

## **CAN YOU BID ZERO (\$0) OR LESS ON A FIXED PRICE CONTRACT?**

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The answer to the question in the title is “yes,” when bidding on a single Contract Line Item Number (“CLIN”) or the entire contract, unless the solicitation prohibits such a bid. The Government Accountability Office (“GAO”) has issued numerous decisions supporting this view. The most recent decision was *Kiewit Infrastructure West Co.*, B-419687, June 25, 2021.

*Kiewit* involve a Navy Request for Proposals for repair, design and conversion of existing facilities in Oahu, HI. The RFP anticipated award of a fixed-price task order to the responsible offeror with the lowest evaluated price of proposals which met all the non-price evaluation factors. There were 15 CLINs in the RFP, including a CLIN for accelerated completion. The awardee proposed a discount (negative value) for the accelerated completion CLIN. Upon protest, the GAO noted that “in the context of fixed-price contracts, there is nothing objectionable in an offeror’s proposal of low or even below-cost prices.” GAO even cited a case, *SatoTravel*, B-287655, July 5, 2001, where GAO found it acceptable for an offeror to propose a negative value (an amount less than zero) for each option period of performance (Awardee took no exception to the solicitation by proposing to provide commercial travel office services at no cost to the government in any of the performance periods by its insertion in the price schedule of \$zero for the base period and a discount fee/rebate for each of the option periods.)

The GAO further noted that it saw no merit the protester’s argument that the awardee was not bound by its offer, or that its performance on the one CLIN at issue remained within the offeror’s control. The offer was sufficient to bind the awardee to perform the requirement in the RFP.

The Takeaway. In a fixed price contract, you may bid zero or below zero unless the solicitation prohibits this on one or more CLINs. There are several reasons why a bidder might do this:

- The bidder has found a new approach to meeting the requirement, and wishes to get started in this particular business
- The bidder wants to keep its workforce intact, and is willing to take a loss
- The bidder may be making up its losses on another CLIN-which clearly was the case in *SatoTravel*. Id. My suspicion is that it is likely there were rebates back to Sato on the commercial travel tickets, which were valuable to it and would have made up the fee differences. Another example of this is *Alderson Reporting Co, Ace-Federal Reporters*, B-205552, Feb. 12, 1982. In this case, both the protester and the awardee offered a 100 percent discount on certain work categories in a contract for transcription. The idea was that there would be no cost to the Agency (the Federal Regulatory Commission) for the Agency’s hearings. I think it likely that these offerors bid “zero” for the agency copies, while making up the difference on copies that went to private persons, such as law firms.

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