Civil Rights – SBA & 8A HUB Zones

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PRESERVATION

CW MTS—
SBA + 8A Programs

Irene Bueno
04/24/2000 02:58:38 PM

Record Type: Record

To: Eric P. Liu/OPD/EOP@EOP
cc: Anna Richter/OPD/EOP@EOP
Subject: HUB Zones

I spoke to Michelle Enger from Sally's office and she explained that it is somewhat confusing but here's how she explained it to me. I hope this answers your questions. Let me know.

- In 1997, Bond and the CBC struck an agreement in the SBA reauthorization bill that would give equal treatment to HUBZone businesses and 8A program businesses. Bond wanted to give preference to HUBZone businesses and CBC wanted to give preferences to 8A program businesses.

- When SBA wrote the regs on this law, SBA gave 8A program businesses preference over HUBZone programs. CBC is pleased with these regs.

- The current Bond language does not give preferences to HUBZone programs but would makes sure that SBA does not give preference to 8A programs as it did in its regs. Bond would argue he is just doing what was originally agreed to in 1997.

- The CBC views the Bond language as undoing the SBA regs and views the SBA regs as the Administration's view on this issue. Consistent with SBA regs, the CBC is strongly urging that the Administration issue a veto threat over the Bond language.

· Kerry was OK w/ parity in '97 – as before v. HUBZone getting priority

4/24

· Aida will draft ltr to Kerry saying we're disappointed w/ + oppose the Cmte-passed language – see if he wants to receive such a ltr.

· Possible Aida/Maria briefing to S Dems.

· Ed drum road toward SAP – veto Q left open

April 20, 2000

To: Eric Liu

From: Irene Bueno

RE: BRIEFING - SMALL BUSINESS ADMINISTRATION 8A AND HUBZONE
Monday, April 24, 2000 at 5:00 pm

In addition to the talking points on this briefing, the following is some further background. My understanding is that Aida Alvarez, the Administrator of the Small Business Administration (SBA), will brief us on the SBA reauthorization legislation and make sure we are in agreement with their approach in light of political pressure to recommend a veto of the legislation.

The Senate version of the SBA reauthorization bill includes language authored by Senator Bond (R-MO), Chairman of the Small Business Committee, to give preference to HUBZone program businesses over 8A program businesses in government contract procurement programs. The 8A program business is a "race-based" business that gives preferences to minority owned businesses for government contracts. The HUBZone program is a "location-based" program that gives preferences to businesses located in economically disadvantaged areas.

The CBC and CHC are pushing SBA to recommend a veto over the Bond language. Representative Nydia Velasquez (D-NY) is the ranking member on the Small Business Committee has particularly been pushing SBA. CBC and CHC and other would argue that the Bond language would threaten minority owned businesses if preference is given to HUBZone programs over 8A programs and that is an indirect way of eliminating affirmative action in government contract programs.

Internally, SBA would like to express their opposition the Bond provision but not recommend a veto. They need their reauthorization bill to be passed this year and they do not want to hold up the bill on this one but very important issue. A possible compromise with Bond is unlikely. He is very firm about his position on this issue and he has Republican support for this provision. Also, Bond believes that SBA undercut similar language in a reauthorization bill three years ago by issuing regulations that did not give preferences to HUBZone programs.

Talking Points on
SBA's FY 2000 Reauthorization Legislation
8(a) and HUBZones

- SBA's government contracting office operates two programs that attempt to assist small disadvantaged businesses, or SDBs.

  8(a). SBA's 8(a) program automatically certifies minority-owned firms as SDBs, which entitles them to certain Federal procurement privileges. Federal procurement rules provide for sole-source contracts to SDBs and instruct Federal agencies to set aside 25 percent of their contracts for SDBs. Further, there is a preference for 8(a) firms if their bids exceed others by 10 percent or less. (HUBzones receive this same preference.)

