

Sec. ~~271.117~~. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AGENT.

(a) A governmental entity may use the construction manager-agent method for the construction, rehabilitation, alteration, or repair of a facility. In using that method and in entering into a contract for the services of a construction manager-agent, a governmental entity shall follow the procedures prescribed by this section.

(b) A construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that provides consultation to the governmental entity regarding construction, rehabilitation, alteration, or repair of the facility. A governmental entity using the construction manager-agent method may, under the contract between the governmental entity and the construction manager-agent, require the construction manager-agent to provide administrative personnel, equipment necessary to perform duties under this section, and on-site management and other services specified in the contract. A construction manager-agent represents the governmental entity in a fiduciary capacity.

(c) Before or concurrently with selecting a construction manager-agent, the governmental entity shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with Chapter 1001 or 1051, Occupations Code, as applicable. If the engineer or architect is not a full-time employee of the governmental entity, the governmental entity shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code. The governmental entity's engineer or architect may not serve, alone or in combination with another person, as the construction manager-agent unless the engineer or architect is hired to serve as the construction manager-agent under a separate or concurrent procurement conducted in accordance with this subchapter. This subsection does not prohibit the governmental entity's engineer or architect from providing customary construction phase services under the engineer's or architect's original professional service agreement in accordance with applicable licensing laws.

(d) A governmental entity shall select a construction manager-agent on the basis of demonstrated competence and qualifications in the same manner as provided for the selection of engineers or architects under Section 2254.004, Government Code, except that notice must be published as provided by Section 271.112(d).

(e) A governmental entity using the construction manager-agent method shall procure, in accordance with applicable law, a general contractor, trade contractors, or subcontractors who will serve as the prime contractor for their specific portion of the work.

(f) The governmental entity or the construction manager-agent shall procure in accordance with Section 2254.004, Government Code, all of the testing

of construction materials engineering, the inspection services, and the verification testing services necessary for acceptance of the facility by the governmental entity.

Added by Acts 2001, 77th Leg., ch. 1409, Sec. 5, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.793, eff. Sept. 1, 2003.