

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CAPITAL FUND GUIDEBOOK TRAINING

GENERAL PROGRAM REQUIREMENTS/ IMPLEMENTATION AND COMPLIANCE, PENALTIES AND SANCTIONS (CHAPTERS 6 & 12)

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PRESENTERS



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TOPICS



- Overview
- Procurement, Contract Administration
- Wage Rates
- Force Account Labor
- Administrative Requirements and Other Compliance
- Environmental Reviews
- Real Property Acquisition and Relocation
- Compliance
- Penalties and Sanctions



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PROCUREMENT AND CONTRACT REQUIREMENTS

- **Procurement with Capital Funds, PHAs must:**
 - Conduct transactions in a manner that provides, to the extent possible, full and open competition.
 - Perform an independent cost estimate (ICE) for all procurements above micro purchase threshold in 2 CFR Part 200.320.
 - Determine price reasonableness using either:
 - Price Analysis.
 - Cost Analysis.





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METHODS OF PROCUREMENT

Method	Summary
Micro Purchase	Maximum \$10,000, (\$2,000 for construction) one source permitted
Small Purchase	Maximum \$250,000, typically three quotes.
Sealed Bid	Typically for construction contracts over \$250,000; contract awarded to the lowest bid. "IFB" used when only price is considered
Competitive Procedures	Request for Proposal (RFP) and Request for Qualifications (RFQ) procurements
RFP	Used when price and other factors are "considered"
RFQ	Used when price is not considered"
Noncompetitive Procedures	Sole source solicitation after competitive process is deemed inadequate.

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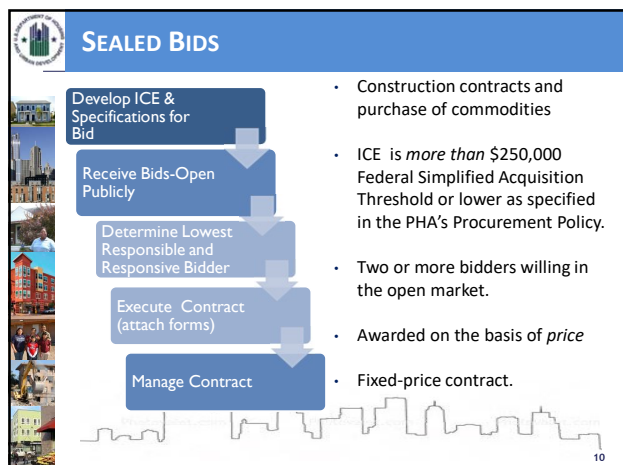
SMALL PURCHASE PROCEDURES (SPP)



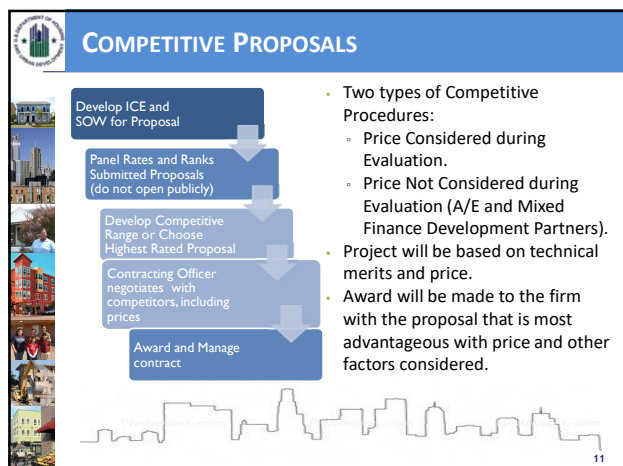
- ICE is less than the \$250,000 Federal Simplified Acquisition Threshold or lower threshold as specified in the PHA's Procurement Policy.
- At least an adequate number (3 or more) of oral or written quotes via phone, fax or email should be obtained.
- PHAs may obtain equipment or supplies, or seek professional services typically obtained via the formal solicitation process.

