

New ConstructionDesign-BuildIntroduction

The District is authorized to enter into design-build contracts for district construction projects by adhering to the procedures set forth in the Political Subdivisions Construction Alternatives Act, Neb. Rev. Stat. §§ 13-2901 et seq. (the “Act”). Pursuant to the Act, the Board of Education hereby adopts the following policies for entering into a design-build contract and the general terms of such contract.

Board Selection of Design-Build Method and Process and Direction to Prepare Request for Proposals

The Board of Education of the District shall adopt a resolution to select the design-build under the Act as the method and process of construction delivery of the specific project and authorize and direct the District administration, in conjunction with the performance-criteria developer retained for the specific project, to prepare a Request for Proposals in accordance with the Act and this policy. The resolution shall require the affirmative vote of at least two-thirds of the Board of Education.

Procedures for Selecting and Hiring a Performance-Criteria Developer

Prior to proceeding with any district construction project using the design-builder method under the Act, the District shall retain the services of a performance-criteria developer under the following procedures:

1. In the event that the estimated fee for the professional services of a performance-criteria developer is less than forty thousand dollars (~~\$40,000~~ 50,000), the District shall informally solicit proposals or statements of qualifications from persons licensed or organizations issued a certificate of authorization to practice architecture or engineering pursuant to the Nebraska Engineers and Architects Regulation Act, Neb. Rev. Stat. §§ 81-3401 et seq., and select a performance-criteria developer that, in the sole opinion of the District, is best suited to the specific district construction project. The District shall negotiate and enter into a written performance-criteria developer contract with the selected person/firm.
2. In the event that the estimated fee for the professional services of a performance-criteria developer exceeds forty thousand dollars ~~\$40,000~~ 50,000), the District shall select a performance-criteria developer based on the following procedures, which are to be consistent with the Nebraska Consultants’ Competitive Negotiation Act, Neb. Rev. Stat. §§ 81-1700 et seq.
 - a. Public notice of a request for qualifications for the position of performance-criteria developer shall be given in a manner consistent with district policy. In addition, known persons and/or firms engaged in the lawful practice of their profession who desire to provide professional services will be encouraged to submit a proposal or statement of qualifications.
 - b. Proposals or statements of qualifications shall be objectively evaluated and discussions with qualified persons/firms shall be conducted regarding the

- person's/firm's qualifications, approach to the project, and ability to furnish the services of performance-criteria developer. If necessary, person(s)/firm(s) may be asked to provide public presentations.
- c. Qualified persons/firms shall be ranked in order of preference after considering such factors as:
 - i. The ability of professional personnel;
 - ii. Past performance;
 - iii. Willingness to meet time and budget requirements;
 - iv. Location, recent, current and projected workloads of the persons/firms; and,
 - v. The volume of work previously awarded to the person/firm.
 - d. The District shall attempt to negotiate a performance-criteria developer contract with the highest ranked qualified person/firm and may enter into a performance-criteria developer contract after negotiations. If the District is unable to negotiate a satisfactory contract with the highest ranked person/firm, the Scottsbluff Public School District may terminate negotiations with that person/firm. The Scottsbluff Public School District may then undertake negotiations with the second highest ranked person/firm and may enter into a performance-criteria developer contract after negotiations. If the Board of Education is unable to negotiate a satisfactory contract with the second highest ranked person/firm, the Board may undertake negotiations with the third highest ranked person/firm, if any, and may enter into a performance-criteria developer contract after negotiations.
3. The procedures in subparagraphs 1. and 2. above shall include the requirement that the performance-criteria developer is:
 - a. A person licensed or an organization issued a certificate of authorization to practice architecture or engineering in the state of Nebraska pursuant to the Engineers and Architects Regulation Act;
 - b. Ineligible to be included as a provider of any services in a proposal as a design-builder for the construction project on which it has acted as performance-criteria developer; and,
 - c. Is not employed by or does not have a financial or other interest in a design-builder who will submit a proposal.
 4. The procedure shall also provide that the performance-criteria developer shall assist the District in the development of project performance criteria, letters of interest, Requests for Proposals, evaluation of the proposals, evaluation of design and construction under the design-build contract to determine adherence to the performance criteria, and any additional services requested by the District to represent its interests in relation to the construction project.

