

SECTION 103
AWARD AND EXECUTION OF CONTRACT

103-1 CONSIDERATION OF BIDS

After the bids are opened and read, they will be compared on the basis of the summation of the products of the quantities shown in the bid schedule by the unit bid prices. The results of such comparisons will be immediately available to the public. In the event of errors, omissions, or discrepancies in the bid prices, corrections to the bid prices will be made in accordance with Article 103-2. Such corrected bid prices will be used for the comparison and consideration of bids.

The right is reserved to reject any or all bids, to waive technicalities, to request the low bidder to submit an up-to-date financial and operating statement, to advertise for new bids or to proceed to do the work otherwise, if in the judgment of the Department, the best interests of the State will be promoted thereby.

103-2 CORRECTION OF BID ERRORS

The provisions of this article shall apply in waiving irregularities and correcting apparent clerical errors and omissions in the unit bid price and the amount bid for bid items.

(A) Paper Bid

(1) Omitted Unit Bid Price--Amount Bid Completed--Quantity Bid on is One Unit

In the case of a bid item for which the amount bid is completed, but the unit bid price is omitted and the quantity shown in the proposal for the bid item is only one unit, the unit bid price shall be deemed to be the same as the amount bid for that bid item and shall constitute the contract unit price for that bid item.

(2) Omitted Unit Bid Price--Amount Bid Completed--Quantity Bid on is More Than One Unit

In the case of a bid item for which the amount bid is completed (extension of the unit bid price by the quantity) but the unit bid price is omitted and the quantity shown in the proposal for the bid item is more than one unit, the unit bid price shall be deemed to be the amount derived by dividing the amount bid for that item by the quantity shown in the proposal for that bid item and shall constitute the contract unit price for that bid item.

(3) Discrepancy in the Unit Bid Price and the Amount Bid

In the case of a bid item in which there is a discrepancy between the unit bid price and the extension for the bid item (amount bid), the unit bid price shall govern.

As an exception to the above, on bids for contracts not funded with any federal funds, the extension for the bid item (amount bid) shall govern when the discrepancy consists of an obvious clerical mistake in the unit bid price consisting of the misplacement of a decimal point. The correction to the unit bid price will be made only when the following two conditions are met:

(a) The corrected unit bid price multiplied by the quantity equals the amount bid for the bid item.

(b) The corrected unit bid price is closer to the average of the engineer's estimate and the individual bids for the contract item than the uncorrected unit bid price.

(4) Omitted Unit Bid Price and Omitted Amount Bid--Deemed Zero Bid

(a) State Funded Projects

In the case of omission of the unit bid price and the omission of the amount bid for any one item except Mobilization and, in the case of the omission of the

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amount bid where a lump sum price is called for, the amount bid and the unit bid price shall be deemed to be zero where the value of the omitted amount bid is 1% or less of the total amount bid for the entire project (excluding the omitted item). The value of the omitted amount bid will be derived by determining the average of the engineer's estimate and the individual bids for that contract item.

Where the unit bid price is deemed to be zero as provided in this subarticle, such zero unit bid price shall constitute the contract unit price for the affected bid item.

Where the amount bid for a lump sum bid item is deemed to be zero except Mobilization, as provided in this subarticle, such zero amount bid shall constitute the contract lump sum price for that bid item.

In the case of omission of the amount bid for Mobilization, the bid shall be deemed irregular and may be rejected.

(b) Federally Funded Projects

In the case of omission of the unit bid price and the omission of the amount bid for any one item and, in the case of the omission of the amount bid where a lump sum price is called for, the bid will be considered nonresponsive and will not be considered for award.

(5) Unit Bid Prices Containing More Than Four Decimal Places

In the case of a Bid Item for which the amount bid contains more than 4 decimal places for the Unit Bid Price, only the whole number and the first 4 decimal places shall constitute the Contract Unit Price for that Bid Item.

