



City of Santa Clara - Charter Review Committee

Stadium Procurement Process Discussion



6-2-2009 Agenda Report

The City will create a Charter Review Committee to determine if existing City Charter language requiring competitive bidding for Public Works projects can be modified to allow for some focused, limited use of a design/build process in some or all of the stadium construction. If a Charter modification of Section 1310 of the City Charter (Contracts on Public Works) were to go forward on the same ballot as the Term Sheet it would be limited solely to the stadium project and no other future Public Works projects in the City.

6-2-2009 Approved Term Sheet

Section 6.3 Charter Review Committee. The City will form a Charter Review Committee to review and make recommendations to the Council to consider possible amendment to Section 13.10 of the City Charter (Contracts on Public Works), and if Council approves, to submit a proposed Charter amendment to the voters for approval. In accordance with the City's requirement that 49ers Stadium Company be responsible for any construction cost overruns, the proposed Charter Amendment could create a design-build process and contractor selection process that would allow the 49ers Stadium Company to properly manage the risk of overall construction costs. Such a process could allow for sole-sourcing (i.e., without public bidding) certain elements of the work unique to stadium construction, while assuring that the majority of the construction work is put out for public-bid on a best value basis (which could allow consideration of selection criteria other than the lowest responsible bid).



Sec. 1310 Contracts on public works.

Every contract involving an expenditure of more than one thousand dollars (\$1,000.00) for the construction or improvement, (excluding maintenance and repair), of public buildings, works, streets, drains, sewers, utilities, parks and playgrounds shall be let to the lowest responsible bidder after notice by publication in an official newspaper by one or more insertions, the first of which shall be at least ten days before the time for opening bids.

The City Council may reject any and all bids presented and may readvertise in its discretion.

The City Council, without advertising for bids, or after rejecting bids, or if no bids are received, may declare and determine that, in its opinion, the work in question may be performed better or more economically by the City with its own employees, and after the adoption of a resolution to this effect by at least four affirmative votes, it may proceed to have said work done in the manner stated, without further observance of the provisions of this section. Such contracts likewise may be let without advertising for bids, if such work shall be deemed by the City Council to be of urgent necessity for the preservation of life, health or property, and shall be authorized by motion passed by at least four affirmative votes and containing a declaration of the facts constituting such urgency.



- Under the Term Sheet, the 49ers (not the City) have agreed to cover construction cost overruns. Accordingly, the 49ers must be able to effectively manage the design and construction process.
- In order to manage this risk, the 49ers are proposing that the City modify its Charter only with respect to the Stadium Project.
- The Charter, as it currently stands, would continue to apply to all other city projects.



- Construction cost overrun risks on stadium projects are very high
- The 49ers have taken responsibility for that risk and must be able to manage it
- These risks usually stem from
 - The nature of the design & construction process
 - The unusual size and geometry of stadiums
 - Lack of stadium experience in project personnel
 - Unrecognized construction cost inflation
 - Poor initial budgets and poor budget tracking

What we are asking the Charter Review Committee for



1. We are asking the City to allow us to use a Design-Build process to help manage our cost overrun risk.
2. We are asking the City to allow us to continue using our previously-selected General Contractor to manage the stadium construction process.



1. We are asking the City to allow us to use a Design-Build process to help manage our cost overrun risk
 - Why Design-Build.
 - What it is and where it came from.



Evolution of the Owner-Contractor-Architect relationship

- Original Master Builder concepts
- Architects and Contractors become separate entities
- Favoritism and Questionable Contracting Processes
- In Search of Fair Dealing and Fair Pricing
- Traditional Design-Bid-Build
- Contractors Learn and Owners Push Back
- The Construction Manager concept evolves
- The Design-Build concept evolves

What is Design-Build?