Procedures for the Preparation and Content of Request for Letters of Interest and Procedures and Standards to be Used to Prequalify Design-Build Candidates

The District shall prepare and issue a Request for Letters of Interest for the position of design-builder under the Act and in accordance with this section and shall prequalify design-builders on

the basis of letter of interest responses received from such firms submitted in accordance with this section.

1. The Request for Letters of Interest shall be:
 - a. Published in a newspaper of general circulation within the District at least thirty days prior to the deadline for receiving letters of interest: and,
 - b. Sent by first-class mail to any design-builder upon request.
2. The Request for Letters of Interest shall include, at a minimum, a description of the District construction project in sufficient detail to permit a design-builder to submit a letter of interest, which may include a description of the scope and nature of the construction project, the project site, the schematic design (if any has been prepared), the preliminary project schedule, and the estimated budget.
3. Letters of interest shall be reviewed by the District, in consultation with the performance-criteria developer. The District will evaluate prospective design-builders based on the information submitted to the District in the letters of interest.
4. The District shall select as prequalified at least three prospective design-builders who submitted letters of interest. Provided that if only two design-builders have submitted letters of interest, the District shall select as prequalified at least two prospective design-builders. The selected design-builders then shall be considered prequalified and eligible to receive a Request for Proposals.

Procedures for the Preparation and Content of Request for Proposals

The District shall prepare the Request for Proposals for the position of design-builder under the Act and in accordance with this section. The Request for Proposals shall be sent only to the prequalified design-builders. At least 30 days prior to the deadline for receiving and opening proposals, notice of the Request for Proposals shall be published in a newspaper of general circulation within the District and filed with the State Department of Education. The Request for Proposals shall include, at a minimum, the following components:

1. The notice of the Request for Proposals;
2. An invitation to submit proposals. Such invitation shall:
 - a. Identify the District as the project owner;
 - b. Contain the day and hour upon which such proposals are due and shall be received;
 - c. State that proposals shall be sealed;
 - d. State that proposals shall not be opened until expiration of the time allowed for submitting proposals; and,
 - e. State the hour at which such proposals shall be opened in the presence of the proposers or representatives of the proposers.
3. These policies adopted by the District;
4. A project statement, which contains information about the scope and nature of the project, the project site, the schedule, and the estimated construction budget and other budget parameters;
5. The project performance criteria;

6. Instructions to prospective design-builder firms, which shall state that the following requirements, at a minimum, must be contained in any submitted proposal:
 - a. A description of the design-builder's project team and organization of such team;
 - b. Fee proposal, if required by the District as part of the Request for Proposals;
 - c. Proof of insurance coverage and bonding required by law and the construction manager at risk contract;
 - d. A written statement of the design-builder's proposed approach to the design and construction of the project, which may include graphic materials illustrating the proposed approach to design and construction but shall not include price proposals; and,
 - e. A written acknowledgement that the design-builder agrees to the following conditions:
 - i. An architect or engineer licensed to practice in Nebraska will participate substantially in those aspects of the offering which involve architectural or engineering services.
 - ii. At the time of the design-build offering, the design-builder will furnish to the District a written statement identifying the architect or engineer who will perform the architectural or engineering work for the design-build project.
 - iii. The architect or engineer engaged by the design-builder to perform the architectural or engineering work with respect to the design-build project will have direct supervision of such work and may not be removed by the design-builder prior to the completion of the project without the written consent of the District.
 - iv. A design-builder offering design-build services with its own employees who are design professionals licensed to practice in Nebraska will:
 1. Comply with the Engineers and Architects Regulation Act by procuring a certificate of authorization to practice architecture or engineering;
 2. Submit proof of sufficient professional liability insurance; and,
 3. The rendering of architectural or engineering services by a licensed architect or engineer employed by the design-builder will conform to the Engineers and Architects Regulation Act and rules and regulations adopted under the act.
7. Information of pre-proposal conference, if any required, and attendance requirements at such conference;
8. Information of pre-proposal conference, if any required, and attendance requirements at such conference;
9. Proposal procedures, including:
 - a. Questions and clarification or interpretations of the proposal documents;
 - b. Method of handling addenda to proposal documents;
 - c. Procedure for modification or withdrawal of proposals; and,
 - d. Proposal due date and opening including date, time, location and methods of submittal of proposals.

