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RONALD N. COGLIANO

The Boston Globe

Competing for school construction

By Ronald N. Cogliano | July 10, 2007

THE FOUR-YEAR moratorium on state funding for new school construction ended July 1, and more than 200 potential projects are lined up for grants. Before doling out \$500 million, though, state officials should adopt a policy of refusing projects governed by project labor agreements -- deals between labor unions and a project owner requiring the use of only union labor on a construction site.

Time and again, these agreements have proved wasteful and discriminatory. They ratchet up project costs by blocking the majority of contractors from bidding on the project, and they disadvantage the majority of the state's construction workforce that is nonunion. According to federal labor statistics, 80 percent of construction workers in Massachusetts are nonunion. They are just as well trained as union members.

PLAs are banned at the federal level but still allowed in Massachusetts when a project is sufficiently complicated, and when a union strike would threaten its completion. With a flurry of new school construction imminent, pressure to adopt such agreements will be intense -- and the prospect of political support by labor unions will be tempting to local officials.

It has happened before. Last year, the City of Fall River adopted a PLA on a project to build five schools. As a result, fewer than half of the contractors who were prequalified for the job ended up submitting bids. Those bids came in millions of dollars over budget.

My organization, the Merit Construction Alliance, represents open-shop contractors. We sued, arguing that the city lacked justification to adopt the union-only measure. Faced with unaffordable bids and a legal challenge, Fall River's mayor, Edward Lambert, abandoned the agreement.

A second round of bidding was open to all qualified union and open-shop contractors. The number of bids nearly doubled and the prices plummeted. Fall River taxpayers saved \$8.5 million from a combination of lower bids and the need to borrow less money. "With more bidders," the mayor reluctantly concluded, according to a Fall River newspaper, "you tend to get a better price."

The Fall River fiasco followed our organization's successful legal challenges against Brockton school projects in 2002 and 2005. In 2002, we threatened a challenge against Worcester's new vocational school, and officials dropped a project labor agreement as a result. These schools were eventually bid and built by union and open-shop contractors and workers, side-by-side.

In Worcester, city officials publicly acknowledge PLAs add to construction costs. The city is building a \$21.5 million garage. The city's public works director pegs the additional cost of the PLA at \$365,000, according to news reports. We think the true cost is closer to \$4 million. Worcester's garage will feature 500 parking spaces, while in Lowell, a built garage for the same price -- and without a PLA -- will have 900 spaces.

Last fall, the Beacon Hill Institute concluded that these agreements restrict competition and increase the cost of public school construction by 14 to 20 percent -- an extra \$16.51 per square foot. That's \$2.1 million tacked onto the cost of a new 125,000-square-foot school. Taxpayers end up overpaying to prohibit the vast majority of Bay State construction workers from working.

Proponents argue that project-labor agreements guarantee wage rates and proper documentation, but in fact, the state's prevailing wage law sets the pay grades on public construction. Federal law requires all employers to hire only workers legally in the country. A PLA guarantees none of it. Meanwhile, open-shop employees receive competitive wages, as well as health insurance, paid holidays, vacations, sick time and other benefits unheard of for many construction union members.

Project owners who are concerned about the treatment of construction workers may stipulate employment standards in the bid specifications. Smith College did just that after student activists tried unsuccessfully to ensure that the new \$73 million Ford

Science Center be built solely with union labor. Smith's vice president of finance and administration, Ruth Constantine, explained the issue succinctly in a letter posted on the activists' website.

"People have a range of reasons for joining or not joining unions," she wrote, "and none of Smith's experience suggests that nonunion workers bring any less commitment or skill to their jobs or to the projects of which they are a part."

School districts and state officials should recognize the common sense and wisdom in her words.

Ronald N. Cogliano is executive director of the Merit Construction Alliance. ■

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Christine M. Fix
Secretary to the Board
Joint School Construction Board
203 City Hall
Syracuse, NY 13202

Dear Ms. Fix:

I am writing to give you perspective on the experiences of the City of Fall River with Project Labor Agreements as you consider whether or not to use them in the construction of your city's schools.