  HUBzones. Unlike the 8(a) program, SBA's HUBzone program focuses on a firm's location rather than its ownership. The program gives contracting preferences to firms that are located in and that employ residents of historically underutilized business zones, or HUBzones. While the 8(a) program is now well established, the HUBzone program has been in operation for a little over a year now.

- SBA's current policy is to promote 8(a) firms over HUBzones firms. However, this contradicts Sen. Bond's intent of current law, which gives more priority to HUBzones. (See table below.) SBA crafted its regulations in 1997 to reflect the interest of the Administration and Congressional Democrats that minority-owned businesses receive ample assistance.

1997 Law (Bond's Interpretation)	**SBA Regs**	**2000 Senate Bill**
8(a) in HUBzones	8(a) in HUBzones	8(a) in HUBzones
HUBzones	8(a)	8(a) or HUBzones
8(a)	HUBzones	

- The Senate Small Business Committee's mark-up of SBA's reauthorization bill endorses neither HUBzone nor 8(a) firms with respect to each other. This provision reflects Chairman Bond's preference that the Federal government use a place-based criterion instead of a race-based criterion for awarding contracts.

- The Hispanic and Black Congressional Caucuses oppose this provision of the Senate bill and are calling for the Administration to threaten to veto the bill. Both caucuses favor giving preference to 8(a) firms out of concern that HUBzone firms may crowd out 8(a) firms for Federal contracts. Rep. Velázquez (D NY), ranking member of the House Small Business Committee, is spearheading the Congressional effort to amend the Senate bill.

- SBA's unofficial position is that they will not pursue a veto threat because they do not want to threaten their reauthorization over this one issue. SBA is currently developing comments to more fully explain its position. They will likely note that they lack data to evaluate the impact of HUBzones vis a vis 8(a) firms. SBA will also argue that many other factors besides HUBzones are reducing the 8(a) procurement volume, e.g., court challenges, benchmarking, and GSA schedules.

FAX COVER SHEET

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Date: 4/20/00

# of Pages Including Cover Sheet: 6

Notes: More on 8(A) See pages 69-70

See pages 69-70

Calendar No. ____

106TH CONGRESS
2D SESSION

S. ____

[Report No. 106-___]

IN THE SENATE OF THE UNITED STATES

MARCH ___ (legislative day, ________), 2000

Mr. BOND, from the Committee on Small Business, reported the following original bill; which was read twice and placed on the calendar

A BILL

To reauthorize programs to assist small business concerns, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Small Business Reauthorization Act of 2000".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

tified) shall be considered to be a qualified HUBZone small business concern during the 1-year period beginning on that date of release, and such firm may perform any contract awarded to it on the basis of a preference provided under section 31(b), if such award is made on or before the expiration of that 1-year period".

SEC. 612. ELIGIBLE CONTRACTS.

Section 31(b) of the Small Business Act (15 U.S.C. 657a(b)) is amended—

(1) in paragraph (8)—

(A) by striking "In any" and inserting the following:

"(A) IN GENERAL.—Subject to subparagraph (B), in any"; and

(B) by adding at the end the following:

"(B) PROCUREMENT OF COMMODITIES.—The 10 percent price evaluation preference under subparagraph (A) does not apply to the quantity of a commodity being purchased under full and open competition in a particular tender—

"(i) if—

"(I) the contracting officer sets aside not less than 10 percent of the tender for—

"(aa) competition restricted to small business concerns that are eligible to be awarded a contract under section 8(a)(1)(D)(i) or other socially and economically disadvantaged small business concerns (as defined in section 8(a)(4)(A));

"(bb) sole source contracts for small business concerns that are eligible to be awarded a contract under section 8(a)(3), or other socially and economically disadvantaged small business concerns (as defined in section 8(a)(4)(A)); or

"(cc) competition restricted to small business concerns in general; and

"(II) the contracting officer provides for a set-aside under paragraph (2)(B), or a sole-source contract under paragraph (2)(A), of not less than an additional 10 percent of the quantity of commodity to be purchased in that tender; or

