Dakota Century Code, relating to the selection process for construction management at-risk planning and design phase services and the procurement of architect, engineer, construction management, and land surveying services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 48-01.2-20 of the North Dakota Century Code is amended and reenacted as follows:

1. A governing body electing to utilize a construction management at-risk delivery process for a proposed public improvement shall create a selection committee composed of:
   a. An administrative individual from the governing body.
   b. A registered architect, excluding any architect contracted for the project.
   c. A registered engineer, excluding any engineer contracted for the project.
   d. A licensed contractor.

SECTION 2. AMENDMENT. Subdivision f of subsection 5 of section 48-01.2-20 of the North Dakota Century Code is amended and reenacted as follows:

f. The person's fees and expenses for the entire project, which must be identified on a standard bid form approved by the director of the office of management and budget and issued by the governing body for the project;

SECTION 3. AMENDMENT. Subsection 6 of section 48-01.2-20 of the North Dakota Century Code is amended and reenacted as follows:

6. The selection committee shall evaluate each submission based on the qualification criteria under subsection 5 without modifying the qualification criteria and shall include the numeric scoring of each criteria item on a weighted basis~~, with~~. Excluding the person's fees and expenses, which must be weighted no less than twenty percent, no item ~~being~~may be weighted at more than twenty percent and no less than five percent. The weighting of the qualification criteria must be done in a manner to ensure no subjective bias and encourage the maximum participation of qualified construction managers at-risk. Each member of the selection committee shall apply the same weighting of qualification criteria for a project.

SECTION 4. AMENDMENT. Section 48-01.2-22 of the North Dakota Century Code is amended and reenacted as follows:

48-01.2-22. Subcontractor bids.

1. An agency construction manager selected for a public improvement shall publicly advertise pursuant to section 48-01.2-04 and publicly open bids pursuant to section 48-01.2-07 from subcontractors for the work items necessary to complete the general construction portions of the improvement. The agency construction manager shall evaluate the bids and award the subcontract to the lowest responsible bidder. The governing body may influence the selection of the subcontractors, but only insofar as the governing body's past experience with a subcontractor or a current legal dispute with a subcontractor.
2. A construction manager at-risk selected for a public improvement shall publicly advertise pursuant to section 48-01.2-04 and publicly open bids pursuant to section 48-01.2-07 from subcontractors for the work items ~~the construction manager at-risk chooses not to perform~~necessary to complete the general construction portions of the improvement. A construction manager at-risk must submit a bid for any work item necessary to complete the general construction portions of the improvement the construction manager at-risk chooses to perform pursuant to this section. The construction manager at-risk ~~then~~ shall evaluate the bids and ~~determine which is the most responsible~~award the subcontract to the lowest responsible bidder. The

governing body may influence the selection of the subcontractors, but only insofar as the governing body's past experience with a subcontractor or a current legal dispute with a subcontractor.

SECTION 5. AMENDMENT. Subsection 5 of section 54-44.7-03 of the North Dakota Century Code is amended and reenacted as follows:

5. a. The agency selection committee shall evaluate each of the persons or firms interviewed on the basis of the following criteria:

~~a.~~ (1) Past performance.

~~b.~~ (2) The ability of professional personnel.

~~c.~~ (3) Willingness to meet time and budget requirements.

~~d.~~ (4) Location, with higher priority given to firms headquartered in North Dakota.

~~e.~~ (5) Recent, current, and projected workloads of the persons or firms.

~~f.~~ (6) Related experience on similar projects.

~~g.~~ (7) Recent and current work for the agency.

(8) Fees and expenses for the entire project, which must be identified on a standard information submission form approved by the director of the office of management and budget and issued by the agency selection committee for the project.

b. Based upon these evaluations, the agency selection committee shall select the three which, in its judgment, are most qualified, ranking the three in priority order. The agency selection committee's report ranking the interviewed persons or firms must be in writing and must include data substantiating its determinations. This data must be available to the public upon written request.

The agency selection committee shall evaluate each of the persons or firms interviewed on the basis of the following criteria:

(1) Past performance.

(2) The ability of professional personnel.

(3) Willingness to meet time and budget requirements.

(4) Location, with higher priority given to firms headquartered in North Dakota.

(5) Recent, current, and projected workloads of the persons or firms.

(6) Related experience on similar projects.

(7) Recent and current work for the agency.

(8) Fees and expenses, which must be identified on a standard information submission form approved by the director of the office of management and budget and issued by the agency selection committee for the project. **This subdivision (8) does not apply to section 24-02-07.3, unless the project is on the state capitol grounds and only involves state funds. This subdivision also does not apply to any state agencies utilizing federal funds, when the use of such funds prohibit this type of criteria.**

Based upon these evaluations, the agency selection committee shall select the three which, in its judgment, are most qualified, ranking the three in priority order. The agency selection committee's report ranking the interviewed persons or firms must be in writing and must include data substantiating its determinations. This data must be available to the public upon written request.