State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor:
3 Vendors

Email: Telephone No.: ___

Ship To:
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Invoice: As Requested

Price Agreement Number: 80-000-18-00061

Price Agreement Amendment No.: Two

Term: April 13, 2018 – April 12, 2021

Procurement Specialist: Brandy Jones

Telephone No.: (505) 827-0507

Email: Brandy.Jones@state.nm.us

Title: Statewide Food (Dairy, Eggs, Frozen Food, Meat, Poultry, Fresh Produce, and Staple Food)

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from April 13, 2020 to April 12, 2021 at the same price, terms and conditions.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico

Mark Hayden, New Mexico State Purchasing Agent

Date: 02/12/2020

Purchasing Division: 1100 St. Francis Drive, Room 2016, Santa Fe, 87505; PO Box 6850, Santa Fe, NM 87502 (505) 827-0472
State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor
3 Vendors

Price Agreement Number: 80-000-18-00061

Price Agreement Amendment No.: One

Term: April 13, 2018 – April 12, 2020

Ship To:
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Procurement Specialist: Amber Sanchez

Telephone No.: (505) 827-0554

Email: Amber.Sanchez2@state.nm.us

Invoice:
As Requested at time of order

Title: Statewide Food (Dairy, Eggs, Frozen Food, Meat, Poultry, and Staple Food)

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from April 13, 2019 to April 12, 2020 at the same price, terms and conditions.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico

Acting Director, State Purchasing Division

Date: 3/21/19

Purchasing Division: 1100 St. Francis Drive, Room 2016, Santa Fe, 87505; PO Box 6850, Santa Fe, NM 87502 (505) 827-0472
State of New Mexico  
General Services Department  
Statewide Price Agreement

<table>
<thead>
<tr>
<th>Awarded Vendor</th>
<th>Price Agreement Number: 80-000-18-00061</th>
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<tbody>
<tr>
<td>3 Vendors</td>
<td>Payment Terms: Net 30</td>
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Telephone No. ________  

F.O.B.: Destination  

Delivery: As Requested  

Procurement Specialist: Savannah Quintana  

Telephone No.: (505) 827-0483

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<th>Ship To:</th>
<th>Title: Statewide Food (Dairy, Eggs, Frozen Food, Meat, Poultry, Fresh Produce, and Staple Food)</th>
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<td>All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.</td>
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<th>Term: April 13, 2018 – April 12, 2019</th>
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<tbody>
<tr>
<td>As Requested</td>
<td>This Price Agreement is made subject to the “terms and conditions” shown on the reverse side of this page, and as indicated in this Price Agreement.</td>
</tr>
</tbody>
</table>

Accepted for the State of New Mexico  

New Mexico State Purchasing Agent  

Date: 4/12/2018  

Purchasing Division: 1100 St. Francis Drive, Santa Fe, NM 87505; PO Box 6850, Santa Fe, NM 87502 (505) 827-0472
1. **General:** When the State Purchasing Agent or his/her designee issues a purchase document in response to the Vendor's bid, a binding contract is created.

2. **Variation in Quantity:** No variation in the quantity of any item called for by this order will be accepted unless such variation has been caused by conditions of loading, shipping, packing or allowances in manufacturing process and then only to the extent, if any, specified in this order.

3. **Assignment:**
   a. Neither the order, nor any interest therein, nor any claim thereunder, shall be assigned or transferred by the Vendor, except as set forth in Subparagraph 3b or as expressly authorized in writing by the State Purchasing Agent or his/her designee. No such assignment or transfer shall relieve the Vendor from the obligations and liabilities under this order.
   
   b. Vendor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the State as to goods, services, and materials purchased in connection with this bid are hereby assigned to the State.

4. **State Furnished Property:** State furnished property shall be returned to the State upon request in the same condition as received except for ordinary wear, tear and modifications ordered hereunder.

5. **Discounts:** Prompt payment discounts will not be considered in computing the low bid. Discounts for payment within twenty (20) days will be considered after the award of the contract. Discounted time will be computed from the date of receipt of the merchandise invoice, whichever is later.

6. **Inspection:** Final inspection and acceptance will be made at the destination. Supplies rejected at the destination for nonconformance with specifications shall be removed at the Vendor's risk and expense, promptly after notice of rejection.

7. **Inspection of Plant:** The State Purchasing Agent or his/her designee may inspect, at any reasonable time, the part of the Contractor's, or any subcontractor's plant or place of business, which is related to the performance of this contract.

8. **Commercial Warranty:** The Vendor agrees that the supplies or services furnished under this order shall be covered by the most favorable commercial warranties the Vendor gives for such to any customer for such supplies or services. The rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other clause of this order. **Vendor agrees not to disclaim warranties of fitness for a particular purpose of merchantability.**

9. **Taxes:** The unit price shall exclude all state taxes.