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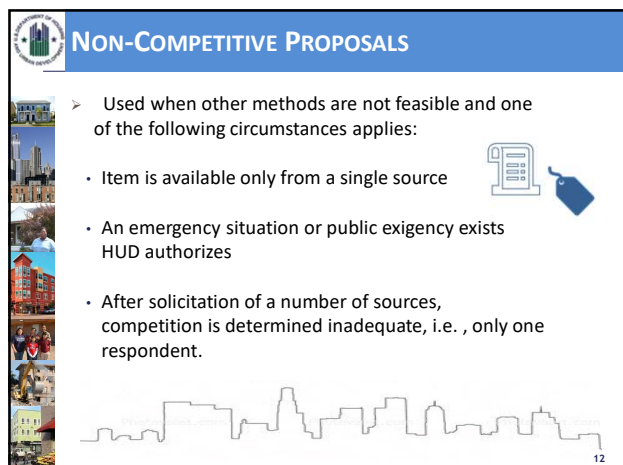
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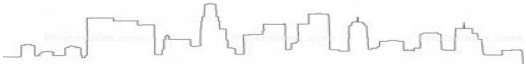


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INDEPENDENT COST ESTIMATE (ICE)


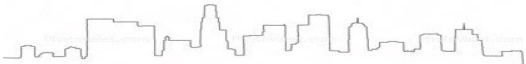
- Required for ALL procurements of \$10,000 or more (\$2,000 for construction contracts subject to Davis-Bacon).
- Prepared before PHA receives bids or proposals.
- PHA benchmark for evaluating the price reasonableness.
- Assists in determining type of contract

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PRICE REASONABLENESS

- Price analysis – performed when there is adequate competition.
- Cost analysis - performed when an absence of competition (e.g., sole source contracts) or where the PHA requires (e.g., competitive proposals contracts) to facilitate price negotiation.
 - (i) General and Administrative Cost.
 - (ii) Owner Overhead.
 - (iii) Profit.


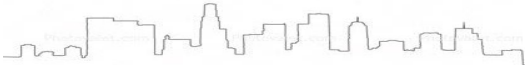



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COST ANALYSIS EXAMPLE

Work Item: Change Order – Roofing Contract


- Break down the change order price into its components of cost.
- Examine each item of cost.
 - **Materials.** Such as plywood, nails, felt, asphalt shingles.
 - **Equipment.** Such as cranes, dump truck.
 - **Labor.** Costs for the size of the job at hand, such as hauling asbestos debris out.
 - **General, Administrative and Overhead.** Contractor costs to administer contract.
 - **Profit.** Based on risk and industry standards.

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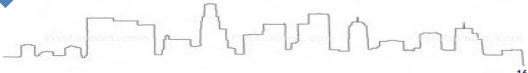
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10 BASIC PROCUREMENT STEPS

- 1 • Develop a Specification or Statement of Work (SOW)
- 2 • **Complete an Independent Cost Estimate (ICE)**
- 3 • Determine rationale for procurement method
- 4 • Solicit & receive quotes/bids/proposals
- 5 • Determine responsive/responsible bidder, as applicable
- 6 • **Determine price reasonableness (Cost vs. Price Analysis)**
- 7 • Award contract
- 8 • Implement contract administration system
- 9 • Close out the contract
- 10 • Maintain records for minimum of 3 years



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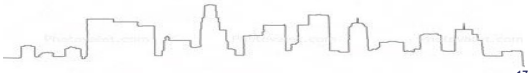
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KNOWLEDGE CHECK: QUESTION #1


An ICE is only required for purchases above the micro purchase threshold which is \$10,000 (\$2,000 for construction contracts).

True or False?



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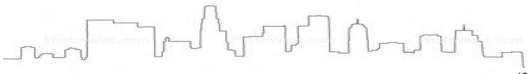
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KNOWLEDGE CHECK: QUESTION #2

Which of the following are methods of procurement?