(B) Electronic Bids

(1) Enter a unit price in schedule of items. Totals will be generated automatically.

(2) Data incorrectly entered may not be recognized, and the bid item may remain blank until entered correctly.

(3) Enter no more than 4 decimal places for unit price.

(4) Do not enter zero (0) in any unit price field unless zero is the intended bid for that item. Zero will be considered a valid bid. However, where zeros are entered for items that are authorized alternates to those items for which a non-zero bid price has been submitted, zeros will be deemed invalid.

(5) When the proposal allows alternate bids, the bidder shall submit a unit or lump sum price for every item in the proposal other than items that are authorized alternates to those items for which a bid price has been submitted. Where the bidder submits a unit price other than zero for all items of an authorized alternate, the Department will determine the lowest total price based on the alternate bid.

103-3 WITHDRAWAL OF BIDS—MISTAKE

(A) Criteria for Withdrawal of Bid

The Department of Transportation may allow a bidder submitting a bid pursuant to NCGS § 136-28.1 for construction or repair work to withdraw his bid after the scheduled time of bid opening upon a determination that:

(1) A mistake was in fact made in the preparation of the bid.

(2) The mistake in the bid is of a clerical or mathematical nature and not one of bad judgment, carelessness in inspecting the work site or in reading the contract.

- (3) The mistake is found to be made in good faith and was not deliberate or by reason of gross negligence.
- (4) The amount of the error or mistake is equal to or greater than 3% of the total amount bid.
- (5) The notice of mistake and request for withdrawal of the bid by reason of the mistake is communicated to the Engineer within 48 hours after the scheduled time of bid opening. Upon proper notification of a mistake and request for withdrawal of bid, the bidder shall submit within 48 hours written notice of mistake accompanied by copies of bid preparation information to the Engineer. The notification of a mistake, request for withdrawal of bid and copies of bid preparation information shall be submitted to the State Contract Officer or Engineer.
- (6) The Department will not be prejudiced or damaged except for the loss of the bid.

(B) Hearing by the Engineer

If a bidder files a notice of mistake along with a request to withdraw his bid, the Engineer will promptly hold a hearing thereon. The Engineer will give to the requesting bidder reasonable notice of the time and place of any such hearing. The bidder may appear at the hearing and present the original working papers, documents or materials used in the preparation of the bid sought to be withdrawn, together with other facts and arguments in support of his request to withdraw his bid. The bidder shall be required to present a written affidavit that the documents presented are the original, unaltered documents used in the preparation of the bid.

(C) Action by Chief Engineer

A determination may be made by the Chief Engineer that the bidder meets the criteria for withdrawal of the bid as set forth in Subarticle 103-3(A) upon presentation of clear and convincing evidence by the bidder. The Engineer will present his findings to the Chief Engineer for action on the bidder's request. The Engineer will advise the bidder of the Chief Engineer's decision before the Department's consideration of award.

(D) Bid Bond

If a bid mistake is made and a request to withdraw the bid is made, the bid bond shall continue in full force and effect until there is a determination by the Chief Engineer that the conditions in Subarticle 103-3(A) have been met. The effect of the refusal of the Contractor to give payment and performance bonds within 14 calendar days after the notice of award is received by him, if award has been made by the Department after consideration and denial of the Contractor's request to withdraw his bid, shall be governed by the terms and conditions of the bid bond.

103-4 AWARD OF CONTRACT

(A) General

The lowest responsible bidder will be notified by letter that his bid has been accepted and that he has been awarded the contract. This letter shall constitute the notice of award. Where award is to be made, the notice of award will be issued within 60 days after the opening of bids; except with the consent of the lowest responsible bidder, the decision to award the contract to such bidder may be delayed for as long a time as may be agreed upon by the Department and such bidder. In the absence of such agreement, the lowest responsible bidder may withdraw his bid at the expiration of the 60 days without penalty if no notice of award has been issued.

Award of a contract involving any unbalanced bid price may be made in accordance with Article 102-14.

