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

FILE: B-216491**DATE:** September 28, 1984**MATTER OF:** Anthony Giunta Construction**DIGEST:**

Protest that low bid price was too low is dismissed because below-cost bids are not illegal and affirmative determinations of responsibility are not generally reviewed by GAO.

By mailgram received at our Office on September 21, 1984, Anthony Giunta Construction Company (Giunta) protests an award to any other bidder than itself under invitation for bids (IFB) No. DAAB08-84-B-S984, issued by the United States Army, Fort Monmouth, New Jersey, for renovation and conversion of certain buildings. The only basis of protest mentioned is that there is an "inbalance" between the low bid of \$230,000 and the government estimate of \$352,000 and the Giunta's bid of \$347,000.

The crux of Giunta's protest is apparently that the low bidder is bidding too low a price so no award should be made to that bidder. However, our Office has consistently found that the submission of a below-cost bid is not illegal, and the government cannot withhold an award merely because a responsive low bid is below cost. Ellsworth Street Associates, B-213211, Oct. 24, 1983, 83-2 C.P.D. ¶ 488. Whether a bid price is so low that the bidder will not be able to perform the contract satisfactorily is a question concerning the bidder's responsibility, a matter that must be determined by the Army prior to award. Luikart Photographic Enterprises, B-213244, Oct. 17, 1983, 83-2 C.P.D. ¶ 463.

This Office does not review affirmative determinations of responsibility in the absence of an allegation either of fraud or bad faith on the part of procurement officials or that definitive responsibility criteria in the solicitation were not met. 4 C.F.R. § 21.3(g)(4) (1984); Beta Construction Company, B-214850, Apr. 18, 1984, 84-1 C.P.D. ¶ 445. Since there is no definitive responsibility criterion or allegation of fraud or bad faith involved in this protest, the protest is dismissed. Beta Construction Company, B-214850, supra.

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Harry R. Van Cleve
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Acting General Counsel