"(ii) if the contracting officer allocates not less than 20 percent of the tender for a set-aside under paragraph (2)(B) or a sole-source contract under paragraph (2)(A), in the absence of any other small business program set-asides or sole source contract under this Act.";

(2) in paragraph (4), by striking "paragraph (2) or (3)" and inserting "this subsection"; and

(3) by adding at the end the following:

"(5) PREFERENCE FOR CERTAIN SMALL BUSINESSES.—

"(A) IN GENERAL.—Except as provided in paragraph (4), a contracting officer shall give preference in awarding contracts under subparagraph (A) or (B) of paragraph (2) to qualified HUBZone small business concerns that are also eligible to be awarded contracts under section 8(a).

"(B) REGULATORY LIMITATION.—No rule, regulation, or order of the Administration or the Federal Acquisition Regulatory Council may require a contracting officer, in awarding contracts—

"(i) to give preferential treatment to a qualified HUBZone small business concern relative to a small business concern that is eligible to be awarded a contract under section 8(a); or

"(ii) to give preferential treatment to a small business concern that is eligible to be awarded a contract under section 8(a) relative to a qualified HUBZone small business concern.".

SEC. 613. CORRECTION OF HUBZONE REFERENCE.

Section 8(d)(4)(D) of the Small Business Act (15 U.S.C. 637(d)(4)(D)) is amended by inserting "qualified HUBZone small business concerns," after "small business concerns,".

SEC. 614. COMMUNITY DEVELOPMENT.

Section 3(p) of the Small Business Act (15 U.S.C. 632(p)), as amended by this Act, is amended—

(1) in paragraph (2)—

(A) in subparagraph (B), by striking "or" at the end;

JAMES M. TALENT, MISSOURI
CHAIRMAN

NYDIA M. VELÁZQUEZ, NEW YORK

NO PREV-
HSPA

Congress of the United States
House of Representatives
106th Congress
Committee on Small Business

2361 Rayburn House Office Building
Washington, DC 20515-0515

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April 14, 2000

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The Honorable Aida Alvarez
Administrator
U.S. Small Business Administration
Mail Code: 2110
409 3rd Street, S.W.
Washington, DC 20416

Dear Administrator Alvarez:

As you are aware, on Tuesday, March 21st, the Senate Small Business Committee passed the *Small Business Reauthorization Act of 2000*. Included in that legislation, was language that would create parity between 8(a) and HUBZone firms. We are writing to express our strong opposition to this language.

Federal prime contracting opportunities for small businesses, is one of the most important issues we deal with as the Committee on Small Business. When we passed the HUBZone Act in 1997, we did so because the HUBZone Program was designed to inject federal contract dollars to businesses in underserved areas. We expressed our concern at that time, that the HUBZone Program not harm minority-owned businesses, and especially 8(a) firms.

We believe the inclusion of the parity language will mean the end for the 8(a) Program. The 8(a) Program will no longer be a viable option because there will be no incentive to use it. As we all know, the 8(a) Program is the primary tool through which minority entrepreneurs enter the federal marketplace. If this proposal passes, contracts that used to go to minority-owned firms won't anymore.

We still believe that the HUBZone Program and the 8(a) Program can work in synergy, but we do not believe that the HUBZone Program can or should replace the 8(a) Program. Preliminary fiscal year 1999 statistics show that only 3.34 percent of all federal procurement dollars go to the 8(a) Program. These figures are appalling, considering the fact that the federal small disadvantaged business goal is a mere 5 percent. Clearly, now is not the time to dismantle the most significant source of federal contract dollars for minority-owned businesses.

A clear message must be sent that this change is unacceptable to the Administration. We urge you to encourage the President to issue a veto threat if the new HUBZone language is included in the SBA's Re-authorization. If we fail to act now, all of the gains made over the past several years by minority-owned businesses will be lost.