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(B) Title VI and Nondiscrimination

The North Carolina Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252) and the Regulations of the Department of Transportation (49 CFR, Part 21), issued pursuant to such act, hereby notifies all bidders that it will affirmatively insure that contracts entered in pursuant to advertisements, if awarded, will be made by the Department to the lowest responsible bidder without discrimination on the grounds of race, color or national origin.

(1) Title VI Assurance

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(a) Compliance with Regulations

The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(b) Nondiscrimination

The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(c) Solicitations for Subcontractors, Including Procurements of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(d) Information and Reports

The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the North Carolina Department of Transportation (NCDOT) or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the NCDOT, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

(e) Sanctions for Noncompliance:

In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the NCDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(i) Withholding of payments to the contractor under the contract until the contractor complies, and/or

(ii) Cancellation, termination or suspension of the contract, in whole or in part.

(f) Incorporation of Provisions

The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontractor procurement as the NCDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the NCDOT to enter into such litigation to protect the interests of the NCDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(2) Title VI Nondiscrimination Program

Title VI of the 1964 Civil Rights Act, 42 U.S.C. 2000d, provides that: “No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” The broader application of nondiscrimination law is found in other statutes, executive orders, and regulations (see Section III, Pertinent Nondiscrimination Authorities), which provide additional protections based on age, sex, disability and religion. In addition, the 1987 Civil Rights Restoration Act extends nondiscrimination coverage to all programs and activities of federal-aid recipients and contractors, including those that are not federally-funded.

The North Carolina Department of Transportation (NCDOT) hereby gives assurance that no person shall on the ground of race, color, national origin, sex, age, and disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by the recipient, as provided by Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, and any other related Civil Rights authorities, whether those programs and activities are federally funded or not.

During the performance of this contract, the Contractor and its subcontractors are responsible for complying with NCDOT’s Title VI Program. The Contractor must ensure that NCDOT’s Notice of Nondiscrimination is posted in conspicuous locations accessible to all employees and subcontractors on the jobsite, along with the Contractor’s own Equal Employment Opportunity (EEO) Policy Statement. The Contractor shall physically incorporate this “Title VI and Nondiscrimination” language, in its entirety, into all its subcontracts on federally-assisted and state-funded NCDOT-owned projects, and ensure its inclusion by subcontractors into all subsequent lower tier subcontracts. The Contractor and its subcontractors shall also physically incorporate the FHWA-1273, in its entirety, into all subcontracts and subsequent lower tier subcontracts on Federal-aid highway construction contracts only. The Contractor is also responsible for making its subcontractors aware of NCDOT’s Discrimination Complaints Process, as follows:

(a) Applicability

These complaint procedures apply to the beneficiaries of the NCDOT’s programs, activities, and services, including, but not limited to, members of the

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public, contractors, subcontractors, consultants, and other sub-recipients of federal and state funds.

(b) Eligibility

Any person or class of persons who believes he/she has been subjected to discrimination or retaliation prohibited by any of the Civil Rights authorities, based upon race, color, sex, age, national origin, or disability, may file a written complaint with NCDOT's Civil Rights office. The law prohibits intimidation or retaliation of any sort. The complaint may be filed by the affected individual or a representative, and must be in writing.

(c) Time Limits and Filing Options

A complaint must be filed no later than 180 calendar days after the following:

- (i) The date of the alleged act of discrimination; or
- (ii) The date when the person(s) became aware of the alleged discrimination; or
- (iii) Where there has been a continuing course of conduct, the date on which that conduct was discontinued or the latest instance of the conduct.

Title VI and other discrimination complaints by be submitted to the following entities:

(d) Format for Complaints

Complaints must be in writing and signed by the complainant(s) or a representative and include the complainant's name, address, and telephone number. Complaints received by fax or e-mail will be acknowledged and processed. Allegations received by telephone will be reduced to writing and provided to the complainant for confirmation or revision before processing. Complaints will be accepted in other languages including Braille.

