

Department of Homeland Security **Office of Inspector General**

The California Department of Parks and Recreation
Did Not Account for or Expend \$1.8 Million in
FEMA Grant Funds According to Federal
Regulations and FEMA Guidelines



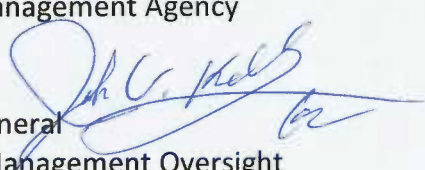


OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

MAR 27 2013

MEMORANDUM FOR: Nancy Ward
Regional Administrator, Region IX
Federal Emergency Management Agency

FROM: D. Michael Beard 
Assistant Inspector General
Office of Emergency Management Oversight

SUBJECT: *The California Department of Parks and Recreation Did Not Account for or Expend \$1.8 Million in FEMA Grant Funds According to Federal Regulations and FEMA Guidelines (Final Report)*
FEMA Disaster Number 1628-DR-CA
Audit Report Number DS-13-05

We audited Federal Emergency Management Agency (FEMA) Public Assistance program (PA) grant funds awarded to the California Department of Parks and Recreation, Sacramento, CA (Department), PA Identification Number 000-U8RA6-00. Our audit objective was to determine whether the Department accounted for and expended FEMA PA grant funds according to Federal regulations and FEMA guidelines.

The California Emergency Management Agency (Cal EMA), a FEMA grantee, awarded the Department \$8,002,596 for costs resulting from severe storms, flooding, mudslides, and landslides during the period from December 17, 2005, through January 3, 2006.¹ The award provided 75 percent FEMA funding for 38 large projects and 178 small projects.² Our audit covered the period of December 17, 2005, to October 4, 2012. We audited 10 large projects and 2 small projects, with total awarded costs of \$2,684,804.

Of the 10 large and 2 small projects we audited, the Department either completed the work or decided not to pursue the projects under the FEMA grant program.³ Department (and Cal EMA) officials had not submitted a final claim as of our October 4, 2012, audit cutoff date. Consequently, our audit was based on the Department's charged costs of \$2,688,919 (see Exhibit).

¹ At the time of this disaster, the grantee's name was The Governor's Office of Emergency Services (OES), which became part of Cal EMA on January 1, 2009.

² Federal regulations in effect at the time of disaster set the small project threshold at \$57,500.

³ Please see Finding A below.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

We conducted this performance audit between February and October 2012 pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objective. We conducted this audit applying the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.

We interviewed FEMA, Cal EMA, and Department officials; reviewed judgmentally selected project costs (generally based on dollar value); and performed other procedures considered necessary to accomplish our objective. We did not assess the adequacy of the Department’s internal controls applicable to grant activities because it was not necessary to accomplish our audit objective. We did, however, gain an understanding of the Department’s method of accounting for disaster-related costs and its procurement policies and procedures.

RESULTS OF AUDIT

Department officials did not account for or expend \$1,252,823 of the \$2,688,919 we audited, according to Federal regulations and FEMA guidelines, and have \$527,426 in unneeded funding that can be deobligated and put to better use (see table 1).

Table 1. Summary of Questioned Costs and Unneeded Funding by Finding			
Finding	Subject	Questioned Costs	Unneeded Funding
A	Unneeded Funding That Cal EMA Should Deobligate		\$527,426
B	Required Cost Justification Not Completed for Procurement	\$ 373,331	
C	Documents in Support of Project Costs Are Missing or Incomplete	353,357	
D	Ineligible Bridge Improvement Costs	301,534	
E	Ineligible Utilities Costs for Facility Not in Active Use	203,151	
F	Emergency Work Costs Outside of Scope of Work	21,450	
Totals:		\$1,252,823	\$527,426



Finding A: Unneeded Funding That Cal EMA Should Deobligate

The Department has \$527,426 in (additional) unneeded funding from four projects, for which final costs have been accounted, that can be deobligated and put to better use.