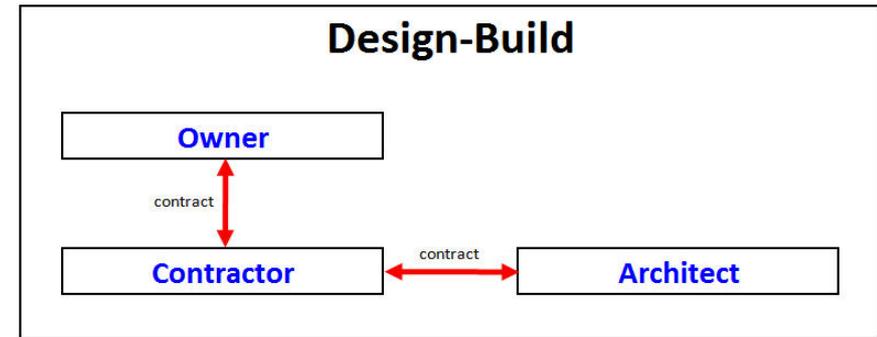
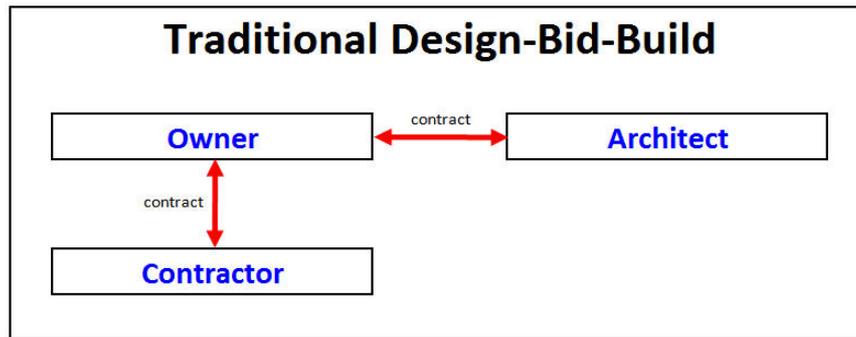


- Design-Build is an integrated design and construction delivery system in which the contractor, at a specified point in the design, assumes responsibility for executing the owner's design intent by completing the detailed design documents and constructing the building.
- Design-Build was developed by Owners in response to certain problems that emerged over time in the use of traditional Design-Bid-Build delivery systems.



- **Owner Problems with Traditional Design-Bid-Build**
 1. The contract price is not known until too late in the process
 2. The contractor is not part of the design process and assumes no accountability for design decisions
 3. There is no contractor input during the design process (crucial input on costs, schedule, availability, common practice, long-lead items, sustainable practices, technology, sequencing, marketplace changes, shared peer knowledge)
 4. The architect's role as the owner's agent puts the owner in the position of being responsible for the inevitable shortcomings, errors and gaps in the architect's drawings, leading to claims against the owner that it shouldn't be responsible for.
 5. Traditional Design-Bid-Build lengthens the overall design and construction schedule, also creating the risk of a re-design delay

The difference in the Contractual Relationship



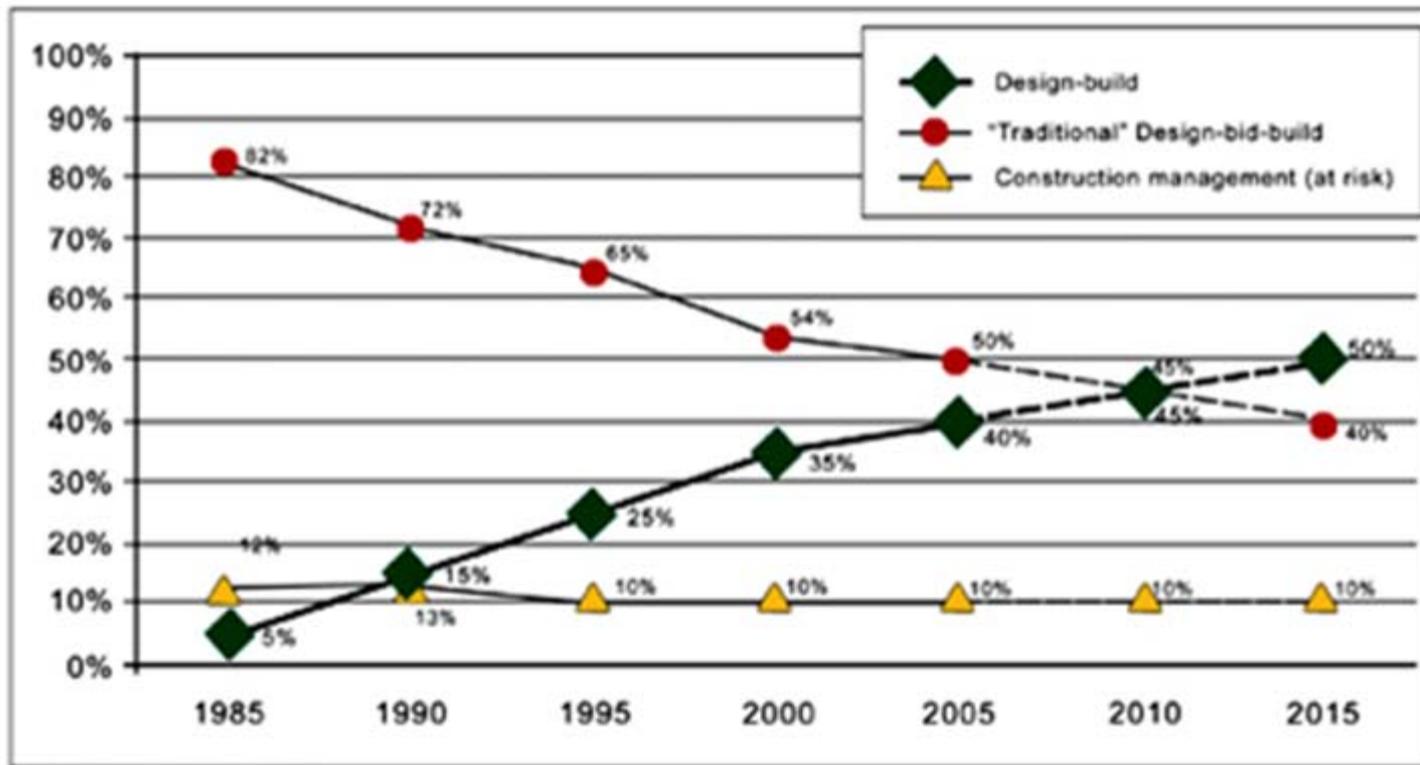
After the Owner has fully stated its design intent through its design-build drawings and specifications, the architect goes to work for the contractor and, together, they complete the detailed permit and construction drawings for the building.

