

## **Division 146**

### **GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING**

#### **736-146-0010**

##### **Application**

(1) Purpose: The purpose of this division is to establish a comprehensive framework governing the procurement processes of the Oregon Parks and Recreation Department (OPRD). Pursuant to the authority granted under ORS 279A.025(3)(k), this division enables OPRD to develop and implement its own contracting and purchasing procedures. The intent is to ensure consistency in procurement practices, safeguard the interests of OPRD, and promote fairness and transparency in its engagement with the business community.

(a) This division applies to OPRD's procurement of goods and services in accordance with ORS 279A.025(3)(k). The intent of these rules is to identify exemptions from public contracting code as identified in ORS 279A.025(3)(k) except as identified in:

(A) ORS 279A.250 to ORS 279A.290

(B) OPRD's contracting activities related to information technology, as defined in ORS 276A.230,

(C) photogrammetric mapping, as defined in ORS 672.002,

(D) or telecommunications, as defined in ORS 276A.206.

(b) This division 146 applies to OPRD's procurement of printing and printing purchase exemptions in accordance with ORS 282.020(1). The intent of these rules allows OPRD the authority to seek the most cost effective, printing services for the products needed while still complying with ORS 282.210 to 282.230 as required of all public agencies.

(2) In addition to the source selection methods set forth in this division, OPRD may enter into contracts for the types of goods and services described by any method OPRD determines is reasonable in the circumstances, including by direct award and negotiation.

(3) Reservation of Rights: Except as set forth in ORS 279A.025(3)(k), OPRD is exempt from the provisions of ORS chapters 279A, 279B and 279C, which govern public contracting and procurement, OPRD reserves the right to consult the following as guidance in making procurement decisions:

(a) ORS chapters 279A, 279B and 279C;

(b) The Attorney General's Model Public Contract Rules (OAR chapter 137, divisions 46, 47, 48, and 49);

- (c) The Public Contracting Rules established by the Oregon Department of Administrative Services (OAR chapter 125, divisions 246, 247, 248, and 249) including but not limited to the use of the state electronic procurement tools;
- (d) Any written opinions issued by the courts of the State of Oregon interpreting any of the foregoing; and
- (e) The provisions set forth in the foregoing statutes, administrative rules, and interpretations thereof are not binding on OPRD, but OPRD may refer to such statutes, administrative rules, and interpretations for guidance in the interpretation and administration of procurements subject to this division. OPRD will document in the procurement file the extent to which it relied on the foregoing statutes, administrative rules, or interpretations as guidance for its decisions related to the procurement.

**Statutory/Other Authority:** ORS 279A.025(3)(k) & ORS 282.020

**Statutes/Other Implemented:** ORS 279A.025(3)(k) & ORS 282.020

**History:**

PRD 16-2009, f. & cert. ef. 12-4-09

PRD 12-2008, f. & cert. ef. 12-15-08

PRD 1-2007, f. & cert. ef. 2-7-07

**736-146-0012**

**Definitions**

- (1) "Contract Administration" means all functions related to a given contract between OPRD and a contractor from the time the contract is awarded until the work is completed and accepted or the contract is terminated, payment has been made, and disputes have been resolved.
- (2) "Designated Procurement Officer" (DPO) means the individual designated and authorized by the Director of the Oregon Parks and Recreation Department to perform certain procurement functions described in these rules.
- (3) "Direct Award" or "Small Procurement" mean a public contract for goods or services that does not exceed a contract price of \$100,000 in any manner OPRD deems practical or convenient, including by direct selection or award.
- (4) "Emergency" as defined in ORS 279A.010(1)(f).
- (5) "Formal Procurement" means a public contract for goods or services that exceeds a contract price of \$500,000 and must be awarded by using a formal Request for Proposal (RFP) process if contractor selection will be based on criteria in addition to cost or if the ability to negotiate terms and conditions with the selected contractor is desired. The solicitation process must provide opportunities for prospective proposers to protest the solicitation and the award.

(6) “Intermediate Procurement” means a public contract for goods or services that exceeds a contract price of \$100,000, but does not exceed a contract price of \$500,000. OPRD is required to seek at least three informally solicited competitive price quotes or competitive proposals from prospective contractors.

(7) “Sole Source” means a contract for goods or services without competition that exceed a contract price of \$100,000 if OPRD determines in writing that the goods or services are available from only one source.