10. **Packing, Shipping and Invoicing:**
    a. The State's purchasing document number and the Vendor's name, user's name and location shall be shown on each packing and delivery ticket, package, bill of lading and other correspondence in connection with the shipments. The user's count will be accepted by the Vendor as final and conclusive on all shipments not accompanied by a packing ticket.

    b. The Vendor's invoice shall be submitted duly certified and shall contain the following information: order number, description of supplies or services, quantities, unit price and extended totals. Separate invoices shall be rendered for each and every complete shipment.

    c. Invoices must be submitted to the using agency and NOT the State Purchasing Agent.

11. **Default:** The State reserves the right to cancel all or any part of this order without cost to the State, if the Vendor fails to meet the provisions of this order and, except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the State due to the Vendor's default. The Vendor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor, such causes include but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government,
fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery scheduled. The rights of the State provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this order.

12. **Non-Collusion:** In signing this bid the Vendor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or his/her designee.

13. **Nondiscrimination:** Vendor doing business with the State of New Mexico must be in compliance with the Federal Civil Rights Act of 1964 and Title VII of the Act (Rev. 1979) and the Americans with Disabilities Act of 1990 (Public Law 101-336).

14. **The Procurement Code:** Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

15. **Items:** All bid items are to be NEW and of most current production, unless otherwise specified.

16. **Payment for Purchases:** Except as otherwise agreed to: late payment charges may be assessed against the user state agency in the amount and under the conditions set forth in Section 13-1-138 NMSA 1978.

17. **Workers’ Compensation:** The Contractor agrees to comply with state laws and rules pertaining to Workers’ Compensation benefits for its employees. If the Contractor fails to comply with Workers’ Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the contracting agency.

18. **Submission of Bid:** Bids must be submitted in a sealed envelope with the bid number and opening date clearly indicated on the bottom left hand side of the front of the envelope. Failure to label bid envelope will necessitate the premature opening of the bid in order to identify the bid number.

19. **Contractor Personnel:** Personnel proposed in the Contractor’s written bid to the Procuring Agency are considered material to any work performed under this Price Agreement. Once a Purchase Order or contract has been executed, no changes of personnel will be made by the Contractor without prior written consent of the Procuring Agency. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience, and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. The Procuring Agency shall retain the right to request the removal of any of the Contractor’s personnel at any time.

20. **Subcontracting:** The Contractor shall not subcontract any portion of the Price Agreement without the prior written approval of the Procuring Agency. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Price Agreement, nor shall any subcontracting obligate payment from the Agency.

21. **Records and Audit:** The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature, and cost of services rendered during this Price Agreement’s term and effect, and retain them for a period of three (3) years from the date of final payment under this Price Agreement. The records shall be subject to inspection by the Agency, State Purchasing Division, Department of Finance and Administration, and for Information Technology contracts, State Chief Information Officer. The Agency shall have the right to audit billings, both before and after payment. Payment for services under this Price Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

22. **Subcontracts:** The foregoing requirements for Contractor Personnel, Subcontracting, and Audit shall be inserted into all subcontracts from the prime contractor to the subcontractor.
New Mexico Employees Health Coverage

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agrees to maintain for the term of the contract, health insurance for its New Mexico Employees and offer that health insurance to its New Mexico Employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceeds $250,000 dollars.

B. Contractor agrees to maintain a record of the number of its New Mexico Employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all of its New Mexico Employees of the availability of State publicly financed health care coverage programs by providing each of its New Mexico Employees with, as a minimum, the following web site link to additional information: http://www.insurenewmexico.state.nm.us/.

D. For purposes of this Paragraph, the following terms have the following meanings:

1. “New Mexico Employee” means any resident of the State of New Mexico employed by Contractor who performs the majority of the employee’s work for Contractor within the State of New Mexico, regardless of the location of Contractor’s office or offices; and

2. “offer” means to make available, without unreasonable restriction, enrollment in one or more health coverage plans and to actively seek and encourage participation in order to achieve the goals of Executive Order 2007-049. This could include State publicly financed public health coverage programs such as Insure New Mexico!

New Mexico Pay Equity Initiative

Contractor agrees, if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees, contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts that are up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90) days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.

Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90) days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report it self.

Two copies of the Pay Equity Worksheet shall be submitted prior to Award by the prospective Awarded Vendor.

The PE10-249 and PE250 worksheet is available at the following website: http://www.generalservices.state.nm.us/statepurchasing/Pay_Equity.aspx
State of New Mexico  
General Services Department  
Purchasing Division  
Price Agreement #: 80-000-18-00061

Statewide Price Agreement

Article I – Statement of Work
Under the terms and conditions of this Price Agreement all State of New Mexico agencies, commissions, institutions, political subdivisions and local bodies allowed by law may issue orders for items and/or services described herein. The terms and conditions of this Price Agreement shall form a part of each order issued hereunder.