(e) Discrimination Complaint Form

Contact NCDOT Civil Rights to receive a full copy of the Discrimination Complaint Form and procedures.

(g) Complaint Basis

Allegations must be based on issues involving race, color, national origin, sex, age, or disability as shown in Table 103-1. The term "basis" refers to the complainant's membership in a protected group category. Contact the NCDOT Civil Rights to receive a Discrimination Complaint Form.

TABLE 103-1 COMPLAINT BASIS				
Protected Categories	Definition	Examples	Applicable Statutes and Regulations	
			FHWA	FTA
Race	An individual belonging to one of the accepted racial groups; or the perception, based usually on physical characteristics that a person is a member of a racial group	Black/African American, Hispanic/Latino, Asian, American Indian/Alaska Native, Native Hawaiian/Pacific Islander, White	Title VI of the Civil Rights Act of 1964; 49 CFR Part 21; 23 CFR 200	Title VI of the Civil Rights Act of 1964; 49 CFR Part 21; Circular 4702.1B
Color	Color of skin, including shade of skin within a racial group	Black, White, brown, yellow, etc.		
National Origin	Place of birth. Citizenship is not a factor. Discrimination based on language or a person's accent is also covered.	Mexican, Cuban, Japanese, Vietnamese, Chinese		
Sex	Gender	Women and Men	1973 Federal-Aid Highway Act	Title IX of the Education Amendments of 1972
Age	Persons of any age	21 year old person	Age Discrimination Act of 1975	
Disability	Physical or mental impairment, permanent or temporary, or perceived.	Blind, alcoholic, para-amputee, epileptic, diabetic, arthritic	Section 504 of the Rehabilitation Act of 1973; Americans with Disabilities Act of 1990	

(3) Pertinent Nondiscrimination Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

- (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- (b) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

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- (c) Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- (d) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- (e) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- (f) Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- (g) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- (h) Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- (i) The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- (j) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- (k) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- (l) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).
- (m) Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*, Pub. L. 88-352), (prohibits employment discrimination on the basis of race, color, religion, sex, or national origin);
- (n) 49 CFR Part 26, regulation to ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs, as regards the use of Disadvantaged Business Enterprises (DBEs);
- (o) Form FHWA-1273, “Required Contract Provisions,” a collection of contract provisions and proposal notices that are generally applicable to all Federal-aid construction projects and must be made a part of, and physically incorporated into, all federally-assisted contracts, as well as appropriate subcontracts and

purchase orders, particularly Sections II (Nondiscrimination) and III (Nonsegregated Facilities).

(C) Award Limits

A bidder who desires to bid on more than one project on which bids are to be opened on the same date and who desires to avoid receiving an award of more projects than he is equipped to handle, may bid on any number of projects but may limit the total amount of work awarded to him on selected projects by completing the form Award Limits on Multiple Projects for each project subject to the award limit. In the event that a bidder is the lowest responsible bidder on projects subject to the award limit and the value of such projects is more than the award limit established by such bidder, the Department will not award such bidder projects from among those subject to the award limit which have a total value exceeding the award limit. The projects to be awarded to the bidder will be those projects on which award will result in the lowest total cost to the Department.

In determining the lowest total cost to the Department, the options of rejecting a bid or readvertising for new bids may be considered.

All bids submitted without the properly executed form Award Limits on Multiple Projects will not be subject to the award limit. In the event that there is a discrepancy between the completed award limit forms submitted by the same bidder for the different projects in a letting, the Department reserves the right to declare all such award limit forms invalid or to make such interpretation of the discrepancy as may be in the best interests of the Department. However, the presence of such discrepancy shall not be reason for declaring any bid irregular nor shall it invalidate the conditions of his bid bond or bid deposit.

Where a prequalified Contractor bids individually (as opposed to a Joint Venture) on one or more projects and bids on one of more projects as part of a Joint Venture, such individual bidder and such Joint Venture will be considered separate bidders in applying the provisions of this article.