10. Evaluation procedure, including the criteria for evaluation of proposals, the relative weight of each criterion, the interview process, the contract negotiation process and the contract execution process;
11. The proposed agreement between the District and the design-builder, including general conditions of the contract for construction. Such agreement may set forth an initial determination of the manner by which the design-builder selects any subcontractor and may require that any work subcontracted be awarded by competitive bidding;
12. Payment and performance bonds and guaranteed maximum price bond requirements for the design-builder;
13. Insurance requirements, which shall provide that the design-builder shall purchase from and maintain in a company or companies lawfully authorized to do business in the State of Nebraska such insurance as will protect the design-builder from claims which may arise out of or result from the design-builder's operations under the contract and for which the design-builder may be legally liable, whether such operations be by the design-builder or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable;
14. Special notice requirements, if any, which may include but not limited to the following:
 - a. This project is being conducted under, and is subject to, the provision of the Political Subdivisions Construction Alternatives Act, Neb. Rev. Stat. §§ 13-2901 et. seq.
 - b. This District is an equal opportunity institution and actively recruits well-qualified and diverse individuals and firms, for architectural and engineering services and for contractor services. The School District or any of its responders, bidders, or proposers for public work shall not discriminate against any employee or applicant for employment or subcontractor by reason of race, color, national origin, religion, marital status, sex, age, disability, or sexual orientation. The District requires that all responders/bidders/proposers for public work provide written assurances, affirm and agree that:
 - i. They are an equal opportunity employer;
 - ii. They actively recruit a well-qualified and diverse group of employees and subcontractors; and,
 - iii. If selected, they will actively continue and implement this policy throughout any awarded public work.
 - c. By submitting a proposal, each proposer agrees to waive any claim it has, or may have, against the District and the architects retained by the District, and their respective employees, arising out of, or in connection with, the administration, evaluation, or recommendation of any proposal; waiver of any requirements under the proposal documents; or the contract documents; acceptance or rejection of any proposals; and/or award of the contract.
 - d. The District reserves the right to:
 - i. Terminate the proposal process at any time;
 - ii. Reject any or all proposals; and/or,
 - iii. Waive formalities and minor irregularities in the proposals received.
 - e. The District reserves the right to conduct a pre-award survey of any firm under consideration to confirm any of the information furnished by the firm or to require other evidence of managerial, financial, technical and other capabilities, the

positive establishment of which is determined by the District to be necessary for the successful performance of the contract.

- f. The proposing firm's signature on the proposal is the proposing firm's guarantee that the content of the proposal has been arrived at without collusion with other eligible prospering firm or firms and without effort to preclude the District from obtaining the lowest competitive price.
15. Other information, which may include the following:
- a. A description of the general scope of services to be provided by the design-builder;
 - b. Project financing phase informational services, if any;
 - c. Pre-construction phase services including consultation of design, materials and systems, long lead items, contractor availability and recruitment, preliminary project schedule and preliminary cost estimation, and review of construction documents and conduct value engineering assessments with respect to constructability, material and construction techniques and building systems, sequencing of construction, separation or combining of bid packages.
 - d. Cost estimation and preliminary guaranteed maximum price submittals to the District; and/or,
 - e. Construction administration and supervision services including identification and preparation of bid packages, recruitment and prequalification of prospective proposers for such bid packages, conduct of bid process for each bid package, review of and recommendations to the District with regard to proposals submitted, and administration of construction contracts, day-to-day supervision of the work with a qualified site superintendent and project manager;

Procedures for Preparing and Submitting Proposals

Only design-builders prequalified under this policy may submit proposals. The District only will accept, consider and evaluate proposals submitted by prequalified design-builders and will not accept, consider or evaluate any proposals submitted by firms not prequalified. Proposals submitted by interested design-builder firms must include all of the elements required by the Request for Proposals. Proposals shall be required to be submitted in the form and method specified in the Request for Proposals, as determined by the District. All proposals must be submitted on or before the time and date and at the location specified in the Request for Proposals. All submitted proposals become the property of the District.