The items and/or services to be ordered shall be as listed under Article IX - Price Schedule. All orders issued hereunder will bear both an order number and this Price Agreement number. It is understood that no guarantee or warranty is made or implied by the New Mexico State Purchasing Agent, his/her designee or the user that any order for any definite quantity will be issued under this Price Agreement. The Contractor is required to accept the order and furnish the items and/or services in accordance with the articles contained hereunder for the quantity of each order.

Article II – Term
The term of this Price Agreement, for issuance of orders, shall be as indicated in the specifications.

Article III – Specifications
Items and/or services furnished hereunder shall conform to the requirements of specifications and/or drawings applicable to items listed under Article IX-Price Schedule. Orders issued against this schedule will show the applicable Price Agreement item(s), number(s), and price(s); however they may not describe the item(s) fully.

Article IV – Shipping and Billing Instructions
Contractor shall ship in accordance with the following instructions: Shipment shall be made only against specific orders which the user may place with the Contractor during the term; The Contractor shall enclose a packing list with each shipment listing the order number, price agreement number and the commercial part number (if any) for each item; Delivery shall be made as indicated on page 1. If vendor is unable to meet stated delivery the State Purchasing Agent or his/her designee must be notified.

Article V – Termination
The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency’s uncured, material breach of this Agreement. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency’s material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor’s notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach. Termination of this Contract, however, shall not affect any outstanding orders. This provision is not exclusive and shall not waive other rights and remedies afforded either party in the event of breach of contract or default. In such instances the contract may be cancelled effective immediately.

Article VI – Amendment
This Price Agreement may be amended by mutual agreement of the New Mexico State Purchasing Agent or his/her designee and the Contractor upon written notice by either party to the other. An amendment to this Price Agreement shall not affect any outstanding orders issued prior to the effective date of the amendment as mutually agreed upon, and as published by the New Mexico State Purchasing Agent or his/her designee. Amendments affecting price adjustments and/or the extension of a price agreement expiration date are not allowed unless specifically provided in the bid and price agreement specifications.

Article VII – Indemnity Clause
Contractor shall indemnify and hold harmless the State, its officers and employees, against liability, claims, damages, losses or expenses arising out of bodily injury to persons or damage to properties caused by, or resulting from Contractor’s, and/or its employees, own negligent act or omission while Contractor, and/or its employees, perform or fails to perform its obligations and duties under the Terms and Conditions of this agreement. This save harmless and indemnification clause is subject to the immunities, provisions, and limitations of the Tort Claims Act (Section 41-4-1, et seq., N.M.S.A. 1978 comp. and Section 57-7-1 N.M.S.A. 1878 comp. and any amendments thereto.

It is specifically agreed between the parties executing this agreement that it is not intended by any of the provisions of any part of the agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(s) to person(s), damage(s) to property(ies) and/or any other claim(s) whatsoever pursuant to the provisions of this agreement.
Vendor shall provide all insurance necessary to employees on the work site, including but not limited to Worker's Compensation.

Article VIII – Issuance or Orders
Only written signed orders are valid under this Price Agreement.

Article IX – Packing (if applicable)
Packing shall be in conformance with standard commercial practices.

Article X – Price Schedule
Prices as listed in the price schedule hereto attached are firm.
State of New Mexico  
General Services Department  
Purchasing Division  
Price Agreement #: 80-000-18-00061

Specifications:

Establish a price agreement for dairy products, fresh eggs, frozen foods, meat, poultry, fresh produce, and staple food to be delivered to statewide facilities and centers.

The term of this Price Agreement shall be for one (1) year from date of award with the option to extend for a period of three (3) additional years, on a year-to-year basis, by mutual agreement of all parties and approval of the New Mexico State Purchasing Agent at the same price, terms and conditions. This Price Agreement shall not exceed four (4) years.

Escalation / Reduction Clause:
Contractor shall keep pricing fixed for at least the first 12 full months of this Agreement. Thereafter, SPD and the Contractor may adjust pricing no more than once annually by Agreement amendment. Contractor shall submit all pricing increase requests to SPD in writing and provide substantiating evidence that each request is based on demonstrable market changes impacting the cost of Services. The request must show all proposed increases by line item and include supporting documentation acceptable to SPD. SPD may require Contractor to provide U.S. Bureau of Labor Statistics Producer Price Index or Consumer Price Index data or any other relevant manufacturer or industry data substantiating the increase. However, a price increase may not produce a higher profit margin for Contractor than at the beginning of the initial term of this Agreement. The increase may not exceed 2% of the price immediately before the increase. Pricing changes will apply to Contracts and amendments to Contracts entered on and after the effective date of the price change. Price decreases as well as increases shall apply. If vendor's prices are reduced for any reason, users shall receive the benefit of such reductions. Price increases will not be retroactive to orders already in house or backorders. Orders will be filled at the price in effect on the date of receipt of the order by the vendor.

