

How to Build a Low-Cost Black Box: Practical Tips for Owners

Session 2
TEAM Insert
#1
Executive Contractor.

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Need to build it quick and cheap? Find the right contractor, and really stick it to him for the rest of the project.

The Black Box project had been in the planning stage for almost six years. Given economic uncertainties and lack of clear direction, my company started and stopped the "BB" project more than once. Finally, the word came down that it was a go.

At the time, I was the company's almost senior project manager and since Ralph, my boss, was having health problems, I got the nod. My orders were to get the Black Box project built fast and cheap. I did. Its success is something in which I take great pride. So, if you ever need to build a low-cost Black Box, here is how one owner successfully accomplished the task.

Chaos Can Be an Advantage

The Black Box project cost \$28MM and consisted of about 10,000 components, most of which had to be assembled in the field. From the constructor's perspective, things were not good. Engineering was scattered over the last six years of project ups and downs. The weather was an unpredictable factor and, because of location, what went where and by when varied from day to day due to interface problems with operating systems.

To the less experienced, all these uncertainties might seem like a nightmare. Actually, from an owner's standpoint, the conditions were perfect. Remember that the goal was to get the Black Box built quickly and cheaply. In achieving this goal, chaos can work to your advantage. Here's how.

SCOPE
Picking the Right Contractor. The first day as the BB project manager, I ordered Engineering to put together a bid package that looked 90% complete. A/E firms can be masterful at that. I then picked out ten (never less than ten) contractors all of whom had Purchasing's stamp of approval, and who I personally knew were fierce competitors. The latter is very important for reasons which will become apparent.

usually a No Bid!

SUBMITTER!

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From that beginning point, my task was to make each qualified contractor believe he or she was favored for the project. To get this notion firmly implanted, I fed each contractor reasonable but innocuous "insider" tips. Before bids, contractors hang on every word you utter. It works every time.

All this, of course, is purposeful. The bid package has to look almost complete because you want a very firm price and an iron-clad contract. You also want bidders who have rubbed each other the wrong way in order to increase the chances of a bidding war. Ten firms and a tight market, I have found, usually will create the kind of Russian Roulette environment you need.

The one thing you have to be careful about is making sure a medium-sized firm gets the job. This is essential for two reasons. Big firms have too much liquid cash and are too cautious. You want somebody hungry and willing to take risks. In short, you want a contractor that will do what you tell them, and think about cost later. A few strategic information leaks at the right time usually help get the contractor you want.

An Iron-Clad Contract. Now the contract. Retain a contract attorney (not a great one) to build a one-way deal whereby the contractor assumes most of the risk. This advice may seem a bit odd considering the millions of dollars at stake, but hear me out. You see, the reason you don't want a "hotshot" contract attorney is because he or she will tell you all the stuff that you want in the contract won't hold water in court. Attorneys with reputations at stake always think in terms of winning a case. They just don't seem to grasp that in construction, at least, the owner needs to use the law, not apply it.

Negotiating Your Contract. So now you've got your contract and your bids. On accepting a final bid, you need to make sure the bid is without a lot of contingencies and at least 20% below what you are reasonably sure the project can be done for. You've got a lot of leverage here because once you have selected your target firm, they are eager to get the booking. This enthusiasm helps you negotiate the price you want, get rid of all those messy "if clauses," and make sure the contractor assumes the desired level of risk. Should the contractor not go for it, pick someone more desperate. Remember, as far as Purchasing is concerned, they are all qualified.

The Buffer Zone Strategy. Once you've selected your contractor, it is time to carefully set up your project organization. What your organization looks like is not particularly important. What is important is that you put as many "non-decision-makers" between you and the contractor as possible. These are people you trust to pass on your directives, but under no circumstances are they to make decisions.

This "buffer zone" strategy is critical. It ensures that no decision is made on change requests (the low bidder's salvation) until after the work is actually done. The thing to keep in mind is that most contractor superintendents are schedule-, not cost-, driven. That means their inclination is to go ahead and do the work and worry about authorization later. That's what you want. Once the work is done you can sit on those

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change requests until hell freezes over unless, of course, your people screwed up and agree to something. Healthy owners need lots of people who don't make decisions.

