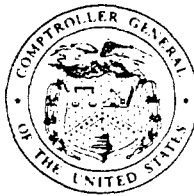


**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-184376

DATE: October 9, 1975

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MATTER OF: Ecoscience, Inc.

**DIGEST:**

1. Recognizing considerable range of discretion accorded buying agency in determining procurement method best suited for given purchase and, especially recognizing complexities involved in building 2,600 military housing units in extinct volcano area, decision to purchase housing on advertised, rather than negotiated (turnkey), basis does not lack rational foundation.
2. Administrative decision not to permit turnkey alternative to conventional, advertised purchase method is not subject to question, since it appears to be rational exercise of discretion given factors recited by Department for decision. Even if some factors are not as significant as they appear to be given protester's comments, support for decision is found in projected escalated labor and material costs that would likely attend delay pending turnkey revision and award.

In early 1974, the Corps of Engineers, Department of the Army, was faced with the problem of deciding the method of procurement for 2,600 family housing units to be constructed in Aliamanu Crater, an extinct volcanic crater, located near Honolulu, Hawaii. The types of procurement available for choice were the "turnkey" method (a type of negotiated procurement involving a single contract for both the design and construction of the project) and the conventional method (a formally advertised procurement for the construction work along with separate negotiated contracts for the required construction management and design effort involved).

In May 1974, the Department decided to proceed with the conventional method because of the projected size and complexity of the project. Further, it was considered that the number of firms capable and willing to make "turnkey" proposals would be severely limited. Among the specific factors influencing this decision were:

1. the size of the project--2,600 units with a construction cost exceeding \$100 million;

2. the difficult site--unusually rough, combining steep volcanic slopes with a flat area containing poor unstable foundation soils;

3. the advantage to be gained by having firms with construction experience in Hawaii compete for the project; and

4. the very limited "turnkey" experience possessed by the established construction industry in Hawaii.

Moreover, the use of conventional design procedures for this project was considered to have the following advantages:

1. The design could be developed deliberately and carefully reviewed at each stage to ensure that all of the siting problems had been adequately considered and that the overall development was properly integrated;

2. Cost estimates for all phases of construction would be developed in detail permitting balanced adjustments of the design as required; and

3. Maximum competition on the construction contract(s) could be obtained because all qualified construction contractors could bid whether or not they have the design capability and not risk the large amount of capital to make a "turnkey" proposal.

As the first step in implementing the conventional procurement method chosen for the project, prospective firms were invited, by letter dated July 24, 1974, to submit proposals for the construction management phase of the project. Ecoscience, Inc., of the several firms submitting proposals for the phase, was initially chosen to be the contractor for the work. In September 1974, Ecoscience indicated it did not desire to pursue the project further.

On October 18, 1974, contract No. DACA84-75-C-0050 was awarded to CM Associates for "Construction-Consultant Services" through the period of the design. A separate contract for architect-engineering services for the project was awarded to Willis & Associates, Inc. on November 12, 1974.

The second step in implementing the conventional procurement method chosen was the decision to buy the required housing units in separate "procurement packages." Following this decision, the Department, by Advance Notice to Bidders dated June 23, 1975, advised that a package of 776 housing units would be procured on a formally advertised basis under IFB DACA84-76-B-0001. Bid opening was to be held on August 28 (later changed to September 18), 1975.

By letter dated June 26, 1975, and subsequent correspondence, Ecoscience insisted that the package (and any future packages, for the units) should, at the very least, allow companies the option of submitting turnkey proposals. This should be possible, Ecoscience insisted, because of the alleged superiority of the turnkey method of purchasing family housing.

The Department acknowledges that it has permitted a "turnkey" alternative on a prior purchase of family housing, but it argues that the prior purchase was for only 400 units (in contrast to the 2,600 units being purchased here) to be located on flat, open terrain (in contrast to the unusual volcanic soil conditions present at the Aliamanu site). Not only do the size and complexity of the present project differ from the prior procurement in which a turnkey alternative was permitted, but the Department states further costs and delay would attend the drafting and implementing of a turnkey alternative here. Thus, the Department estimates:

" \*\*\*To revise the Government bid package to permit 'Turnkey' proposals would require 60 to 90 days and the date for receipt of proposals would have to be extended to about 90 days after the revised bid package was issued. Evaluation and award would require 30 to 60 days and design by the successful proposer (if a 'Turnkey' proposer was selected) would require an additional 120 to 180 days. Thus, the estimated award date under the proposed procedure would be delayed from  $4\frac{1}{2}$  to  $6\frac{1}{2}$  months with actual construction starting 4 to 6 months after that which could total a delay of over a year in this urgently needed housing project.