In a Design-Build process, the Owner is not held responsible for the shortcomings, errors and gaps in the architect's detailed construction drawings which have come to be known as "incomplete documents". The contractor and its own architect are now responsible for them. This is very important because incomplete documents have served as the basis for numerous change orders on traditional Design-Bid-Build projects.

Design-Build is now in Common Usage

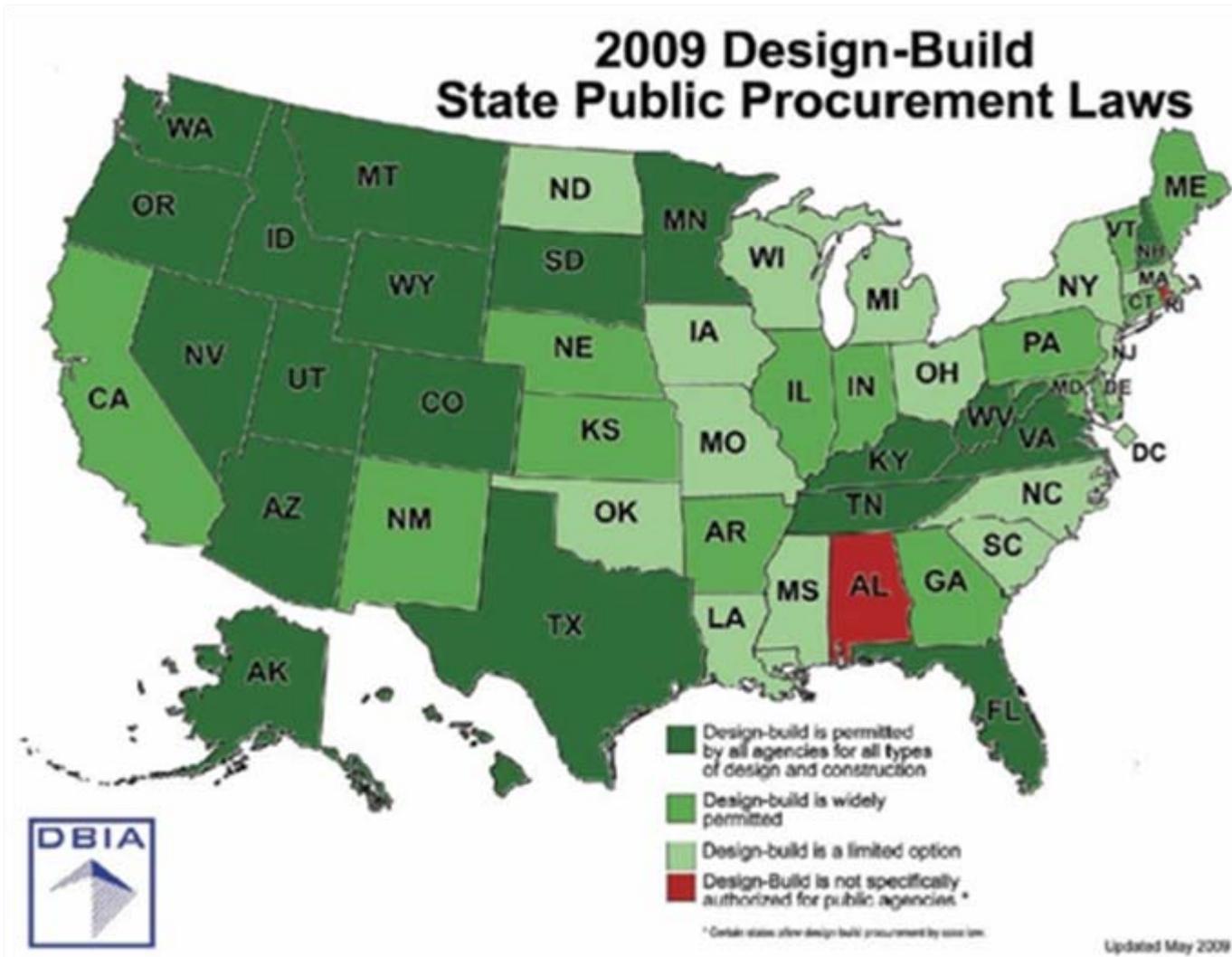


Non-Residential Design and Construction in the United States



Design-Build Institute of America 2005

Design-Build is widely accepted in the Public Sector





Design-Build has been found to perform better as a building delivery system

Extensive research into various project delivery systems has been done by Victor Sanvido and Mark Konchar of Pennsylvania State University's College of Engineering. They studied 351 projects in 37 states and found that the Design-Build process produced a 6% lower unit cost than Design-Bid-Build, and produced project construction speeds that were 12% faster than Design-Bid-Build. When the design team's efforts were also taken into account, Design-Build projects were found to deliver the overall project 33% faster than Design-Bid-Build. According to Sanvido and Konchar, the Design-Build process also outperformed Design-Bid-Build in terms of overall quality, including call-backs and ongoing maintenance costs. In an article for Design-Build Magazine, Sanvido and Konchar wrote:

"Of the worst performing jobs, 73% engaged the contractor late in the design process; 76% had limited or no prior team experience; 69% had numerous onerous contract clauses; 65% had poor ability to make decisions; and 62% did not prequalify bidders. From this data, it seems that design-build project delivery offers the project team the highest chance of attaining successful project attributes and also has built-in mechanisms that allow the owner to prevent against the worst attributes."



Design-Build has been found to produce less Cost and Schedule Growth

In a 1997, in-depth analysis of over 350 construction projects, the Construction Industry Institute at the University of Texas published a document entitled “*Project Delivery Systems: CM at Risk, Design-Build, Design-Bid-Build*”. This independent research effort concluded that

The research shows that design-build systems have significantly less design and construction cost growth when compared to design-bid-build; that design-bid-build systems have the greatest design and construction schedule growth; and that quality measurement associated with design-build, often maligned by many, is better than quality performance in design-bid-build.



D-B Provides Improvement in Design & Construction Process Risks

- Improved overall design & construction schedule
- Best “Continuity of Overall Process” – Lowest Process Risk
- Group effort encourages effective communication among the Owner, Architect and Contractor
- Contractor “accepts responsibility” for budget, schedule and design
- Earlier contract price certainty and less risk of re-design & re-bid