The Crumb Strategy. As the project moves along you will have opportunity to accumulate a significant number of unresolved change requests. This being the case, things start to heat up. The contractor gets anxious and tight on cash. So you use the "crumb" strategy. Simply agree to the little ones and put the big ones in for long-term study. This shows good faith and keeps the contractor paying the priority bills. Contractors know that owners like to study things.

The You-Signed-It Strategy. With a little uneasiness on the project, you don't want things to slow down, so now is the time to use the "you-signed-it, you-do-it" strategy. You did make sure you put in significant schedule penalties, didn't you? If you did, then you simply write letters underlining the appropriate lines in the contract. This keeps the pressure on.

The contractor now knows he for sure loses if he stops work, but he might gain if he keeps on trucking. And that's where you want him—betting on the outcome. A medium-size contractor with insufficient cash reserves can hardly afford not to. And with well-placed assurances that things will be cleared up soon, you can keep the situation stalemated for most of the project.

The Disgruntled Owner Routine. As you approach the last third of the project, your unresolved costs should amount to 15 to 20% of the total bid price. The contractor is naturally upset and considerably more aggressive. This is when you start the "disgruntled owner" routine by sprinkling the project with arbitration of court fight rumors. It's important that these just be rumors—no actual threats, and certainly nothing on paper.

To do this effectively have your non-decision-makers take a lot of pictures of things that look like screw-ups and document stacks of quality problems. These get sent to everybody, of course. The contractor, now in the midst of the most critical period, shouldn't have time to play this paper game, particularly if your field people really start nit-picking. It's the old union game of writing up more grievances than the system was ever made to handle. It keeps things in an uproar and buys you more time. Wasted time is the owner's friend.

The End Game. Having followed my advice up to this point, you should be close to your completion date and still sitting on your 20% unresolved charges. You are now ready for the "End Game." The End Game is accomplished by holding the contractor's payments in order to force a negotiated settlement. The longer you can hold the cash, the more likely the contractor (now in a cash flow shortage with subs clamoring for payment) will be less inclined to wait for arbitration and more willing to settle for something less than he thinks is fair. So keep an eye peeled for indicators of the contractor's economic condition. I like to do a D&B on the contractor about every six

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months, not so much for the information, but for the contractor to know I'm concerned about his ability to finance the project.

I've found that if you pitch long enough you should be able to negotiate about 15 to 25 cents on the dollar for costs over the bid price which, if you will remember, was 20% below what you figured the project could be done for. So in effect you've built your Black Box for about 15% below your estimated cost. In my case, that amounted to \$3MM, compliments of the contractor and subs.

The Make Amends Strategy. There is one thing more to do during negotiation of final settlements. This is called the "make amends" strategy. After all, the contractor helped you, the owner, pay for the project, so show some appreciation. Besides he needs a little encouragement to settle out of court.

You rent a big hall and throw a reasonably elegant party for those involved in the project. Make sure you include the contractor's people, your public relations people, business agents, subs, designers, and, of course, your bosses. The purpose of this party is to smother the contractor, and incidentally yourself, with accolades about how great things went and how fantastic a project team everybody was. Use the word *team* liberally—it's a magical word. Also, don't forget to drop vague but encouraging hints about the next project.

This "make amends" strategy softens hard feelings and leaves the contractor less inclined to be too pushy at the negotiating table while, at the same time, he holds out a hope of regaining his losses on the next project. It is gentlemanly, I believe, not to deny the contractor this one solace.

Good Luck

I hope these lessons from experience are useful. As you can plainly see, this successful project is one in which any owner can be justifiably proud. Though the Black Box itself has not been particularly reliable, it is, by comparable standards, cheap. I seriously doubt anyone can do better. The real problem with today's construction is that contractors just don't seem to take pride in their work.

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