In March 2012, we issued an interim report describing that Department officials had \$1,108,425 in unneeded funds for 26 projects for which they decided against completing with FEMA funds.⁴ Consequently, per our recommendation, FEMA (and Cal EMA), as recent as May 2012, has deobligated the unneeded funding for these projects. Nevertheless, in the period between our last (interim) report and this (final) report, we identified an additional \$527,426 of unneeded funds that can be deobligated and put to better use (see table 2).

Project Number	Project Award Amount	Project Costs Incurred	Project Completion Date	Unneeded Funding
1703	\$341,459	\$230,000	05/25/07	\$111,459
1903	232,555	222,840	08/30/08	9,715
3391	354,030	34,478	06/29/09	319,552
3481	168,740	82,040	06/30/08	86,700
Totals:	\$1,096,784	\$569,358		\$527,426

These funds must be put to better use because—

- According to 44 CFR 206.205(b)(1), the grantee (State) shall make an accounting to the FEMA Regional Administrator of eligible costs for each large project and shall certify that reported costs were incurred in the performance of eligible work, that the approved work was completed, that the project was in compliance with provisions of the FEMA-State Agreement, and that payments for that project have been made in accordance with Federal regulations.
- Federal appropriations laws and the Statement of Federal Financial Accounting Standards (SFFAS) require Federal agencies to record obligations in the accounting records on a factual and consistent basis throughout the government.⁵ The overrecording and the underrecording of obligations are equally improper, as both practices make it impossible to determine the precise status of Federal

⁴ DS-12-05 (http://www.oig.dhs.gov/assets/GrantReports/OIG_DS-12-05_Mar12.pdf).

⁵ Government Accountability Office *Principles of Federal Appropriations Law*, 3rd Edition, Volume II, February 2006, Chapter 7, Section B: *Criteria for Recording Obligations* (31 U.S.C. Section 1501).



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

appropriations. When the precise amount is not known at the time that the obligation is incurred, agencies appropriately record an obligation based on the best estimate at the time. Agencies, however, must periodically adjust that obligation as more precise data on the liability become available. That is, the agency must increase or decrease obligated funds when probable and measurable information becomes known.⁶ Agencies must document both the initial recordings and the adjustments to recorded obligations.

- FEMA officials have noted that deobligating unneeded funding from completed projects in a timely manner can improve FEMA's overall management of a disaster and make funding available for other disaster projects.⁷

Therefore, we question \$527,426 in unneeded funding associated with Projects 1703 (\$111,459), 1903 (\$9,715), 3391 (\$319,552), and 3481 (\$86,700) that should be deobligated and put to better use.

Department and Cal EMA officials concurred with this finding. FEMA officials stated that they will withhold comment until after issuance of our report.

Finding B: Required Cost Justification Not Completed for Procurement

Department officials did not comply with four California State procurement requirements in the solicitation and award of the largest of three contracts, totaling \$373,331, for Project 2404, to replace a destroyed beach access ramp (see table 3).⁸ As a result, FEMA and Cal EMA had no assurance that the Department paid a reasonable price.

The Department is a State entity and officials must therefore comply with the same policies and procedures used for procurements for its non-Federal funds (44 CFR 13.36(a)). This exempted Department officials from compliance with particular Federal criteria. For example, Department officials were not required to and did not solicit competitive bids or proposals because the Department contracted with a public agency (Sonoma County Probation Camp) to perform the work, which is allowable under State contracting rules (California State Contract Manual (CSCM) 5.08.A.4). However, State

⁶ Principles of Federal Appropriations Law, 3rd Edition, Volume II, Chapter 7, Section B: *Criteria for Recording Obligations* (31 U.S.C. Section 1501), February 2006; and Office of Management and Budget *Statement of Federal Financial Accounting Standards*, Number 5, paragraphs 19 and 29, September 1995.

⁷ For example, see DS-09-05 (http://www.oig.dhs.gov/assets/GrantReports/OIG_DS-09-05_May09.pdf).