NYDIA M. VELAZQUEZ
Ranking Democratic Member
Committee on Small Business

JUANITA MILLENDER-McDONALD
Ranking Democratic Member
Subcommittee on Empowerment
Committee on Small Business

Danny K. Davis

DANNY K. DAVIS
Ranking Democratic Member
Subcommittee on Government Programs and Oversight
Committee on Small Busienss

Bill Pascrell, Jr.

BILL PASCRELL, Jr.
Ranking Democratic Member
Subcommittee on Regulatory Reform and Paperwork Reduction
Committee on Small Business

Carolyn McCarthy

CAROLYN McCARTHY
Ranking Democratic Member
Subcommittee on Tax, Finance and Exports
Committee on Small Business

Donna Christian-Christensen

DONNA CHRISTIAN-CHRISTENSEN
Ranking Democratic Member
Subcommittee on Rural Enterprises, Business Opportunities and Special Small Business Problems
Committee on Small Business

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

FEB 25 2000

Honorable Christopher S. Bond
Chairman
Committee on Small Business
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your February 16, 2000, letter supporting the U.S. Small Business Administration's (SBA) efforts to implement the Historically Underutilized Business (HUB) Zone program. We share your view that this program will stimulate business enterprise in underutilized communities and also serve as a catalyst for job creation, capital investment and long term economic development in these areas.

I agree with your position regarding the need to remove the current regulatory restriction regarding affiliation. Our experience during the past year has indicated that this restriction does not serve the best interests of the Program or our small business constituents. Therefore, we are currently drafting a proposed regulation that will remove this restriction, making the program more accessible to a broader base of otherwise eligible small businesses.

You also indicated in your letter that you had concern that SBA may be considering a new order of preference for HUBZone contracting. I regret that there has been confusion on this point. Our position on the order of preference has been clear since the publication of the HUBZone program final rule on June 11, 1998. This rule was developed in response to comments on the proposed rule, which asked the SBA to state a clear and concise order of preference.

Our regulations on this point reflect a desire to ensure a successful HUBZone program, opening up new opportunities for small businesses, and also guarding against an adverse impact on 8(a) businesses. The possible impact on the 8(a) program was a clear and emphatic concern expressed by many members of Congress throughout the legislative process leading to the HUBZone program.

In fact, then House Small Business Committee Ranking Member John LaFalce requested a letter from me containing my commitment that SBA would not permit harm to the 8(a) program. My commitment letter, along with Congressman LaFalce's floor statement on this matter, is enclosed. Congresswoman Nydia Velazquez, the current

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Ranking Member of the House Small Business Committee, also wrote a letter (enclosed) to SBA affirming her position that this major new program must have no adverse impact on the 8(a) program.

The Administration supported the bill with the understanding that subsequent regulations would protect the 8(a) Program. While the order of preference provides this protection, HUBZone contracts are being awarded to non-8(a) businesses as well. We think our current regulations are appropriate and working well.

Thank you for your continuing support of the SBA's programs.

Sincerely,

Aida Alvarez

Aida Alvarez
Administrator

Enclosures (3)

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

November 8, 1997

Honorable John J. LaFalce
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative LaFalce:

The Administration supports reauthorization of the programs of the Small Business Administration and supports House passage of S. 1139. The bill reauthorizes small business loans which assist tens of thousands of small businesses each year and contribute to the vitality of the economy. This bill recognizes the importance of women and service disabled veteran entrepreneurs. And, it makes permanent SBA's Microloan Program which helps those entrepreneurs who need very small amounts of credit. We need this legislation to ensure that we can continue to properly serve our small business customers.

Some Members have raised concerns about the HUBZones provisions in the authorization bill. Please note that unlike earlier versions of the reauthorization bill, the new version of the bill before the House has removed the harmful provisions that would have affected the current preference for 8(a) in the Defense Federal Acquisition Regulations (DFAR), and my ability to appeal contracting actions that might affect 8(a).

I can assure you that SBA will not permit the implementation of the HUBZones program to negatively affect the 8(a) program. As you know, I am a strong supporter of the 8(a) program.