- Less risk of “big surprise” at bid opening resulting in design process turmoil
- Early and continuous contractor input on costs, schedule, materials availability, common industry practice, long-lead items, sustainable practices, technology changes, sequencing, marketplace changes, shared peer knowledge
- Reduced construction claims related to “incomplete documents” since architect works for contractor during the production of detailed drawings
- D-B is a better way to structure the design and construction process for a large, complex and expensive project



2. We are asking the City to allow us to continue using our previously-selected General Contractor to manage the stadium construction process.
 - The importance of the management team.
 - The 49ers' contractor selection process in 2006.



The 49ers effort to select the right management team for this project

- Stadiums are unique and the pool of qualified and experienced General Contractors and Architects in the field is small. Extensive prior stadium experience is essential to the success of a stadium project
- Upfront and continuous involvement by the contractor, with the architect and owner, is essential to the management of the design process and the tracking of a credible budget for a stadium project
- In 2006, the 49ers conducted a competitive, rigorous, fair and arms-length pre-qualification and RFP process and selected both a contractor and an architect
- The 49ers then negotiated contracts with the selected architect and contractor
- After selection, the architect, contractor and 49ers worked together in a diligent, collaborative and constructive manor to define our budget, our expectations and our conceptual scope of work.
- In late 2006 and early 2007 the stadium was completely redesigned to reflect the unique attributes of the prospective Santa Clara site.
- All of this was done prior to our initial stadium proposal to the City of Santa Clara in April of 2007.
- It was because of this prior selection and the subsequent work on both design and budget, that we were able to make the commitments that we made in our proposal to the City in 2007.

The 49ers 2006 General Contractor Selection Process



- Two financially strong and well-respected contractors were pre-qualified as having the largest staffs of experienced stadium personnel in the country.
- Identical written RFP's were given to the two firms, containing
 - A project description
 - a description of the design-build delivery system
 - a form of design-build contract
 - a description of the anticipated architect selection process
 - a description of the anticipated design process
 - a description of the scope of services required
 - a project schedule
 - a budget breakdown
 - a description of the criteria for selection
- Fully conforming, written RFP responses were received from the two contractors, formal presentations were made, responses to the criteria were evaluated, and the final general contractor selection was made by Stadium LLC.
- A joint venture between Turner Construction and Devcon Construction (TDJV) was selected on 3/27/2006 and both parties were immediately notified.