⁸ Three contracts, totaling \$380,131, were awarded and claimed for Project 2404. We determined that only the largest contract, a construction contract for \$373,331, was noncompliant with applicable procurement criteria. Costs associated with the other two (professional services) contracts were accepted.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

contracting rules also stipulate that when contracting with another public agency, the awarding agency must complete a contract cost justification—and address the appropriateness or reasonableness of the contract—when not competitively bidding a contract (CSCM 5.70.D). Despite our requests, Department officials could not provide us with the justification.

Table 3. Key State Procurement Violations: Project 2404 (California State Contract Manual 5.70)				
<i>Detailed cost information in sufficient detail to support and justify the cost of the contract?</i> (CSCM 5.70.D.2)	<i>Detailed cost information for similar services (and explained differences, if applicable)?</i> (CSCM 5.70.D.3)	<i>Detailed special factors affecting the cost under the contract?</i> (CSCM 5.70.D.4)	<i>Explained why the awarding agency believes the costs are appropriate?</i> (CSCM 5.70.D.5)	Total Questioned Cost
Not Provided	Not Provided	Not Provided	Not Provided	\$373,331

Consequently, the Department could not justify the appropriateness or reasonableness of the contract costs for which they are requesting FEMA reimbursement. Therefore, we question the total contract cost of \$373,331 for Project 2404 based on the Department’s noncompliance with mandatory procurement requirements.

Department officials did not concur with our finding, stating that they assumed that the mandatory cost justification—which could not be located within their files—was completed because a California Department of General Services’ (DGS) approval stamp was affixed to the contract. However, the Department could not provide criteria that stipulate that the DGS stamp denotes compliance with all applicable procurement requirements.

Cal EMA and FEMA officials deferred comment until issuance of our final report. FEMA, however, has historically told us that the PA program allows them to determine *reasonable* contract costs and reimburse for eligible work, irrespective of compliance with procurement requirements.

We caution FEMA officials from relying on undocumented reasonableness assertions in determining the eligibility of costs incurred through the use of improper procurement practices—most particularly when the procurement is not used to mitigate safety and security risks to lives and property. Federal criteria stipulate that in determining cost reasonableness, consideration should be given to requirements imposed, such as laws



and regulations that are conditions of the Federal award.⁹ As we have previously reported, contracting practices that do not comply with applicable procurement regulations result in high-risk contracts that may cost taxpayers significant amounts of excessive costs.¹⁰ Therefore, it is our position that—as the Office of Management and Budget (OMB) has stipulated—exceptions should only be allowed on a case-by-case basis, and only in unusual circumstances.¹¹ Because FEMA’s mission revolves around emergency management, the provision of disaster assistance for non-life-threatening situations is not considered an unusual circumstance.

Finding C: Documents in Support of Project Costs Are Missing or Incomplete

Department officials improperly charged \$353,357 in various costs to Projects 218, 1903, and 3481 that they could not support with sufficient documentation (see tables 4 and 5).

Project Number	Total Project Charges	Supported Costs	Unsupported/Questioned Costs
218	\$240,806	\$76,080	\$164,726
1903	222,840	86,192	136,648
3481	82,040	30,057	51,983
Totals:	\$545,686	\$192,329	\$353,357

Federal regulations and FEMA guidelines predicates eligibility on sufficient documentary support. Specifically—

- Eligibility to receive Federal funds is contingent upon having fiscal controls and accounting procedures that permit the tracing of funds sufficiently to establish that they were not used in violation of any legal restrictions, and maintaining records to adequately identify the source and application of funds provided for financially-assisted activities. (44 CFR 13.20(a)(2) and (b)(2))

⁹ 2 CFR Part 225, Appendix A, C.2.

¹⁰ OIG-12-74 (April 2012) (http://www.oig.dhs.gov/assets/mgmt/2012/oig_12-74_apr12.pdf).