Local governments utilizing this Price Agreement must confirm pricing and availability from vendor prior to ordering. This Price Agreement may be utilized by all New Mexico state agencies, commissions, political subdivisions and local public bodies.

Awarded vendors shall submit the name(s) of their authorized contact person(s), in connection with placing orders.

Each institution will place their own orders; and invoicing and payments are to be handled by each institution. Agencies and/or institutions shall provide awarded vendors with name(s) of contact personnel authorized to act as representative of their agencies, for this Price Agreement.

Deliveries are f.o.b.: destination, at times requested by using institutions.

Multiple awards may be issued in order to adequately provide for the needs of the facilities. Facilities are encouraged to combine multiple food Price Agreement orders (e.g. produce, meat & poultry, dairy products) to encourage one-stop deliveries. However, due to the fluctuation in delivery costs, vendors may impose a minimum order delivery fee for orders which total less than $300.00.

Important notes:

Pricing is based on current market list price less percentage discount offered from vendor’s established price list. Vendors are to indicate a discount percentage. If discount is 0%, then 0% must be indicated. This office cannot assume a blank space is 0% discount. If your bid contains a blank space it may be deemed non-responsive and may be disqualified. Awarded vendors will be required to furnish facilities with the most recently published price list as a basis for ordering their requirements for their next delivery(ies).

Vendors will be required to submit reports on quantity usage under this Price Agreement.
Minimum Requirements:

Eggs:
Eggs shall be Grade AA, Large.

Frozen Foods:
All frozen foods shall meet the following requirements:

- All seafood shall be U. S. Grade A and shall be produced under the continuous inspection of the Bureau of Commission of Fisheries, U.S.D.A. and/or current U.S.D.A. seafood requirements.

- All frozen juices shall be U.S.D.A. Grade A and each package shall have the U.S.D.A. shield and/or current U.S.D.A. requirements.

- All frozen potato products shall meet United States Standard, for Grade A Long or Medium. All frozen fruits and vegetables shall carry the U.S.D.A. Grade A Fancy shield on each package. All products such as fish, meats, poultry, are to be packaged in a manner to protect from freezer burn, and dehydration.

- All frozen products must be freshly packed; frozen items must be delivered in refrigerated trucks and completely frozen. Containers and packing crates must be in good form when delivered.

Meat and Poultry:
All products shall be U.S. Department of Agriculture Good, Grade 1 or Grade A, unless otherwise specified and shall comply in all respects to standards and regulations established by Federal and/or New Mexico State Laws regarding meat, poultry and seafood.

Unless otherwise specified all items will be delivered chilled in refrigerated trucks.

Fresh Produce:
All produce shall comply in all respects to standards and regulations established by federal and/or New Mexico state laws, including Federal Food, Drug and Cosmetic Act and subsequent decisions of the U. S. Department of Agriculture.

Staple Food:
Staple Foods, also known as Dry Groceries consist of non-perishable, shelf foods such as canned goods (fruits, vegetables, meats, soups), bakery items, beverages, cereals, cookies, crackers, gelatins, grains, juices, nuts, pasta, pickles, relishes, preserves, salad dressings, non-refrigerated dairy, condiments, sauces, baking supplies, spices, cooking oils, shortening, sugar, syrups, tomato products, etc.

All staple food shall comply in all respects to standards and regulations established by federal and/or New Mexico state laws, including Federal Food, Drug and Cosmetic Act and subsequent decisions of the U. S. Department of Agriculture.

***Vendors are cautioned against bidding items they are unable to supply as specified.***
State of New Mexico  
General Services Department  
Purchasing Division  
Price Agreement #: 80-000-18-00061

Awarded Vendors:

(AA) 0000044061  
BEN E KEITH  
3205 BROADWAY SE  
Albuquerque, NM 87105  
505-843-7766  
csaguilar@benekeith.com

(AB)0000054645  
SHAMROCK FOODS CO.  
2 Shamrock Way NW  
Albuquerque NM 87120  
505-331-0730  
Kelly_Musselman@shamrockfoods.com

(AC) 0000114400  
Sysco USA, Inc.  
601 Comanche Rd NE  
Albuquerque, NM 87107  
505-761-1686  
baca.sheri@nm.sysco.com

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<th>Item</th>
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<td>Staple Foods - Prices are to be those listed on vendor's most current established price list.</td>
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<td>*Delivery is included in the cost of goods for orders over $300.00</td>
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