(1) Paper Bids

This form will be bound within each proposal. This form will not be effective unless the amount is filled in and the form is properly signed.

(2) Electronic Bids

This form is located in the .ebs miscellaneous data file of Expedite. The bidder shall click on yes or no to indicate whether or not the bidder desires to limit the award.

103-5 CANCELLATION OF AWARD

The Department reserves the right to rescind the award of a contract for any reason at any time before the receipt of the properly executed contract bonds from the successful bidder.

103-6 RETURN OF BID BOND OR BID DEPOSIT

Checks that have been furnished as a bid deposit by all bidders, other than the 3 lowest responsible bidders, will be retained not more than 10 calendar days after the date of opening of bids. After the expiration of such period, the checks that were furnished as a bid deposit will be returned to all bidders other than the 3 lowest responsible bidders.

Checks that have been furnished as a bid deposit by the 3 lowest responsible bidders will be retained until after the contract bonds have been furnished by the successful bidder at which time the checks that were furnished as a bid deposit will be returned to the 3 lowest responsible bidders.

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Paper bid bonds will be retained by the Department until the contract bonds are furnished by the successful bidder after which all such bid bonds will be destroyed unless the individual bid bond form contains a note requesting that it be returned to the bidder or the Surety.

103-7 CONTRACT BONDS

The successful bidder, within 14 calendar days after the notice of award is received by him, shall provide the Department with a contract payment bond and a contract performance bond each in an amount equal to 100% of the amount of the contract. All bonds shall be in conformance with NCGS § 44A-33. The corporate surety furnishing the bonds shall be authorized to do business in the State.

103-8 EXECUTION OF CONTRACT

As soon as possible following receipt of the properly executed contract bonds, the Department will complete the execution of the contract, retain the original contract and return one copy of the contract to the Contractor.

103-9 FAILURE TO FURNISH CONTRACT BONDS

The successful bidder's failure to file acceptable bonds within 14 calendar days after the notice of award is received by him shall be just cause for the forfeiture of the bid bond or bid deposit and rescinding the award of the contract. Award may then be made to the next lowest responsible bidder or the work may be readvertised and constructed under contract or otherwise, as the Department may decide.

SECTION 104 SCOPE OF WORK

104-1 INTENT OF CONTRACT

The intent of the contract is to prescribe the work or improvements that the Contractor undertakes to perform, in full compliance with the contract documents. In case the method of construction or character of any part of the work is not covered by the plans, these specifications shall apply. The Contractor shall perform all work in accordance with the lines, grades, typical sections, dimensions and other data shown in the plans, or that may be modified by written orders and shall do such additional, extra and incidental work as may be considered necessary to complete the work to the full intent of the plans and specifications. Unless otherwise provided in the contract, the Contractor shall furnish all implements, machinery, equipment, tools, materials, supplies, transportation and labor necessary for the prosecution and completion of the work.

104-2 SUPPLEMENTAL AGREEMENTS

Whenever it is necessary to make amendments to the contract to satisfactorily complete the proposed construction or to provide authorized time extensions, the Engineer shall have the authority to enter into a supplemental agreement covering such amendments.

Supplemental agreements shall become a part of the contract when executed by the Engineer and an authorized representative of the Contractor. The Contractor shall file with the Engineer a copy of the name or names of his representatives who are authorized to sign supplemental agreements.

104-3 ALTERATIONS OF PLANS OR DETAILS OF CONSTRUCTION

The Engineer reserves the right to make, at any time during the progress of the work, such alterations in the plans or in the details of construction as may be found necessary or desirable. Under no circumstances will an alteration involve work beyond the termini of the proposed construction except as may be necessary to satisfactorily complete the project. Such alterations shall not invalidate the contract nor release the Surety, and the Contractor agrees to perform the work as altered at his contract unit or lump sum prices the same as if it had been a part of the original contract except as otherwise herein provided.