Proposals must also contain the following certification or substantially similar language: "The proposer provides written assurances, affirms and agrees that (a) the proposer is an equal opportunity employer, (b) the proposer actively recruits a well-qualified and diverse group of employees and subcontractors, including women and minorities, and (c) if selected, the proposer will actively continue and implement this policy throughout any awarded public work. The proposers shall not discriminate against any employee or applicant for employment or subcontractor by reason of race, color, national origin, religion, marital status, sex, age, disability or sexual orientation."

Procedures for Evaluating Proposals in Accordance with Neb. Rev. Stat. §§ 13-2908 & 13-2911

The District shall evaluate and rank each proposal on the basis of best meeting the criteria in the Request for Proposals and taking into consideration the recommendation of the selection committee.

1. Referral to Selection Committee. In evaluating proposals, the District shall refer the proposals for recommendation to a selection committee.
2. Make-Up of Selection Committee. The selection committee shall be a group of at least five persons designated by the District. Members of the selection committee shall include at least one person from each of the following groups:
 - a. A member or members of the Board of Education;
 - b. A member or members of district administration and/or staff;
 - c. The performance-criteria developer;
 - d. A person having special expertise relevant to selection of a construction manager under the Act; and,
 - e. A resident of the District other than an individual included in subdivisions a. through d. of this subsection.
3. No Pecuniary Interest By Members. A member of the selection committee shall not be employed by or have a financial or other interest in a design-builder who has a proposal being evaluated and shall not be employed by the District or the performance-criteria developer.
4. Evaluation Criterion. The selection committee and the District shall evaluate proposals taking into consideration the criteria enumerated in subdivisions (1) through (8) of this subsection, with the maximum percentage of total points for evaluation which may be assigned to each criterion set forth following the criterion. The following criteria shall be evaluated, when applicable:

No.	Evaluation Criteria	Maximum Percent Value
1	The financial resources of the design-builder to complete the project	Ten percent (10%) of total points
2	The ability of the proposed personnel of the design-builder to perform	Thirty percent (30%) of total points
3	The character, integrity, reputation, judgment, experience, and efficiency of the design-builder	Thirty percent (30%) of total points
4	The quality of performance on previous projects	Thirty percent (30%) of total points
5	The ability of the design-builder to perform within the time specified	Thirty percent (30%) of total points
6.	The previous and existing compliance of the design-builder with laws relating to the contract	Ten percent (10%) of total points

7.	OPTIONAL - The ability and resources of the design-builder to recruit qualified contractors for the Project, including but not limited to local contractors	Twenty percent (20%) of total points
8.	OPTIONAL - The design-builder's proposed efforts schedule for the Project	Twenty percent (20%) of total points
	TOTAL (No more than 100%)	100%

5. Determination of Evaluation Criteria Percentage Values. The Board of Education, in the resolution adopted to select the design-builder under the Act as the method and process of construction delivery of the specific project, shall identify and describe the exact percentage of total points for each of the evaluation criteria described above, ensuring that that the total percentage does not exceed 100%.

6. Examination of Proposals. Following the opening of the proposals, the selection committee will examine the proposal and supporting documentation submitted by all candidates. The evaluation of the design-builder for the project shall be based upon a careful and objective consideration of the proposals and the ability of each firm submitting a proposal to perform the services described in the Request for Proposals and the requirements of any federal, state, and local laws and regulations, and district policies and regulations that are applicable to the project.

7. Interviews of Candidates. To further assist the selection committee in evaluating each proposal to determine which candidate best meets the criteria in the Request for Proposals, the selection committee and the Board of Education may, at either's election, determine to interview such candidate(s).

8. Recommendation of Selection Committee to Board of Education. After examining and evaluating all proposals and interviewing selected candidate(s), if elected, the selection committee shall rank each proposal on the basis of best meeting the proposal evaluation criteria. The selection committee shall make a formal, written recommendation to the Board of Education based on highest ranking proposal. The selection committee shall provide to the Board of Education the full rankings.

9. Records of Selection Committee. The selection committee shall keep and maintain permanent records of the selection committee proceedings including, but not limited to, records of the minutes of meetings, and documentation received or disclosed in open session of the meetings. The selection committee shall appoint a Board member or district employee to keep the minutes of the selection committee meetings. The minutes of each meeting shall include as a minimum the following items: a record of the date, time, place, members present, action taken, and the vote of each member. The records of the selection committee shall be placed on public file with the central administration office. The records of the selection committee in evaluating proposals and making recommendations shall be considered public records for purposes of Neb. Rev. Stat. § 84-712.01.