In 2005, Fall River received state funding assistance for the construction on four schools. After hearing from both supporters and opponents of PLAs, Fall River's Mayor made a determination to implement a PLA on the construction projects. As a member of the city council, I could understand the Mayor's desire to support the unions in a city with a strong union presence, but I was concerned about how the PLAs restrictions on non-union contractors would affect the bidding. These fears proved to be well-founded.

As the bidding process went forward, we received bids on the first school as high as 100% over the proposed budget. In some trades, such as electrical, we received no bids.

As local news stories continued to report on bids exceeding the budget by millions of dollars, it became clear that the state would not provide additional assistance, meaning that our local taxpayers would have to pay for these overages. This was simply not feasible. Knowing that something dramatic had to be done, the Mayor rescinded the PLA in May of this year and re-bid the projects.

With the first re-bid, 64 bids came in, compared to 21 when the PLA was used. Furthermore, the costs were cut by 17%, and every trade had multiple bidders, even electrical.

Earlier this month, the *Fall River Herald News* reported the following on the results for the second school: "Mayor Edward M. Lambert Jr.'s decision to remove a Project Labor Agreement could potentially save the city approximately \$3 million on the construction of the new Matthew J. Kuss Middle School based on previous bid amounts. Along with the potential savings, the opening of sub-bids for the school project Thursday revealed an increase in the number of bidders in the categories of masonry, waterproofing, roofing, aluminum windows, glass and glazing, ceramic tile, flooring, painting, fire protection, plumbing and electrical. Due to the PLA, previous bidding was limited to contractors who used a unionized work force."

Based on our results, I would strongly recommend refraining from enacting a PLA and instead encouraging full competition among all qualified contractors, union and non-union.

If I can be of any assistance in your project, or if you have questions, please feel free to contact me.

Regards,



Joseph Camara
City Councilor
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Decision to remove PLA could net \$3M on Kuss construction

By: Will Richmond, Herald News Staff Reporter

09/01/2006

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FALL RIVER - Mayor Edward M. Lambert Jr.'s decision to remove a Project Labor Agreement could potentially save the city approximately \$3 million on the construction of the new Matthew J. Kuss Middle School based on previous bid amounts.

Along with the potential savings, the opening of sub-bids for the school project Thursday revealed an increase in the number of bidders in the categories of masonry, waterproofing, roofing, aluminum windows, glass and glazing, ceramic tile, flooring, painting, fire protection, plumbing and electrical.

Due to the PLA, previous bidding was limited to contractors who used a unionized work force.

After a review of Thursday's bids, Public Works Director Kenneth Pacheco said the acceptable low bids totaled \$19,552,588. After bids were initially opened in December with the PLA, the low bids totaled \$22,583,128.

Pacheco said that since December the city has reviewed the numbers for the project and projected a budget of \$20,939,000 for the sub-bids. In all, the project has a budget of \$28.5 million.

With the additional bids, the biggest savings were in the electrical category where the low bid was \$1.5 million less. The cost of painting dropped by \$538,700, and the price of masonry fell \$279,000.

With the sub-bids coming in under the city's projected budget, Pacheco said he is pleased with the numbers, though there was hope the bids would be lower.

"I would have loved better numbers, but they did stay around the projected number for the city," Pacheco said.

Merit Construction Alliance Executive Director Ronald Cogliano, whose organization represents open shop contractors in the commonwealth, said the city should be happy with the savings that came from not using a PLA.

"Project Labor Agreements are bad public policy because they exclude qualified contractors, who make up 85 percent of the construction industry, in favor of special interests, and as a result, the taxpayers take it on the chin every time," Cogliano



Make contact.





said. "By dropping the PLA and opening the bidding to all qualified contractors today, prices were significantly lower compared to bids submitted in December for the same work, saving Fall River's taxpayers millions of dollars."