Moreover, the bill will increase the federal procurement goal for small business from 20 to 23 percent -- increasing opportunities for all small businesses including 8(a). With this overall increase in federal contracting dollars for small businesses there will be room for an increase in 8(a) contracts and I intend to pursue increases in 8(a) contracts aggressively.

In the SBA's strategic plan I have committed to increasing overall procurement for small disadvantaged businesses from 5.5 percent to 7 percent of all federal procurement by the year 2000. Enactment of HUBZones will not affect these goals.

It is my intention to increase 8(a) procurement as a percentage of total federal procurement. Presently, 3.2 percent of all federal procurement dollars go to the 8(a) program. Recently proposed rule changes will allow increased flexibility in small business teaming and joint ventures, and create a new mentor-protégé program. I also intend to increase 8(a) contracts through a more aggressive goaling posture with other federal agencies and through the full implementation of the new on-line PRO-Net procurement system. Enactment of HUBZones will not affect these strategies.

The bill allows federal contractors to utilize a sole source contracting vehicle to access HUBZones companies. However, we do not believe that this provision will necessarily affect 8(a) firms. In fact, federal contracting officers may be more likely to shift competitive contracting dollars to HUBZones because of the relative ease in a sole source vehicle rather than to shift these contracts from 8(a), where the ease of procurement is already in place. In fact, 8(a) firms are exactly the kinds of firms that would most likely take advantage of the new HUBZones sole source authority -- especially after they have left the 8(a) program. However, I can assure the Members of the Small Business Committee that we will take whatever steps are necessary in the rulemaking process to ensure that the new sole source provisions for HUBZones do not negatively affect 8(a). And, I will closely monitor the sole source authority when used for HUBZones. Should it be determined that there is a negative effect on 8(a), I will use my authority to appeal contracts to protect 8(a) firms.

I share your concern that SBA may not have sufficient resources to implement the HUBZones over the next several years. While the final appropriations bill has not yet been enacted, we anticipate that the appropriations bill will include enough resources to write the regulations and implement the program in the first year. As presently proposed, the SBA does not have adequate resources for full implementation of the HUBZones program. I will not increase our risks nor sacrifice the effectiveness of SBA's other programs by shifting resources from these programs to HUBZones. We will evaluate future resource needs after we have analyzed the full on-going costs of the program and provide the Congress with an estimate of these needs in our budget submission.

I will keep the Small Business Committees informed of any issues that may arise during the rulemaking process and provide the Committees with quarterly reports until the program is fully implemented. We will also continue to consult closely with the 8(a) business community during this period. After implementation, I will monitor federal procurement contracting patterns and the use of the sole source provisions for HUBZones. I will report to the Small Business Committees on a semi-annual basis about trends in federal procurement activity for small businesses and on the use of sole source contracts. As we monitor HUBZones implementation, SBA will also pursue regulatory changes within the Administration to further protect 8(a) if necessary. You also have my firm commitment that I will seek legislative changes if we identify any adverse impact on the 8(a) program as a result of this monitoring.

Finally, because the bill retains my appeal authority on behalf of 8(a), I will continue to intervene in the future, if there are any specific instances of a federal agency trying to move a contract from the 8(a) program to HUBZones.

Thank you for your consideration.

Sincerely,

Aida Alvarez

Aida Alvarez
Administrator
U.S. Small Business Administration

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

November 6, 1997

Honorable John J. LaFalce
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman LaFalce:

The Administration supports reauthorization of the programs of the Small Business Administration and supports House passage of S.1139. The bill reauthorizes small business loans which assist tens of thousands of small businesses each year and contributes to the vitality of our economy. This bill recognizes the importance of women and service disabled veteran entrepreneurs and makes permanent SBA's microloan program which helps those entrepreneurs who need small amounts of credit. While we are not in total agreement on all its provisions, we need this legislation to ensure that we can continue to properly serve our small business customers.

The Administration appreciates the improvement made in the version of the bill recently passed by the Senate which maintains the current preference for businesses participating in the 8(a) Business Development Program.