- a) Small purchases
- b) Sealed bids
- c) Competitive proposals
- d) Non-competitive proposals
- e) All of the above



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QUESTIONS





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WAGE RATES

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PREVAILING WAGE RATES

Davis-Bacon Wage Rates	HUD-Determined Wage Rates
All construction contracts exceeding \$2,000, except for non-routine maintenance work.	All maintenance (routine and non-routine) contracts in excess of \$2,000.
Davis-Bacon and Related Acts require payment of prevailing wage rates and benefits as determined by the Department of Labor (DOL) on federally-financed or assisted construction.	Contracts for <i>certain</i> professional services are <u>excluded</u> from coverage by HUD-determined prevailing wage rates, including contracts for inspections and service or maintenance of leased equipment, fixtures, or appliances.
Includes both on-site and off-site work.	

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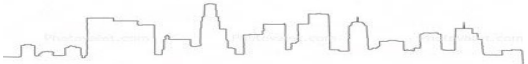
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LABOR RELATIONS – PHA RESPONSIBILITIES


PHA Contract Administration System Requires the PHA to:

- Include applicable DOL wage decision in the bid package.
- Discuss payment of prevailing wages at the pre-bid conference.
- Require the contractor to submit weekly certified payrolls.
- Conduct interviews of laborers working under each contract.
- Initiate corrective actions when violations are found.
- Maintain full records of all wage rate activities.




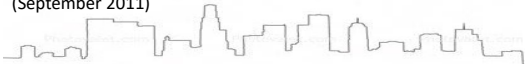
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WAGE RATE RESOURCES

- Table 6.4 in [Capital Fund Program Guidebook](#)
- Labor Standards Handbook 1344.1, [Federal Labor Standard Requirements in HUD Programs](#)
- PHA Procurement Handbook 7460.8, [Procurement Handbook for Public Housing Agencies](#)
- [A Contractor's Guide to Prevailing Wage Requirements for Federally Assisted Construction Projects](#) (January 2012)
- [A Practical Guide for States, Indian Tribes, and Local Agencies](#) (September 2011)

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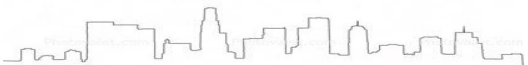
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KNOWLEDGE CHECK: QUESTION #3

The requirement to pay prevailing wages only applies to construction contracts.


True or False?



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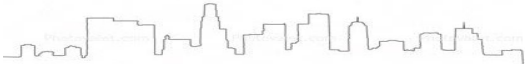
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 **KNOWLEDGE CHECK: QUESTION #4**


The contractor (versus the PHA) is the only one responsible for ensuring that the prevailing wage is paid.

True or False?

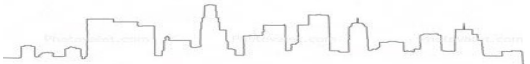


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 **CONTRACT RELATED REQUIREMENTS** **MANDATORY**

- **Mandatory Contract Clauses** - incorporate by attaching HUD forms and incorporating requirements/clauses into the PHA contract.
- **Assurances of Completion** - For each Capital Fund construction contract greater than or equal to \$150,000
 - A bid guarantee from each bidder equal to 5% of the bid price.
 - At least one of the following:
 - Performance bond and payment bond for 100% of contract.
 - Performance/payment bonds, each for 50% or more of contract price.
 - A 20% cash escrow.
 - **A 10% irrevocable letter of credit with HUD acceptable terms.**
 - Any other payment method acceptable to HUD.



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 **CONTRACT ADMINISTRATION AND ACCEPTANCE OF WORK**

- **Inspection and Acceptance Based on Compliance:**
 - Inspect work in progress and goods delivered
 - Only pay for acceptable work.
- **Guarantees and Warranties:**
 - Specify the guaranty period, amounts withheld and warranties.
 - Inspect 3 months after project guaranty period begins, 3 months before expiration, and as needed.
 - Require repair or replacement of all defective items prior to the expiration of the guaranty or warranty.
- **Notification of Completion**
 - Require all contractors and developers to notify PHA in writing when contract work will be completed and ready for inspection.



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 **QUESTIONS**



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 **FORCE ACCOUNT LABOR**

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 **FORCE ACCOUNT LABOR**

Labor employed directly by PHA (permanent or temporary) to do capital improvements on a PHA property funded by the CF.