Cogliano also noted that the bids decreased despite increased construction costs since December.

"A full eight months after the December bids, when oil has risen from \$56 per barrel to \$68 per barrel and the cost of building supplies has skyrocketed, contractors were able to submit lower bids without the PLA. This is proof positive that PLAs drive up the costs while open and fair competition among all contractors will lower the costs to taxpayers," Cogliano said.

Pacheco had a different view.

"These bids are not a lot lower than those filed with the PLA," Pacheco said. "So the PLA numbers were actually not that far off."

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Monday 08 May, 2006

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City scraps PLA for projects

Will Richmond, Herald News Staff Reporter

05/06/2006

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The announcement comes as bids on the new Matthew J. Kuss Middle School and Slade and Small schools came in millions of dollars above the architect's anticipated budget for the projects.

Lambert said the decision to end the agreement, which requires that all labor on the projects be unionized, was made late last week, and talks with the Building Trades Unions took place this week to drop the deal.

"It is my belief that we have to do everything within our power to make these projects affordable and completed on time," Lambert said during a press conference at Government Center.

He added the bidding process for the three school projects will be redone. Director of Public Works Terrance J. Sullivan said the city is currently awaiting a recommendation from the Attorney General's Office on whether the projects will have to pre-qualify bidders once again or if the city can use the already pre-qualified groups. Under construction reform laws, all potential bidders must pre-qualify months before the actual bidding process in order to submit bids.

While the PLA limited bidding to contractors who would use unionized work forces, Lambert said, there are other factors driving project costs up. Among them are the cost of construction

From Page A1

materials and the pre-qualifying process, which Lambert has said limits the number of bidders at bid time.

Lambert said the city also has to deal with the decision by the Massachusetts School Building Authority to only reimburse projects based on the originally submitted estimate rather than changing the amount annually to coincide with inflation, as the Department of Education did when monitoring the school building reimbursement process.

Lambert said the decision to start the bidding process over again should not have any effect on the scheduled completion date of the three schools, which is currently slated for September 2008.

"I believe that by acting quickly now we can get the schools online when they are supposed to come online," Lambert said.

The decision to drop the PLA was welcomed by Merit Construction Alliance Executive Director Ronald Cogliano, whose organization represents open-shop

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In opening the bidding to all pre-qualified bidders, Lambert called on the open-shop contractors to enter the process and make the bidding competitive.

Also happy to see the PLA abandoned is City Councilor Joseph Camara, who has spoken out against the agreement in the past.

"I'm glad (Lambert) chose to do that," Camara said. "I think we'll see more bids. These people want to work, so I think things will be more competitive. ...It just makes sense to save the taxpayers money."

In dissolving the PLA, Lambert said, the unions understood the situation the city is in and asserted that he still feels PLAs can be a useful construction tool.

"I credit them (the unions)," Lambert said. "They stood to benefit, but they understand the city's predicament, and they contend, as do I, that the PLA is not solely responsible for the costs. They were cooperative, and I've enjoyed a good relationship with them over my years as mayor."

Following the decision on the rebidding process, Sullivan said he expects a new bid schedule to be developed in the next two weeks. But Lambert pointed out getting the schools completed on time and as close to budget as possible is the main goal.

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E-mail Will Richmond at wrichmond@heraldnews.com.

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05/06/2006

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City scraps PLA for projects

FRONT PAGE

New bids for construction of schools to be taken as budget exceeded by millions

WILL RICHMOND

HERALD NEWS STAFF REPORTER

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Lambert

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MERIT CONSTRUCTION ALLIANCE

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A link to PLA, Page A5

PLA: City to open work to non-union firms

FROM PAGE A1

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OPINIO

B2 Sunday, April 2, 2006

OUR VIEW

Labor disagreement

To reinvent a popular expression: It's the PLAs, stupid!

That's Project Labor Agreements, and they look as if they will cost Fall River's taxpayers a whole heap of extra cash as the city endeavors to construct five new public schools.