The 49ers 2006 General Contractor Selection Process



- Contractor Selection Process Timing

- | | |
|--------------|---|
| 2/22/2006 | Contractor Request for Proposals issued to two prequalified stadium contractors & Devcon (issued selection criteria, project description, program, budget, schedule, response format, form of contract) |
| 3/20-22/2006 | RFP responses analyzed |
| 3/23-24/2006 | Contractor Formal Interviews before selection panel |
| 3/27/2006 | Turner Devcon Joint Venture Selected as Design Build Contractor |

- Architect Selection Process Timing

- | | |
|--------------|--|
| 2/14/2006 | Nine architects currently employing personnel with prior stadium experience were asked to submit qualifications. |
| 3/3/2006 | RFQ responses analyzed and short listed to 3 architectural firms |
| 3/4/2006 | RFPs issued including selection criteria, project description, program, budget, schedule, response format, form of contract) |
| 3/30-31/2006 | Architect Formal Interviews before selection panel (including contractor) |
| 4/3/2006 | HNTB Selected as project architect |

The 49ers Conceptual Design Process



Stadium Conceptual Design Process began 4/25/2006 and has continued over 3 years

Design	Bi-weekly Conceptual Design Meetings continued from 4/25/2006 through 10/2/2006
Administration	Bi-weekly Administrative Meetings alternating with Administrative Conference Calls
Study Groups	Separate Meetings with Architect's subconsultants (structural, MEP, scoreboards, special systems, vertical transportation)
Study Groups	Separate Meetings on "Futureproofing" and Sustainability in Stadium Design
Study Groups	Separate Meetings with subcontractors
Study Groups	Separate Meetings on Estimate Detail and Methodology
Study Groups	Trips to other stadiums including 49ers, architect & contractor personnel
10/2/2006	Completion of Conceptual Design
11/27/2006	Completion of Conceptual Estimate
1/2007-3/2007	Site Plan and stadium re-design for Santa Clara (Main Lot)
10/2007-12/2007	Site Plan and stadium re-design for Santa Clara (Overflow Lot)
1/2008-6/2008	Completion of Conceptual Design for Overflow Lot
7/2008-9/2008	Completion of Conceptual Estimate for Stadium on Overflow Lot
Ongoing	DEIR review
Ongoing	Quarterly budget price adjustments



