

A “construction manager-agent” is a sole proprietorship, partnership, corporation, or other legal entity that serves as the agent for the governmental entity, including a college district, by providing consultation or administrative services during the design and construction phase and managing multiple contracts with various construction prime contractors for construction, rehabilitation, alteration, or repair of a facility. A governmental entity may retain a construction manager-agent for assistance in the construction, rehabilitation, alteration, or repair of a facility only as provided by Government Code Chapter 2269, Subchapter E. The contract between the governmental entity and the construction manager-agent may require the construction manager-agent to provide administrative personnel, equipment necessary to perform duties under this policy, on-site management, and other services specified in the contract. *Gov’t Code 2269.201–.202*

A construction manager-agent may not:

1. Self-perform any aspect of the construction, rehabilitation, alteration, or repair of the facility.
2. Be a party to a construction subcontract for the construction, rehabilitation, alteration, or repair of the facility.
3. Provide or be required to provide performance and payment bonds for the construction, rehabilitation, alteration, or repair of the facility.

Gov’t Code 2269.203

A construction manager-agent represents the governmental entity in a fiduciary capacity. *Gov’t Code 2269.204*

The governmental entity may use the construction manager-agent method for the construction, rehabilitation, alteration, or repair of a facility. In using this method, the governmental entity must comply with applicable legal requirements in this policy as well as other applicable legal requirements [see CM], which include the following steps:

1. SELECTING A CONTRACTING METHOD;
2. Giving PUBLIC NOTICE of the project;
3. Publishing CONTRACT SELECTION CRITERIA;
4. MAKING EVALUATIONS PUBLIC after the contract is awarded; and

5. Providing for INSPECTION, VERIFICATION, AND TESTING necessary for acceptance of the facility by the governmental entity.

Education Code 44.031(g); Gov't Code 2269.052, .055, .056(a), (c), .058, .201(c)

Note: Terms in all capital letters, above, point to margin notes in the referenced policy.

Architect / Engineer

On or before the selection of a construction manager-agent, the governmental entity shall select or designate an architect or engineer in accordance with Occupations Code Chapters 1051 or 1001, as applicable, to prepare the construction documents for the project. [See CM]

The governmental entity's architect or engineer may not serve, alone or in combination with another person, as the construction manager-agent unless the architect or engineer is hired to serve as the construction manager-agent under a separate or concurrent selection process conducted in accordance with this policy. This restriction does not prohibit the governmental entity's architect or engineer from providing customary construction-phase services under the architect's or engineer's original professional service agreement in accordance with applicable licensing laws.

To the extent that the construction manager-agent's services are defined as part of the practice of architecture or engineering under Occupations Code Chapter 1051 or 1001 those services must be conducted by a person licensed under the applicable chapter.

Gov't Code 2269.205

**Selection of
Construction
Manager-Agent**

A governmental entity shall select a construction manager-agent on the basis of demonstrated competence and qualifications in the same manner that an architect or engineer is selected under Government Code 2254.004. *Gov't Code 2269.207* [See CM]

Insurance

The construction manager-agent shall maintain professional liability or errors and omissions insurance in the amount of at least \$1 million for each occurrence. *Gov't Code 2269.208*

**Selection of
Contractors**

A governmental entity using the construction manager-agent method shall procure, in accordance with applicable law and in any manner authorized by Government Code Chapter 2269, a general contractor or trade contractors who will serve as the prime contractor for their specific portion of the work and provide performance and payment bonds to the governmental entity in accordance with applicable laws. *Gov't Code 2269.206*