PHA uses employees, pursuant to its personnel policy, versus a contractor


PHA may use force account labor -- **IF** included in the approved PHA 5-Year Action Plan in EPIC

Must be cost effective and suitable for the PHA.




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FORCE ACCOUNT LABOR PERSONNEL ISSUES



Current PHA employees may be Force Account workers if:

- Their regular duties are either suspended or reassigned
- Maintenance of the properties is not compromised
- Employees' regular work assignments are not undermined
- **Remember:** No hiring may violate any conflict-of-interest policies




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QUESTIONS



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ADMINISTRATIVE REQUIREMENTS AND OTHER COMPLIANCE



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PHA ADMINISTRATIVE REQUIREMENTS

Topic	Regulatory Reference/Description
Administrative (See Table in Section 6.8 of Guidebook for reference)	CFR compliance; Nondiscrimination and Equal Opportunity, URA, Section 3 (24 CFR Part 135) and Disposition and Relocation
Compliance with Physical Standards	24 CFR 905.308 (b)(5) and 905.308(b)(6)
Flood Insurance and Flood Plan Requirements	Flood Insurance and Flood Plan Requirements – 24 CFR 905.308(b)(7)
Section 18	Authorization for demolition and disposition.
Section 30	Approval to place a mortgage or other encumbrance on public housing property

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PHA ADMINISTRATIVE REQUIREMENTS, CONT.

Topic	Regulatory Reference/Description
Affordability	Operation as Public Housing; Use Restriction Secured by Declarations; Restriction on Transfers
Declaration of Trust (DOT)	24 CFR 905.304. When DOTs are recorded in first position against all of their public housing property and is effective until the latest expiration date required by the funds and/or activities at the property.
Declaration of Restrictive Covenants (DORC)	A recorded document which assures HUD that the owner entity will maintain and operate the public housing units for the period required by law, and not encumber, demolish, or sell the public housing units without HUD approval.

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ENVIRONMENTAL REVIEW

PHAs must comply with the environmental review requirements found at 24 CFR parts 50 and 58 and the National Environmental Policy Act of 1969 (NEPA)


For updated guidance see PIH 2016-22

Note: For environmental review purposes, *maintenance* refers to activities that slow or halt deterioration of a building and do not materially add to its value or adapt it to new uses.

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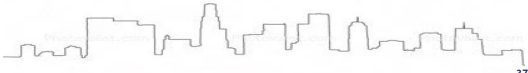
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KNOWLEDGE CHECK: QUESTION #5

When does HUD consider a PHA to be in full compliance with DOT requirements?

- a) With any narrative description of the property.
- b) With a legal description of the property of any kind.
- c) If the PHA counsel indicates there is a legal DOT.
- d) When there is an accurate and current legal description where the PHA is recorded in first position on the property.



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REAL PROPERTY ACQUISITION AND RELOCATION



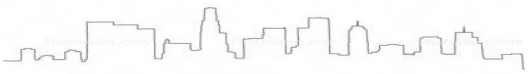
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UNIFORM RELOCATION ASSISTANCE (URA)


- Establishes minimum standards with respect to acquisitions of real property and relocation of people resulting from the acquisition, rehabilitation, or demolition of real property for a federally-funded program or project.
- All acquisition or rehab funded by the CFP must comply with URA.
- PHAs should include URA compliance when planning any activity involving land acquisition or tenant relocation.



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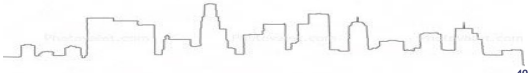
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SECTION 104 (d)

- Part of the Housing and Community Development Act of 1974
- Federal law that applies to PHAs when using CDBG and HOME in conjunction with public housing development or demolition.
- Section 104(d) relocation and one-for-one replacement may apply when CDBG or HOME funds are used in connection with the demolition or conversion of lower-income units.