10. Board of Education Action. After receiving the formal recommendation of the selection committee, the Board of Education shall examine the proposals and supporting documentation submitted by all proposing design-builder candidates. Each proposal will be evaluated and ranked by the Board of Education on the basis of best meeting the evaluation criteria in the Request for Proposals and taking into consideration the recommendation of the selection committee.
11. Rejection of Proposals. The District shall have the right to reject any and all proposals. The District may subsequently solicit new proposals using the same or different project performance criteria.

Procedures for Design-Builder Contract Negotiations

1. Negotiations with Highest Ranked Design-Builder. The District shall attempt to negotiate a design-build contract with the highest ranked design-builder and may enter into a design-build contract after negotiations. The negotiations shall include a final determination of the manner by which the design-builder selects a subcontractor.
2. Negotiations with Second Highest Ranked Design-Builder. If the District is unable to negotiate a satisfactory contract with the highest ranked design-builder, the District may terminate negotiations with that design-builder. The District may then undertake negotiations with the second highest ranked design-builder and may enter into a design-build contract after negotiations. If the District is unable to negotiate a satisfactory contract with the second highest ranked design-builder, the District may undertake negotiations with the third highest ranked design-builder, if any, and may enter into a design-build contract after negotiations.
3. Requirement of Execution of Written Contract. No contractual rights shall be created between the design-builder and the District until a written contract has been negotiated, agreed upon, approved by the Board of Education of the District, and executed by all parties thereto.
4. Filing of Design-Build Contract. The District shall file a copy of all design-build contract documents with the State Department of Education within thirty days after their full execution. Within thirty days after completion of the project, the design-builder shall file a copy of all contract modifications and change orders with the department.
5. Unsuccessful Negotiations with Design-Build Candidates. If the District is unable to negotiate a satisfactory contract with any of the ranked design-builders, the District may either revise the Request for Proposals and solicit new proposals or cancel the Request for Proposals process.
6. Modification of Design-Build Contract. A design-build contract may be conditioned upon later refinements in scope and price and may permit the District in agreement with the design-builder to make changes in the project without invalidating the contract. Later refinements shall not exceed the scope of the project statement contained in the Request for Proposals.

Procedures for Filing and Acting on Formal Protests Relating to the Solicitation or Execution of the Design-Build Contract

1. A design-builder seeking to protest the policies adopted by the Board of Education pursuant to the Act, and the form or content of the Request for Letters of Interest, or the form or content of the Request for Proposals promulgated by the District, or the notice of the Request for Letters of Interest or the Request for Proposals, or any prequalification or pre-proposal process or procedures, must file such protest within fourteen calendar days from the date of the publication of the notice of the letters of interest or Request for Proposals, as the case may be.
2. A design-builder candidate seeking to protest the letters of interest or proposal opening process used by the District must file such protest within seven calendar days from the date of the letters of interest or proposal opening, as the case may be.
3. A design-builder candidate seeking to protest the process and procedures used by the selection committee in evaluating and/or ranking the design-builder candidates must file such protest within seven calendar days from the date the selection committee makes its recommendation to the Board of Education, or the Board of Education's acceptance of the recommendation of the selection committee.
4. Negotiation or Execution of Design-Build Contract. A design-builder candidate seeking to protest the process and procedures used by the District in the negotiation or execution of the design-build contract must file such protest within seven (7) calendar days from the date the Board of Education takes action to approve the design-build contract.
5. Form and Filing of Protests. All protests under this subparagraph shall be filed with the Office of the Superintendent during normal business hours. Such protest must be in writing and received at or before the close of business on the last day provided for the receipt of such proposals. For purposes of this paragraph the term "received" shall mean the actual in hand receipt of all protests and attendant documents. Facsimile transmittals, e-mail, or other electronic or telephonic transmittals shall not be accepted and receipt of protest documents, or change in protest documents, in such manner will not be accepted. Protests shall be public records and shall not be considered proprietary and confidential.
6. Action on Protests. The Board of Education shall take action on any protest filed pursuant to the above paragraphs within forty-five days of receipt of such protest, and shall provide the decision of the Board of Education in writing to the protesting party.