Project Labor Agreements, which Fall River Mayor Edward M. Lambert Jr. imposed upon the five upcoming school building projects, limit the work force on those projects to union laborers.

Nationwide, just 13.9 percent of construction workers were represented by unions during 2005, according to the United States Department of Labor. Agreeing to exclusively employ union laborers thus severely restricts competition, a fact evidenced by the general contractor bids opened Thursday for the new Kuss Middle School project.

The lowest general contractor bid — there were only two — came in more than \$9 million over budget. The only other bid was about \$17 million over budget. With a budget of \$36 million, that makes the low bid a whopping 25 percent over budget and the alternate bid a staggering 47 percent over budget.

And if that isn't devastating enough, the Massachusetts School Building Authority is adamant it will pony up only \$28 million in reimbursements, based on the city's original \$31.1 million budget.

That gaping \$17.6 million chasm separating the Lambert Administration from reality can be made up from only one source: Taxpayers.

Back in December, Department of Public Works Director Terrance J. Sullivan said that it was too early to determine what effect the dearth of bids — quite clearly caused by imposition of the PLA — would have on the Kuss construction budget.

It's now impossible to ignore.

The city is still re-advertising various sub-bids on the project; in the case of electrical services, it's the fourth time. Now there's talk, given the huge cost differentials, of re-advertising for general contractors.

Meanwhile, the Lambert Administration wants the state to consider reimbursements based on current construction costs rather than on the original proposal. And the longer the project is delayed, the

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more expensive costs become.

Yet Lambert's PLAs are causing further delays. The opening of the Kuss general contractor bids was initially delayed six weeks after the city rejected sub-bids because of a low number of bids and high costs. Then the bid openings were delayed another two weeks to allow general contractors more time to determine their budgets. And now, more delays are being considered while the city hopes against hope it will attract an affordable general contractor bid.

That's wishful thinking, along with a couple of other myths Lambert's people are spinning.

First, despite the fact that Lambert, Sullivan and other city officials and members of our legislative delegation met with state officials and reported "positive" results, the state simply cannot make an exception to reimburse Fall River differently than it does any other community.

Second, it's not, as Lambert would have us believe, the prequalification process that is driving up costs. Some 75 sub-contractors pre-qualified for the Kuss project, but only 36 filed bids after the PLA was imposed. It's not hard to imagine that competition would have rendered the bids more reasonable if all those who took the time to prequalify had been able to bid on the project.

No, it's clear that PLAs are obstructing the process rather than facilitating it, as Lambert promised they would. They are anti-competitive, anti-quality and, most importantly, anti-taxpayer.

Lambert has agreed to use PLAs with all five new school projects, but before even a trowel of dirt has been turned, it's clear the agreements are doomed to fail.

Persuading the unions to abandon the PLAs won't be the easiest thing he's ever done, but if Lambert doesn't attempt to get out of the agreements he may as well get used to a new meaning for the acronym.

PLA? Public Loses Again.

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Construction Labor

REPORT


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Page 403

State News

Massachusetts Associated Builders Ends Court Challenge After Fall River Abandons Project Agreement

BOSTON--Nonunion contractors in Massachusetts said May 8 that they would drop litigation against a project labor agreement in Fall River after the mayor announced that the city no longer plans to use a project agreement for the construction of five schools.

"There's no reason to proceed" with the case said James DeChene, spokesman for the Associated Builders and Contractors. The group filed suit last December and obtained a temporary restraining order in state court, but the judge subsequently denied ABC's request for a preliminary injunction (51 CLR 1417, 12/21/05) .


Fall River Mayor Edward M. Lambert (D) announced on May 5 that the city was abandoning plans to use a project agreement on the school project. City officials did not return calls for comment on the decision.

According to ABC, the city received two general contractor bids for the \$36 million project, one for \$45 million, or \$9 million above budget, and the other for nearly \$53 million, or \$17 million over budget. ABC also said that 75 subcontractors were prequalified to bid but that only 36 submitted bids.