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REAL PROPERTY ACQUISITION AND RELOCATION RESOURCES

- HUD Handbook 1378, [*Real Estate Acquisition and Relocation Policy and Guidance*](#).
- 24 CFR Part 42 Subpart C – Section 104(d).
- HUD's Real Estate Acquisition and Relocation website: www.hud.gov/relocation



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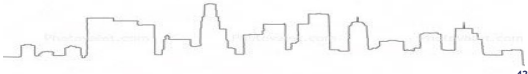
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KNOWLEDGE CHECK: QUESTION #6

All acquisition and rehabilitation activities funded by the Capital Fund are required to comply with URA?

True or False?



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QUESTIONS




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COMPLIANCE





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COMPLIANCE OVERVIEW


PHAs, their management entities, instrumentalities and their partners (owner entities and affiliates) must comply with all applicable provisions of the Capital Fund Rule, at 24 CFR 905, Subpart H – Compliance, HUD Review, Penalties and Sanctions.

If something in the Annual Capital Fund submission is incorrect or in need of revision, PHAs must revise or correct that information immediately.



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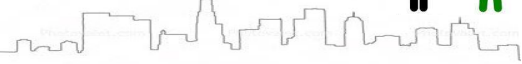
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COMPLIANCE OVERVIEW, CONT.

- PHA's Certification of compliance with PH Requirements and 24 CFR 905
 - Execution of the CF ACC Amendment
 - Submissions required by this part
 - Disbursement of Capital Fund grants from HUD
- Key points when HUD may evaluate compliance:
 - Capital Fund Submission.
 - Development Submissions.
 - LOCCS draw downs.
 - HUD performance reviews.

Non-compliance Costs

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SUBMISSION REQUIREMENTS

PHAs must correct information in Annual Capital Fund submissions not compliant with Part 905


- Administrative sanctions may result

PHAs must comply with the following:

- 24 CFR 905-Capital Fund Rule
- 2 CFR 200.
- Civil Rights Acts.
- Accessibility Requirements- Section 504, American Disabilities Act (ADA), Fair Housing Amendments Act (FHAA), Architectural Barriers Act (ABA).
- Section 3.

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PENALTIES AND SANCTIONS


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PENALTIES

Access to individual **Capital Funds** may be **restricted** if the PHA does not:

- Certify IMS/PIC data on time;
- Have a current UEI number (**Unique Entity Identifier**) in SAM – an annual update;
- Submit an annual Board resolution approving 5-Year Action Plan;
- Submit required documents timely;
- Complete environmental reviews; or
- Maintain compliance with procurement requirements.

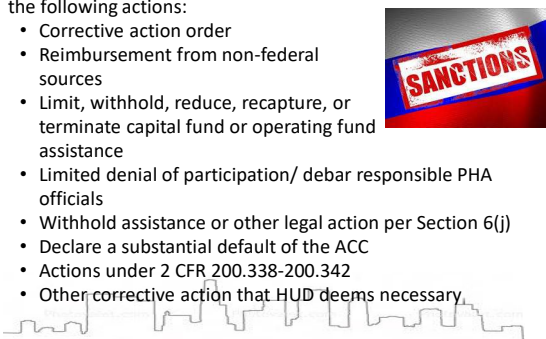


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HUD SANCTIONS

➤ If a PHA does not meet the requirements in 905, HUD can take the following actions:

- Corrective action order
- Reimbursement from non-federal sources
- Limit, withhold, reduce, recapture, or terminate capital fund or operating fund assistance
- Limited denial of participation/ debar responsible PHA officials
- Withhold assistance or other legal action per Section 6(j)
- Declare a substantial default of the ACC
- Actions under 2 CFR 200.338-200.342
- Other corrective action that HUD deems necessary

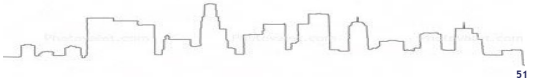


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QUESTIONS

For more information on the Capital Fund General Requirements see Chapter 6 and Compliance, Penalties and Sanctions see Chapter 12 of the Capital Fund Guidebook:

<https://www.hud.gov/sites/documents/CAPITALFUNDGUIDEBBOOKFINAL.PDF>



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