(a) OPRD must base a sole source determination on written findings that may include:

(A) That the efficient utilization of existing goods requires acquiring compatible goods or services;

(B) that the goods or services required to exchange software or data with other public or private agencies are available from only one source;

(C) that the goods or services are for use in a pilot or an experimental project; or

(D) other findings that support the conclusion that the goods or services are available from only one source.

(b) OPRD must, to the extent reasonably practical, negotiate with the sole source provider to obtain contract terms that are advantageous to OPRD.

**Statutory/Other Authority:** ORS 279A.010; ORS 279A.025; ORS 279B.005; ORS 282.020

**Statutes/Other Implemented:** ORS 279A.010; ORS 279A.025; ORS 279B.005; ORS 282.020

**History:**

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PRD 12-2008, f. & cert. ef. 12-15-08

PRD 1-2007, f. & cert. ef. 2-7-07

**736-146-0015**

**Special Approvals for Public Contracts When Required**

(1) When Attorney General legal sufficiency approval is required under ORS 291.047, OPRD must seek legal approval.

(2) When OPRD contracts for services normally provided by another contracting agency or for services for which another contracting agency has statutory responsibilities, OPRD is required to seek the other contracting agency's approvals. Examples of these special approvals include, but are not limited to:

(a) Oregon Department of Administrative Services (DAS), State Services Division, Risk Management for providing tort liability coverage;

- (b) DAS Enterprise Information Services for telecommunications services;
  - (c) Office of the Treasurer, Debt Management Division, for bond counsel and financial advisory services (bond counsel services also require the approval of the Attorney General);
  - (d) DAS Enterprise Information Services for information-system related services.
- (3) The Attorney General has sole authority to contract for attorney services. Exceptions may be granted in writing on a case-by-case basis only by the Attorney General.
- (4) The Secretary of State Audits Division has sole authority to contract for financial auditing services. Exceptions may be granted in writing on a case-by-case basis only by the Secretary of State Audits Division.

**Statutory/Other Authority:** ORS 279A.065(5)(a); ORS 279A.070; ORS 279A.025; ORS 282.020

**Statutes/Other Implemented:** ORS 279A.140(2); ORS 279A.025; ORS 282.020

**History:**

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PRD 12-2008, f. & cert. ef. 12-15-08

PRD 1-2007, f. & cert. ef. 2-7-07

**736-146-0050**

**Contract Administration; General Provisions**

- (1) OPRD conducts procurements for goods or services, including architectural, engineering, land surveying and related services, and public improvements.
- (2) OPRD must appoint, in writing, a contract administrator as an OPRD representative for each contract. The contract administrator may delegate in writing a portion of the contract administrator's responsibilities to a technical representative for specific day-to-day administrative activities for each contract.
- (3) OPRD must maintain a procurement file for procurements for goods or services; the informal selection threshold for architectural, engineering, and land surveying services; and the intermediate procurement threshold for public improvements, respectively:
- (a) Each procurement file must contain an executed contract, if awarded.
  - (b) OPRD must maintain procurement files, including all documentation, for a period not less than six years, except for 10 years beyond each contract's expiration date for architectural, engineering, and land surveying services and related services or for another period in accordance with another provision of law.

**Statutory/Other Authority:** ORS 279A.065(5)(a); ORS 279A.070; ORS 279A.025(3)(k)

**Statutes/Other Implemented:** ORS 279A.050; ORS 279A.065(5) ; ORS 279A.070; ORS

279A.140; ORS 279A.025(3)(k)

**History:**

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PRD 12-2008, f. & cert. ef. 12-15-08

PRD 1-2007, f. & cert. ef. 2-7-07

**736-146-0060**

**Payment Authorization of Cost Overruns for Goods or Services including Architectural, Engineering and Land Surveying Services and Related Services Contracts**

(1) Payments on contracts that exceed the maximum contract consideration require approval from OPRD's designated procurement officer and may require approval from the Department of Justice (DOJ) pursuant to OAR 137-045-0010 et seq. Approval may be provided if there is compliance with all of the following:

(a) The original contract was duly executed and, if required, approved by the DOJ.

(b) The original contract has not expired, been terminated, or been reinstated under OAR 736-147-0070 as of the date written approval to increase the contract amount is granted.

(c) The cost overrun is not associated with any change in the statement of work set out in the original contract.

(d) The cost overrun arose out of extraordinary circumstances or conditions encountered in the course of contract performance that were reasonably not anticipated at the time the original contract or the most recent amendment, if any, was signed. Such circumstances include but are not limited to cost overruns that:

(A) Address emergencies arising in the course of the contract that require prompt action to protect the work already completed.