"All of our dire predictions about what happens when you use PLAs immediately came true," Greg Beeman, president of the Associated Builders and Contractors of Massachusetts said in a statement shortly before the city announced it was abandoning the project agreement.

"Because of the PLA, fewer firms were able to submit bids, and the ones that did submitted bids that were millions of dollars above the initial \$36 million price tag," Beeman said.

ABC had regarded the Fall River PLA as a potential test case of guidelines for the permissibility of project agreements established by the state supreme court seven years ago.

The state court judge who denied the preliminary injunction last December said the Fall River project was similar to a school construction project found lawful by the supreme court, but ABC argued that a new public construction reform law requiring prequalification made PLAs unnecessary. 

By Rick Valliere

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Monday 03 April, 2006

Home > News > News > Top Stories

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Will Richmond, Herald News Staff Reporter

03/31/2006

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FALL RIVER -- The results of general contractor bids for the new Matthew J. Kuss Middle School could put the project at least \$9 million over budget.

Two bids were opened Thursday revealing a bid of \$45,646,700 by East Providence, R.I., Agostini Construction and a bid of \$52,977,000 from Eastern Contractors of Framingham.

The city has budgeted \$36 million for the project and is eligible for 90 percent reimbursement from the state. However, Massachusetts School Building Authority Executive Director Katherine P. Craven has said the city is entitled to a maximum reimbursement of \$28 million based on a \$31.1 million budget originally submitted to the SBA.

Department of Public Works Director Terrance Sullivan, who is overseeing the Kuss project, voiced surprise about the lack of general contractor bids and the bid numbers.

"This is high, extremely high," Sullivan said minutes after the bids were opened. "This is far over the allotment allowed by the state."

The general contractor bids encompass the sub-bids received in the fields of masonry, miscellaneous metals, waterproofing, roofing, aluminum windows, glass and glazing, ceramic tile, acoustical tile, resilient flooring, food service, elevators, fire protection, plumbing, heating, ventilation and air conditioning and electrical work.

The city is re-advertising for sub-bids in the painting category after two bidding opportunities resulted in one bid each time. The city is also asking for bids in the electrical services category for a fourth time after the previous low bidder, Sparks Electrical of Little Compton, R.I., failed to provide documentation regarding the ability to complete some work related to the project.

The general contractor bids do not include the costs related to architect fees, furniture, fixtures, equipment or land acquisition fees, which still need to be figured into the final cost.

With the general contractor bids open, Sullivan said at this point in the process the two bids have to be analyzed before a decision is made to accept either of the bids or re-advertise in the hopes of securing more bidders.

In the meantime, Sullivan said, city officials will continue to work with the SBA, which is under the authority of the state Treasurer's Department, on getting the state to provide reimbursement based on current construction rates rather than the rates when the construction proposal was originally submitted. That had been the policy of the Department of Education when it was in charge of school building reimbursements.

Mayor Edward M. Lambert Jr., Sullivan, other city officials and members of the

**Make contact.**

southeastern Massachusetts legislative delegation met with SBA officials and Treasurer Timothy Cahill in February to begin discussions on the reimbursement issue. Sullivan said he will use these general contractor numbers to provide the SBA with an example of what the city perceives as rising construction costs.

As a reason for the rising costs, Sullivan pointed to the new requirement that bidders be pre-qualified before bidding on a project, as well as the increasing cost of construction. Sullivan and Lambert have said the pre-qualifying requirement, which takes place approximately six months before bids are requested, limits the number of potential bidders because companies that have not pre-qualified cannot enter later in the bidding process.

"Construction costs have increased sharply," Sullivan said. "The cost of steel has increased dramatically and the cost of fuel ... has an effect on everything you do. I also still feel the pre-qualifying process is part of the problem."

However, there is a contention from an alliance of open-shop contractors that the Kuss cost increase is due to Lambert's decision to employ a Project Labor Agreement to construct five new schools, including Kuss, in the district. A PLA requires any work force on the project be unionized.