"The delay would cost the Government approximately \$247 per unit per month in average Basic Allowance for Quarters and Station Housing Allowance payments over average operation and maintenance costs. Based on present scheduling this cost could range between \$1.6 million and \$5 million. In addition there is a very real risk of additional construction costs due to anticipated cost escalation in material and labor costs which, of course, would be passed on to the Government costs through higher bid (proposal) costs."

Ecoscience insists that the turnkey method is fully suited for the present project even considering the project's size and complexity. Moreover, it submits that the 6 months delay attending revision and implementation of the solicitation to permit a turnkey alternate would not delay site work.

#### ANALYSIS

The use of the turnkey method of construction has been recognized and encouraged by the Congress. As we stated in 51 Comp. Gen. 129 (1971):

"\* \* \* This [turnkey] method of procurement has, as is pointed out in the General Counsel's letter of August 27, 1970, been recognized and encouraged by the Congress. See, for example, section 510 of the Military Construction Authorization Act of 1970, Public Law 91-142, December 5, 1969, which relaxes the maximum net floor area limitations on military housing imposed by 10 U.S.C. 7574 by providing in a new subparagraph (f) of section 7574 that the maximum limitations 'may be increased up to 15 percentum if the Secretary of Defense, or his designee, determines that such increase is in the best interest of the Government to permit award of a turnkey construction contract for family housing to the contractor offering the most satisfactory proposal.' See, also, Senate Committee on Armed Services Report on the Military Construction Authorization Act of 1970, S. Rept. No. 91-527, 91st Cong., 1st sess. (1969), pages 43-44; House Committee on Armed Services Report on the Military Construction Authorization Act of 1970, H.R. Rept. No. 91-386, 91st Cong., 1st sess. (1969), pages 38-39. Under the circumstances, we will not object to the negotiation of turnkey construction contracts for military housing.\* \* \*"

The recognition of this method, however, should not be interpreted as making the method mandatory for housing procurements. Instead, the method is for use if the Government's best interests would be served. Indeed, this "best interest" test is also explicit in a memorandum from the Assistant Secretary of Defense (Installations and Logistics), dated December 20, 1973, with an enclosure entitled "DOD Policy and Procedural Guidance for the Use of One Step [turnkey] Competitive Negotiation \* \* \* in the Acquisition of Facilities." The enclosure provides, as pertinent:

"One Step. One step [turnkey] procurement procedures are authorized \* \* \* and shall be utilized when evaluation of a given project indicates this procedure will be advantageous to the government."

There is an obvious conflict between the Department and Ecoscience as to whether the turnkey method would be suited for a project of the size and complexity contemplated for the Aliamanu site. Recognizing the considerable range of discretion accorded those who purchase for the Government in determining the procurement method best suited for a given purchase and, especially recognizing the complexities involved in the present purchase, we cannot conclude that the decision to purchase housing on an advertised, rather than on a negotiated (turnkey), basis lacks a rational foundation. This conclusion is further strengthened by noting the statutory preference (10 U.S.C. § 2304(a) (1970)) for formal advertising.

It is our further view that the decision not to permit a turnkey alternative is not subject to question, since it appears to be a rational exercise of procurement discretion given the factors recited by the Department. See Allen and Vickers, Inc., 54 Comp. Gen. 445, 452 (1974), 74-2 CPD 303. Even if some of the factors are not as significant as they appear to be given Ecoscience's comments, we find substance in the argument that an award delayed because of the time needed to implement a turnkey alternative might be economically disadvantageous to the Government because of anticipated cost escalation in material and labor costs.

Protest denied.

*Thomas D. Morris*  
Acting Comptroller General  
of the United States