Procedures for the Evaluation of Construction Under the Design-Build Contract by the Performance-Criteria Developer to Determine Adherence to the Performance Criteria

The performance-criteria developer shall be the District's representative for purposes of evaluating the design and construction under the design-build contract to determine adherence by the design-builder to the project performance criteria established for the project. The procedures to be followed by the District, performance-criteria developer, and the design-builder for purposes of such evaluation shall be as follows:

1. The performance-criteria developer shall review and evaluate the construction methods and materials, including any shop drawings and submittals, used by the design-builder to determine adherence with the project performance criteria.
2. The performance-criteria developer shall be a representative of and shall advise and consult with the District during the performance of the design-build contract by the design-builder. The performance-criteria developer shall have authority to act on behalf of the District with regard to any issue arising regarding the performance of the design-build contract by the design-builder. The design-builder shall provide the performance-criteria developer with copies of all construction documents, including, but not limited to, all plans and specifications, shop drawings, requests for information from contractors, and warranties for equipment and materials.
3. The performance-criteria developer, as a representative of the District shall visit the site at intervals appropriate to the stage of the design-builder contractor's operations, when services are needed or necessary, or as otherwise directed by the District to:
 - a. Become familiar with and to keep the District informed about the progress and quality of the portion of the work completed;
 - b. Guard the District against defects and deficiencies in the work; and,
 - c. Determine, in general, if the work is being performed in a manner establishing that the work, when fully completed, will be in accordance with the performance criteria for the project.
4. The performance-criteria developer shall be responsible for the performance-criteria developer's negligent acts or omissions and those of the performance-criteria developer's personnel providing services, but shall not have control over or charge of and shall not be responsible for acts or omissions of the design-builder, subcontractors, or their agents or employees, or of any other persons or entities performing portions of the work.
5. The performance-criteria developer shall at all times have access to the work wherever it is in preparation or progress.
6. The District shall endeavor to communicate with the design-builder through or in conjunction with the performance-criteria developer about matters arising out of or relating to the project.
7. Upon issuance by the design-builder of a certificate of substantial completion, the performance-criteria developer shall conduct a final inspection and evaluation of the project to confirm that all components of the work have been completed in accordance with the performance criteria established for the project.

Terms Defined

- Design-Build Contract. A contract developed under the terms and conditions of this policy which is subject to qualification-based selection between the District and a design-builder to furnish:

- Architectural, engineering, and related design services for a construction project pursuant to the Act; and,
- Labor, materials, supplies, equipment, and construction services for a construction project pursuant to the Act.
- Design-Builder. The legal entity which proposes to enter into a design-build contract pursuant to the Act and this policy.
- Letter of Interest. A statement indicating interest to enter into a design-build contract for a project pursuant to the Act and this policy.
- Performance-Criteria Developer. Any person licensed or any organization issued a certificate of authorization to practice architecture or engineering pursuant to the Nebraska Engineers and Architects Regulation Act who is selected by the District to assist the District in the development of construction project performance criteria, Requests for Proposals, evaluation of proposals, evaluation of the construction under a design-build contract to determine adherence to the project performance criteria, and any additional services requested by the District to represent its interests in relation to a construction project.
- Project Performance Criteria. The performance requirements of the construction project suitable to allow the design-builder to make a proposal. Performance requirements include the following, if required by the construction project: capacity, durability, standards, ingress and egress requirements, description of the site, surveys, soil and environmental information concerning the site, interior space requirements, material quality standards, design and construction schedules, site development requirements, provisions for utilities, storm water retention and disposal, parking requirements, applicable governmental code requirements, and other criteria for the intended use of the construction project.
- Proposal. An offer in response to a Request for Proposals by a design-builder to enter into a design-build contract for a District construction project pursuant to the Act and this policy.
- Qualification-Based Selection Process. A process of selecting a design-builder based first on the qualifications of the design-builder and then on the design-builder's proposed approach to the design and construction of the District construction project.
- Request for Letters of Interest. The documentation or publication by which the District solicits letters of interest.
- Request for Proposals. The documentation by which the District solicits design-builder proposals.

Legal Reference: Neb. Rev. Stat. §§ 13-2901 et seq.
 Neb. Rev. Stat. §§ 81-1700 et seq.
 Neb. Rev. Stat. §§ 81-3401 et seq.
 Neb. Rev. Stat. §§ 84-712

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