Merit Construction Alliance Executive Director Ronald N. Cogliano disagreed with Sullivan's position that the pre-qualifying caveat is raising costs, pointing out that after 75 sub-contractors pre-qualified to submit bids only 36 filed bids.

"The fact Mr. Sullivan is somehow placing the blame on the pre-qualifying process is a ruse," Cogliano said. "More than half of the sub-bidders couldn't bid after the PLA was put into place."

As the final figure continues to increase, Cogliano said, the effects of the project's cost will be felt by the city's residents.

"I hope the taxpayers are ready to take it on the chin," Cogliano said. "That \$9 million is not going to be reimbursed, the SBA has said as much and the treasurer is saying they are not going to get any more money."

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09/17/2005

'Constructive criticism' on school projects

Will Richmond , Herald News Staff Reporter

FALL RIVER -- A group of open shop contractors are calling on Mayor Edward M. Lambert Jr. to avoid using Project Labor Agreements regarding the construction of new schools across the city.

Five contractors from the fields of construction, plumbing and heating, electrical, and ventilating and air conditioning met with Lambert Friday morning to state their case against the agreement that would require all bids on the construction of five schools be limited to unionized contractors.

Lambert confirmed after the meeting that he is considering the use of a PLA in conjunction with the school projects. The city has plans to build three new elementary schools and two new middle schools.

"It's something we are looking at very seriously for a couple of reasons," Lambert said.

Lambert explained that, because students will be shifting around to different buildings during the construction process, it is imperative that all of the projects are completed without delay. He also said that a PLA would guarantee that a local work force would be used during construction.

"The guarantee of local labor is also very important to me," Lambert said. "If the city is going to spend \$25 million on a new school with 90 percent being reimbursed from the state, then the 10 percent should be going into the pockets of local workers."

After meeting with Lambert, the group of contractors delivered their message to The Herald News.

"PLAs knock non-union groups out of the process," said Richard N. Cogliano, the executive director of Kingston based Merit Construction Alliance. "They knock the competition out, giving the unions no incentive to provide the best deal."

For example, James J. Grasseschi, president of Grasseschi Plumbing and Heating in Worcester, said that of the five companies to submit prequalification information to the city for bidding purposes, only one was unionized.

Basically, that means "the bidder can name his price," Cogliano said.

And at a time when few bids are being taken for new school projects, they say the city should be jumping at the chance to ensure the best price in what is shaping up to be a highly competitive market.

"With no competition, (the cost of construction) is going to be expensive," said Joe Annese of Annese Electrical Services in Weymouth.

Lambert ensured, however, that the bidding process would be watched to ensure the city receives fair market value.

By going with a PLA, the contractors added, the city will face a limited work force due to declining union membership numbers, and refuted Lambert's claim that unions will employ Fall River residents.

The non-union leaders say that most schools are not built without PLAs, including three projects -- the Silvia, Greene and Spencer Borden elementary schools -- recently completed in Fall River.

They also contend that a school constructed in Milton has gone over budget, causing cutbacks in facilities and supplies.

But Lambert said the city did not make use of a PLA for those construction projects because they did not meet criteria that allows for the use of the agreement.

"You have to meet a certain criteria under the courts for a PLA, and I'm not sure those other projects would have qualified," Lambert said. "You have to display a unique circumstance that you have to complete the projects on time. I think this is a different circumstance, because we're talking about breaking ground on four schools."

While Lambert said the city is in the right to employ a PLA, Grasseschi said that if the city goes that route a trip to court could be in the future.

"We have said we will contemplate a legal challenge," Grasseschi said. "We don't want to delay anything, but that could gum things up six months to a year."

In response to the threat of a legal challenge, Lambert maintained that these construction projects would meet the standards set by the court.

"If we didn't think this would meet the threshold of the court, then we wouldn't do it," Lambert said.

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