For the reasons stated in the attached Statements of Administration Policy, the Administration remains concerned about and opposed to S. 1139's provisions relating to HUB Zones, contact bundling, and the extension of the Small Business Competitiveness Demonstration Program. The Administration notes that the contract bundling provision is less burdensome that previous versions. Should this legislation be enacted, we will continue to work with the Congress to modify these provisions.

The Administration appreciates the opportunity to comment on the bill, and thanks the House and Senate Small Business Committees and their staff for working with us on this important legislation.

Sincerely,

Aida Alvarez

Aida Alvarez
Administrator

Enclosures

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 8, 1997 (SENT)
(Senate)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

S. 1139 Small Business Reauthorization Act of 1997
(Bond (R) Missouri)

The Administration strongly supports reauthorization of the programs of the Small Business Administration and supports Senate passage of S. 1139, with the changes described below. The bill reauthorizes small business loan programs which assist tens of thousands of small businesses each year and contribute to the overall vitality of our economy. The Administration also supports the increase in the government-wide small business participation goal in federal contracting from 20 to 23 percent, following a phase-in period and in conjunction with the elimination of the Small Business Competitiveness Demonstration Program.

However, the Administration strongly opposes the bill's changes to current law on "contract bundling," as well as extension of the Small Business Competitiveness Demonstration Program and creation of the "HUB Zone" program. The Administration will seek amendments to address these and other concerns as addressed below.

Contract Bundling. The Administration is committed to maintaining a strong role for small businesses in Federal contracting, but is concerned that the proposed changes to the current law contract bundling provisions could deny taxpayers the cost savings and improved quality achievable by appropriate consolidation of Federal contract requirements. Therefore, the Administration urges the Senate to maintain current law, which provides sufficient authority and flexibility for the Administration to protect the important interests of small businesses.

Small Business Competitiveness Demonstration Program. The Administration strongly opposes any extension of the Small Business Competitiveness Demonstration Program. Small businesses will substantially benefit from discontinuing this program and lifting the unnecessary paperwork and reporting burdens it imposes. Moreover, the Administration believes that if this demonstration program is not allowed to terminate as scheduled, S. 1139's small business participation goal will be extremely difficult to achieve.

HUBZones. The Administration strongly supports new efforts to promote economic development in the Nation's distressed urban and rural communities. The bill's HUB Zones provision, however, could weaken one of the strongest tools for achieving this objective by according the proposed program a contracting priority equal to that of the 8(a) program.

The Administration has already proposed regulations and is ready to begin pilots for the Empowerment Contracting Program (ECP), a new contracting program targeted at distressed communities. The Administration believes that these tests should be permitted to proceed, and that they will demonstrate the ECP's ability to accomplish the goals of the HUB Zones provisions at less expense and without affecting the 8(a) program.

Other Administration Concerns

The Administration will also seek amendments to:

- Remove proposed restrictions on the SBA's ability to use Women's Business Center funding to finance the costs of administering the program. Removal of these restrictions is important to ensuring the effective execution of this program.

- Maintain the ability of Small Business Development Centers (SBDCs) to charge appropriate fees for counseling services provided under the program.

- Authorize sufficient microloan technical assistance funding to support the projected growth in this program.

- Reauthorize the Small Business Technology Transfer (STTR) Program for three years, rather than six. The three-year authorization proposed by the Administration is consistent with the authorization period for the companion Small Business Innovation Research (SBIR) Program, and provides a reasonable period for both achieving and evaluating program results.

- Delete the proposed pilot program targeting technical assistance to certain States. This provision would divert scarce resources needed to administer the STTR and SBIR programs.

Pay-As-You-Go Scoring

S. 1139 would increase direct spending; therefore it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. OMB's preliminary scoring estimates of this bill are presented in the table below. Final scoring of this legislation may differ from these estimates.

PAY-AS-YOU-GO ESTIMATES
($ in millions)

	1998	1999	2000	2001	2002	1998-2002
Outlays	1	1	1	1	1	5

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