Involvement by the project team since our 2007 proposal to the City

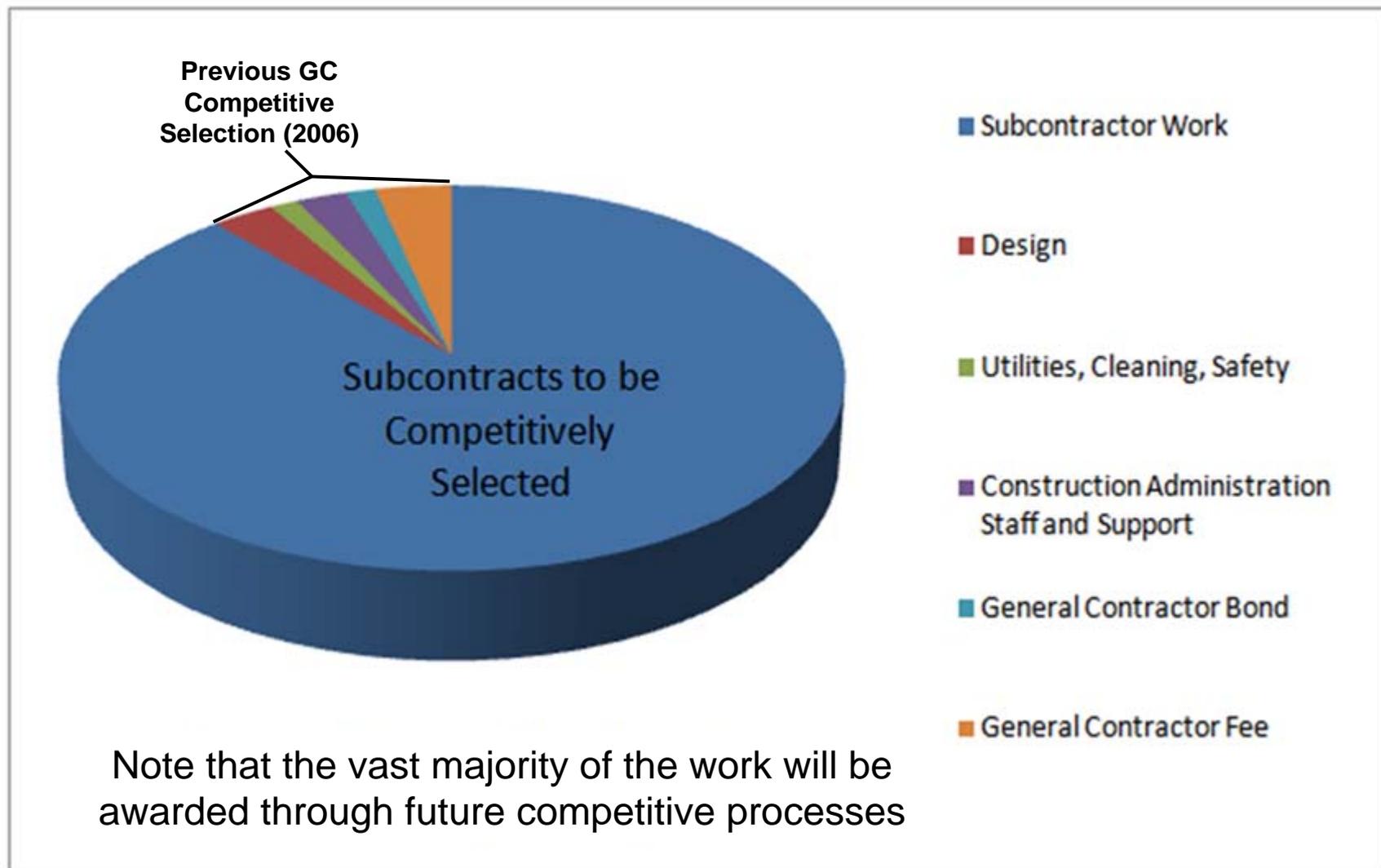
- Tens of thousands of work-hours have gone into our conceptual design and budget for the Santa Clara Stadium Project.
- The project budget has been tracked each step of the way by our contractor's estimating personnel.
- The contractor understands the design intent of the architect and the 49ers.
- A solid, common understanding has evolved among the 49ers, the architect and the contractor about what this stadium will be and what it will cost to build.
- More than 3 years of constructive interactions concerning the stadium project, its design and its budget have already occurred among this project team's members.
- This level of prior design and budgeting interaction is invaluable to the stadium project and is a very desirable commodity. The collective communications efficiencies and common body of knowledge about the project that has evolved can only be developed over long periods of interaction and experience with one another.
- The continuation of this collaborative effort is essential to maintaining the ongoing integrity of our design process, our budget and the design of the stadium itself.
- It's all about the people and the process. The people selected to design and build this project have worked extremely well together and need to continue to do so.

Competitive Pricing Processes are good for the project and are fully supported by the 49ers



- Price competition is critical to fair practices and desirable pricing
- The 49ers absolutely want and need price competition
- Price competition is the key to making our budget work
- The 49ers want that competition to occur among
 - Qualified and Experienced Subcontractors
 - Financially Stable Subcontractors
 - Safety-Conscious Subcontractors
- The only portion of the project that the 49ers are seeking to direct-select, without further competitive process, is the management to be provided by our already-selected general contractor, along with that contractor's attendant fee structure, and other components as shown on the next slide.
- Price was a specific component, among other qualities, of our original contractor and architect selection process and, as a result, the appropriateness of our architect's fee and contractor's fee have already been tested against the market.

Portion of the Project intended to be Competitively Selected





(excerpt from Term Sheet)

ARTICLE 7. **STADIUM CONSTRUCTION FINANCING.**

Section 7.1 Financing Overview. Based on current projections, Stadium development costs will be in the range of Nine Hundred Million Dollars (\$900,000,000) assuming construction starts in 2012, and is completed in 2014. This cost projection will change as the Stadium design process moves forward. As further described in the succeeding Sections of this Article 7, funding for the development of the Stadium will be provided by the Agency, the CFD, the Stadium Authority and 49ers Stadium Company. The Agency investment will not exceed a total of Forty Million Dollars **(\$40,000,000)** (exclusive of debt service and other financing costs). The CFD investment will not exceed a total of Thirty-Five Million Dollars **(\$35,000,000)** (exclusive of debt service and other financing costs). No CFD funds will be used to pay debt service on the Tax Allocation Bonds or to repay the 49ers Agency Advance, as such terms are defined below. No Agency funds will be used to pay debt service on the Mello Roos Bonds or to repay the 49ers CFD Advance, as such terms are defined below. The Stadium Authority will raise funds through such methods as upfront payments and financings relating to the sale of naming rights contracts, vendor contracts and Stadium Builders Licenses. The Stadium Authority also intends to raise funds through a surcharge on NFL Game tickets. If all Conditions to Closing are satisfied, 49ers Stadium Company will be responsible to invest all the funds necessary to pay the costs to complete the Stadium which are not paid by the other sources.