¹¹ Under certain conditions, Federal regulations allow agencies to grant exceptions to Federal administrative requirements for grants (44 CFR Part 13, sections 13.6(b) and (c)). However, OMB allows these exceptions only on a case-by-case basis (44 CFR 13.6(c)). Only OMB may authorize exceptions for classes of grants or grantees (44 CFR 13.6(b)). Further, OMB regulatory guidance (OMB Circular A-110) entitled *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations* includes similar provisions, but adds, “exceptions from the requirements of this part shall be permitted only in unusual circumstances” (2 CFR 215.4).



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

- Costs must be adequately documented to be allowable under a Federal award. (2 CFR Part 225; Appendix A; Section C.1.j)
- It is critical that the applicant establish and maintain accurate records of events and expenditures related to disaster recovery work. The importance of maintaining a complete and accurate set of records for each project cannot be overemphasized. Good documentation facilitates the project formulation, validation, approval, and funding processes. (FEMA Public Assistance Guide, FEMA 322, October 1999. p. 113)
 - The information required for documentation describes the “who, what, when, where, why, and how much,” for each item of disaster recovery work.
 - The applicant should have a financial and recordkeeping system that it can use to track these elements.
 - All of the documentation pertaining to a project should be filed with the corresponding project and maintained by the applicant as the permanent record of the project.
 - These records become the basis for verification of the accuracy of project cost estimates during validation of small projects, reconciliation of costs for large projects, and audits.

Department officials did not comply with these criteria because the following projects did not have complete documentation (i.e., timesheets, invoices) to support project costs:

Table 5: Unsupported Costs				
Missing and/or Incomplete Documentation	Project 218	Project 1903	Project 3481	Totals
Force Account Labor	\$111,229	\$ 47,833		\$159,062
Force Account Materials	53,497	3,731		57,228
Force Account Equipment		17,890		17,890
Contracted Work		67,194	\$51,983	119,177
Totals:	\$164,726	\$136,648	\$51,983	\$353,357



Therefore, we question a total of \$353,357 charged to Projects 218 (\$164,726), 1903 (\$136,648), and 3481 (\$51,983) as unsupported, because of insufficient documentation to support these costs.

Department officials generally concurred with this finding, and stated that they would thoroughly review—and revise, if applicable—the documentation before submitting a final claim to FEMA. Cal EMA and FEMA officials stated that they will withhold comment until after issuance of our report.

Finding D: Ineligible Bridge Improvement Costs

Department officials charged \$301,534 in ineligible costs to Project 3480 when they elected to upgrade and replace a destroyed wooden bridge with a steel bridge and did not limit their charges to the FEMA-estimated cost for restoring the bridge to its predisaster condition (without the improvement), as required. This occurred because Department officials—in coordination with Cal EMA and FEMA officials—did not obtain an improved project designation, which would have signaled to all relevant stakeholders that the Federal funding for the (improved) project would be limited to the Federal share of the approved estimate of eligible costs.¹² Federal regulations and FEMA guidelines stipulate that—

- Improvements can be performed while still restoring the predisaster function of a damaged facility, but the grantee’s approval must be obtained. Federal funding for the improved project is limited to the Federal share of the approved estimate of eligible costs. (44 Code of Federal Regulations (CFR) 206.203(d)(1))
- The costs of restoring damaged facilities are eligible for public assistance funding, but only on the basis of the facility’s predisaster design. (44 CFR 206.201(h); and FEMA Public Assistance Policy Digest, FEMA 321, October 2001, p. 89)

Department officials did not comply with these criteria.

The predisaster bridge was constructed of wood and required an estimated \$410,576 for replacement. However, Department officials charged \$712,110 to install a steel bridge, a \$301,534 difference from the original estimate. We therefore question the \$301,534 difference in costs charged to Project 3480 as ineligible because Department

¹² There was no indication that Hazard Mitigation or FEMA’s *50 Percent Rule* was considered or applied for this project.



officials did not limit their charges to the estimated cost for restoring the bridge to its predisaster condition (without the improvement).