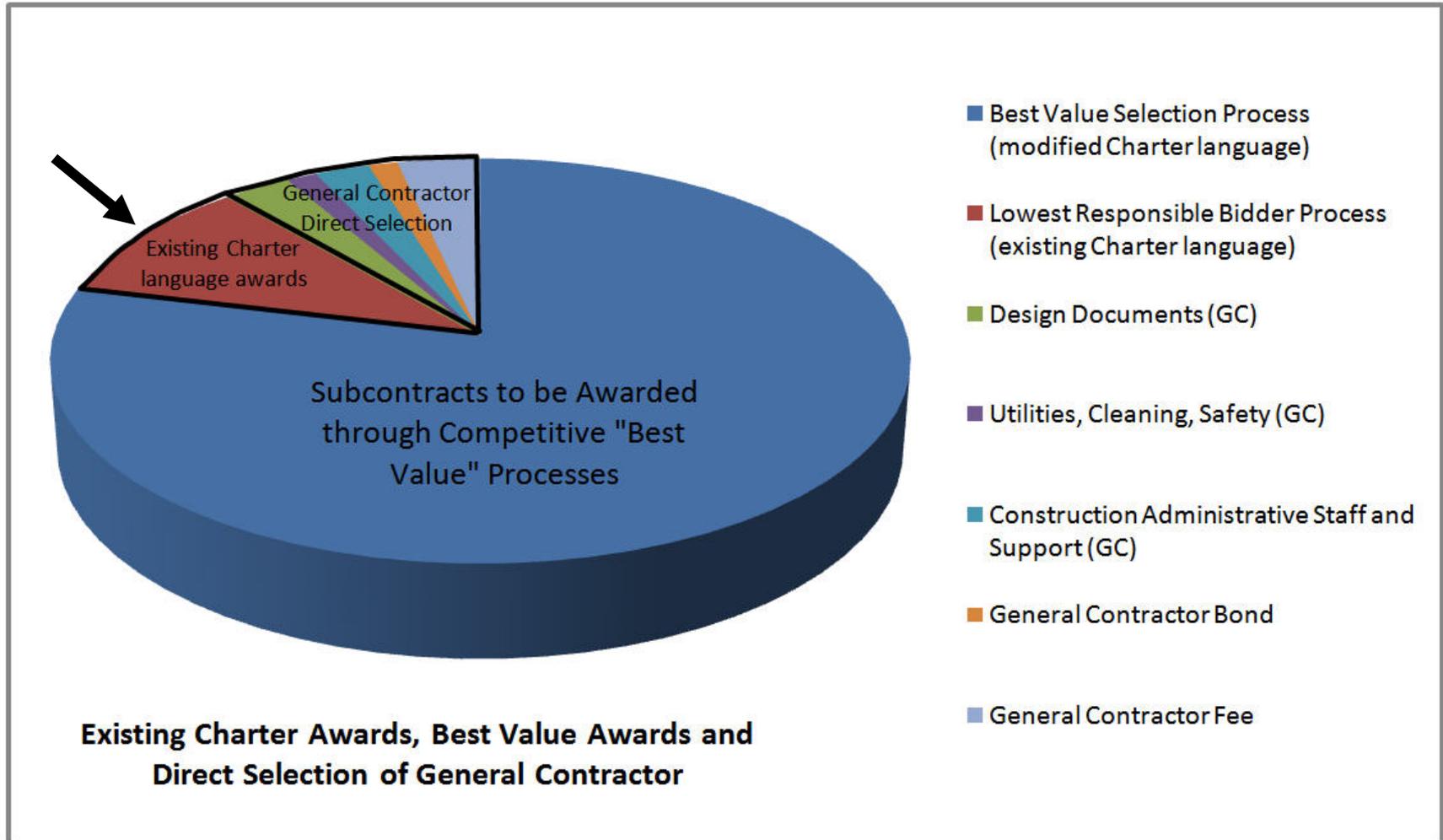
- The 49ers propose that the entire amount of the \$75 million in project contributions from the Santa Clara Redevelopment Agency and the Community Facilities District (Hotel Mello-Roos Bonds) be competitively bid, subject to a pre-qualification process, using the method currently allowed by the City's Charter as follows:

Sec. 1310 Contracts on public works.

Every contract involving an expenditure of more than one thousand dollars (\$1,000.00) for the construction or improvement, (excluding maintenance and repair), of public buildings, works, streets, drains, sewers, utilities, parks and playgrounds shall be let to the lowest responsible bidder after notice by publication in an official newspaper by one or more insertions, the first of which shall be at least ten days before the time for opening bids.

The City Council may reject any and all bids presented and may readvertise in its discretion.

All RDA & CFD Funds will be Awarded using existing Charter Language





Remaining Subcontractor Procurement

Design-Build, Design-Assist and other types of subcontractors will be selected using competitive Best Value methods which consider pricing, schedule, personnel, value engineering, Building Information Modeling capabilities, financial stability, similar project experience, safety record and claims history.

Note: There may be as many as 75 subcontract bid packages on the 49ers Stadium Project

What we are asking the Charter Review Committee for



1. We are asking the City to allow us to use a Design-Build process to help manage our cost overrun risk.
2. We are asking the City to allow us to continue using our previously-selected General Contractor to manage the stadium construction process.



In order for the 49ers to accomplish our goals of

- Protecting against the risk of cost overruns
- Improving the efficiency of the design & construction process
- Benefiting from the specialized expertise and the three years of work already completed

The team is recommending that the Charter Review Committee endorse the following:

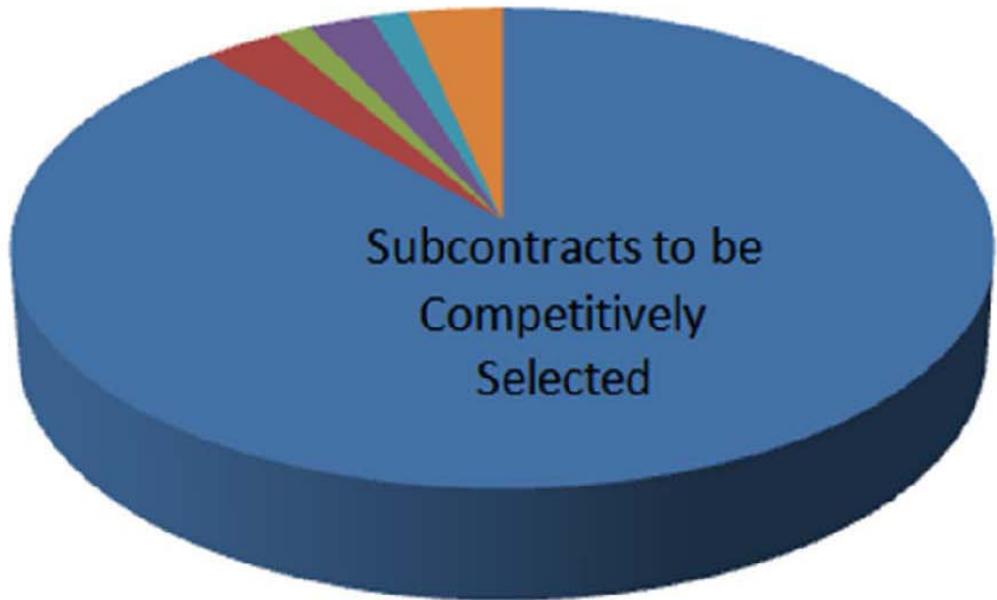
- If SB 43 is signed into law, the Charter Review Committee recommends that the City of Santa Clara use the authority granted in SB 43 to allow a design-build construction process and the use of the general contractor previously selected by the 49ers for the new stadium.
- If SB 43 is not signed into law, the Charter Review Committee recommends that the City Charter be amended in accordance with the following language.

SB43 Overview



- Introduced by Senator Elaine Alquist after the completion of the term sheet agreement by the 49ers and the City of Santa Clara.
- Bill permits the use of design-build for stadium project only. All other city projects will continue to use the city's existing bid process as outlined in the charter.
- Bill gives the Stadium Authority the option to utilize design-build, but does not mandate it. City Council asked the Charter Review committee to evaluate this option.
- Provides option to authorize design-build for stadium project without having to amend the City's Charter.
- Design-builder still required to **competitively bid all sub-contract work**, which represents the vast majority of construction jobs for this project.
- Stipulates that **ALL** RDA and CFD funds will go to sub-contractors hired in accordance with the charter's existing bid process.

SB43 - Majority of project is competitively bid



**Proposed Portion of Stadium Contract
to be Awarded Through a Competitive Process**

- Subcontractor Work
- Design
- Utilities, Cleaning, Safety
- Construction Administration Staff and Support
- General Contractor Bond
- General Contractor Fee



Potential Charter Amendment:

- *49ers would pursue a Charter Amendment only if SB 43 does not become law.*
- *The Charter amendment would provide a process similar to that contemplated by SB 43.*
- *The proposed Charter amendment would apply only to the Stadium.*
- *The Charter Amendment would allow the Stadium Authority to select a design-build contractor on a sole source basis, but would require that all subcontracts be awarded on competitive basis.*
- *Any city investment from RDA and CFD funds would be used only to pay subcontractors selected based on the lowest responsible bidder in accordance with the City's existing bid process.*



- Q&A and General Discussion
- Next Steps

End of Presentation