Department and Cal EMA officials did not concur with this finding. Although the steel bridge cost 70 percent more than the FEMA authorized amount, Department officials stated that the steel bridge was more cost effective than the wooden bridge and would have less affect on the stream bed. FEMA officials withheld comment until after issuance of our report.

Finding E: Ineligible Utilities Costs for Facility Not in Active Use

Department officials improperly charged \$203,151 to Project 3073 to replace utility components (e.g., sewer, electrical, water) of a facility that was not in *active use* at the time of the disaster. Federal regulations at 44 CFR 206.226(k)(2) stipulate that facilities that were not in active use at the time of the disaster are eligible for Federal disaster assistance only when—

- The facilities were temporarily inoperative for repairs or remodeling;
- Active use by the applicant was firmly established in an approved budget; or
- The owner can demonstrate to FEMA’s satisfaction intent to begin use within a reasonable time.

Department officials did not meet these criteria. Department records indicated that the facility, and therefore its components, was not in active use at the time of the disaster, nor were there any future plans for its use. Therefore, we question \$203,151 in ineligible charges for Project 3073 related to a facility that was not in active use at the time of the disaster.

Department officials concurred that the facility was not in active use at the time of the disaster and therefore did not charge the project with costs to repair/replace the facility itself. However, they said that they believed that FEMA would reimburse the Department for damages to the facility’s utilities (e.g., sewer, electrical, water), regardless of the active use status of the facility at the time of the disaster. Cal EMA and FEMA officials stated that they will withhold comment until after issuance of our report.



Finding F: Emergency Work Costs Outside of Scope of Work

Department officials charged a total of \$21,450 in ineligible project costs—emergency work charged to permanent repair projects—that were not part of the FEMA-approved scope of work (see table 6).

Table 6: Ineligible Project Costs by Project			
Project Number	Work Performed Was Included in the FEMA-Approved Scope of Work?	Emergency Work Was Segregated From Permanent Project Work?	Questioned Costs
3481	No	No	\$11,450
3488	No	No	10,000
Total:			\$21,450

Federal regulations and FEMA guidelines regarding scope of work eligibility and documentation stipulate that—

- Eligibility to receive Federal funds is contingent upon having fiscal controls and accounting procedures that permit the tracing of funds sufficiently to establish that they were not used in violation of any legal restrictions, and maintaining records to adequately identify the source and application of funds provided for financially assisted activities. (44 CFR 13.20(a)(2) and (b)(2))
- Costs must be adequately documented to be allowable under a Federal award. (2 CFR Part 225, Appendix A, Section C.1.j)
- Work must be required as a direct result of the declared disaster and (only those) costs that can be directly tied to the performance of eligible work are eligible. FEMA will not provide funds for costs that are outside the approved scope of work. (FEMA Public Assistance Guide, FEMA 322, October 1999, pp. 23, 33, and 71–73; and FEMA Public Assistance Applicant Handbook, FEMA 323, September 1999, pp. 17, 21–22, 32, and 52)
- Emergency work (Categories A and B) generally should not be combined with permanent work (Categories C through G) unless the emergency work is incidental to the permanent repair, and regardless, FEMA eligibility criteria will still be applied as is appropriate to the type of work/costs performed. (FEMA’s Applicant Handbook, FEMA 323, September 1999, p. 16)



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Department officials did not comply with these criteria when they charged—

- \$11,450 in ineligible costs to Project 3481 for debris removal activities that were not part of the eligible scope of work related to the permanent repair of trails.
- \$10,000 in ineligible costs to Project 3488 for emergency sandbagging and stabilization measures that were not part of the eligible scope of work related to the permanent repair of a dam and spillway.

Therefore, we question a total of \$21,450 in ineligible project costs charged to Project 3481 (\$11,450) and 3488 (\$10,000) that were outside of the FEMA-approved scope of work.

Department officials concurred with this finding and noted that (1) \$11,450 was charged to Project 3481 in error, and (2) \$10,000 in ineligible charges were mistakenly charged to Project 3488 rather than the two small projects (Projects 1329 and 3507) to which they rightfully belonged. Cal EMA and FEMA officials stated that they will withhold comment until issuance of our report.

RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region IX:

Recommendation #1: Deobligate \$527,426 (\$395,570 Federal share) in unneeded funds associated with 1703 (\$111,459), 1903 (\$9,715), 3391 (\$319,552), and 3481 (\$86,700) and timely put such funds to better use (finding A).

Recommendation #2: Disallow the total contract cost of \$373,331 (\$279,998 Federal share) for Project 2404 as ineligible based on the Department officials' noncompliance with mandatory procurement requirements unless FEMA grants the Department an exception for all or part of the costs (finding B).

Recommendation #3: Disallow a total of \$353,357 (\$265,018 Federal share) charged to Projects 218 (\$164,726), 1903 (\$136,648), and 3481 (\$51,983) as unsupported because of insufficient documentation, unless Department officials can provide adequate documentation to support these costs (finding C).



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Recommendation #4: Disallow \$301,534 (\$226,151 Federal share) in ineligible costs charged to Project 3480 because Department officials did not limit their charges to the FEMA-estimated cost for restoring the bridge to its predisaster condition, as required (finding D).

Recommendation #5: Disallow \$203,151 (\$152,363 Federal share) in ineligible charges for Project 3073 as a result of Department officials' noncompliance with applicable criteria related to a facility that was not in *active use* at the time of the disaster (finding E).

Recommendation #6: Disallow a total of \$21,450 (\$16,088 Federal share) in ineligible project costs charged to Project 3481 (\$11,450) and 3488 (\$10,000) that were outside of the FEMA-approved scope of work (finding F).

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the results of our audit with the Department during our audit and included those comments in this report, as appropriate. We provided written summaries of our findings and recommendations in advance to FEMA, Cal EMA, and Department officials, and discussed them at an exit conference held on August 16, 2012, with Cal EMA and Department officials. FEMA officials stated that they will withhold comment until after issuance of our report.

Within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until your response is received and evaluated, the recommendations will be considered open and unresolved.

Consistent with our responsibility under the *Inspector General Act*, we are providing copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Major contributors to this report are Humberto Melara, Western Regional Office Director; Devin Polster, Supervisory Analyst; Jack Lankford, Audit Manager; and Willard Stark, Auditor.



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Please call me with any questions, or your staff may contact me at (202) 254-4100 or Humberto Melara at (510) 637-1463.



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EXHIBIT

**Schedule of Projects Audited
December 17, 2005, to October 4, 2012
California Department of Parks and Recreation
FEMA Disaster Number 1628-DR-CA**

Schedule of Projects Audited and Questioned Costs									
Project	Project Award Amount	Project Charges	Unneeded Funding That Cal EMA Should Deobligate (Finding A)	Questioned Costs					Total
				Required Cost Justification Not Completed for Procurement (Finding B)	Documents in Support of Project Costs Are Missing or Incomplete (Finding C)	Ineligible Bridge Improvement Costs (Finding D)	Ineligible Utilities Costs for Facility Not in Active Use (Finding E)	Emergency Work Costs Outside of Scope of Work (Finding F)	
105	\$418,320	\$418,320							
218	161,640	240,806			\$164,726				\$ 164,726
1703	341,459	230,000	\$111,459						
1903	232,555	222,840	9,715		136,648				136,648
2222*	37,064	35,014							
2404	127,399	380,131		\$373,331					373,331
3073	214,591	141,770					\$203,151		203,151
3391	354,030	34,478	319,552						
3480	460,716	712,110				\$301,534			301,534
3481	168,740	82,040	86,700		51,983			\$11,450	63,433
3488	137,284	167,146						10,000	10,000
3761*	31,006	24,264							
Totals:	\$2,684,804	\$2,688,919	\$527,426	\$373,331	\$353,357	\$301,534	\$203,151	\$21,450	\$1,252,823

* Small Project



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APPENDIX

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