(B) Comply with official or judicial commands or directives issued during contract performance.

(C) Ensure that the purpose of the contract will be realized;

(e) The cost overrun was incurred in good faith, results from the good faith performance by the contractor, and is no greater than the prescribed hourly rate or the reasonable value of the additional work or performance rendered.

(f) Except for the cost overrun, the contract and its objective are within the statutory authority of OPRD and OPRD currently has funds available for payment under the contract.

(g) An officer or employee of OPRD has presented a written report to OPRD's designated procurement officer within 60 days of the discovery of the overrun that states the reasons for the cost overrun and demonstrates to the satisfaction of OPRD's designated procurement officer that the original contract and the circumstances of the overrun satisfy the conditions stated above.

(h) OPRD's designated procurement officer approves in writing the payment of the overrun, or such portion of the overrun amount as OPRD's designated procurement officer determines may be paid consistent with the conditions of this rule. If OPRD's designated procurement officer has signed the contract, or has immediate supervisory responsibility over performance of the contract, that person must designate an alternate delegate to grant or deny written approval of payment.

(2) OPRD must obtain DOJ's approval of the contract amendment, if such approval is required by ORS 291.047, before making any overrun payment.

**Statutory/Other Authority:** ORS 279A.065(5)(a); ORS 279A.070; ORS 291.047; ORS 279A.025(3)(k)

**Statutes/Other Implemented:** ORS 279A.065(5)(a); ORS 279A.070; ORS 279A.140; ORS ORS 291.047; ORS 279A.025(3)(k)

**History:**

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PRD 12-2008, f. & cert. ef. 12-15-08

PRD 1-2007, f. & cert. ef. 2-7-07

**736-146-0070**

**Ethics in Public Contracting — Policy**

Oregon public contracting is a public trust. OPRD and contractors involved in public contracting must safeguard this public trust.

**Statutory/Other Authority:** ORS 244.010 - 244.400, 279A.065(5)(a) & 279A.070; ORS 279A.025(3)(k)

**Statutes/Other Implemented:** ORS 244.010 - 244.400, 279A.065(5)(a), 279A.070 & 279A.140; ORS 279A.025(3)(k)

**History:**

PRD 16-2009, f. & cert. ef. 12-4-09

PRD 12-2008, f. & cert. ef. 12-15-08

PRD 1-2007, f. & cert. ef. 2-7-07

**736-146-0080**

**Ethics in Selection and Award of Public Contracts**

(1) OPRD officers, employees or agents involved in the process of the selection and award of public contracts must carefully review the provisions of ORS 244.040.

(2) OPRD officers, employees and agents are prohibited from soliciting or receiving gifts, which means something of economic value given to a public official or the public official's relative without an exchange of valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, and which is not extended to others who are not public officials or the relatives of public officials on the same terms and conditions; and something of economic

value given to a public official or the public official's relative for valuable consideration less than that required from others who are not public officials.

(3) OPRD officers, employees and agents are prohibited from using their official position for personal or financial gain.

(4) OPRD officers, employees and agents are prohibited from using confidential information gained in the course of the screening and selection procedures for personal or financial gain.

**Statutory/Other Authority:** ORS 244.010 - 244.400, 279A.065(5)(a) & 279A.070

**Statutes/Other Implemented:** ORS 244.010 - 244.400, 279A.065(5)(a), 279A.070 & 279A.140

**History:**

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PRD 12-2008, f. & cert. ef. 12-15-08

PRD 1-2007, f. & cert. ef. 2-7-07

**736-146-0100**

**Non-retaliation**

Retaliation against anyone who complies with the rules in this division related to ethics is prohibited. Any officer, employee or agent of OPRD or contractor who engages in retaliation action will be subject to penalties pursuant to ORS 279A.990, 244.350 to 244.400 and related rules. Also, any contractor who engages in a retaliation action may be debarred.

**Statutory/Other Authority:** ORS 279A.065(5)(a) & 279A.070

**Statutes/Other Implemented:** ORS 279A.065(5)(a), 279A.070 & 279A.140

**History:**

PRD 16-2009, f. & cert. ef. 12-4-09

PRD 12-2008, f. & cert. ef. 12-15-08

PRD 1-2007, f. & cert. ef. 2-7-07

**736-146-0110**

**Ethics in Specification Development**

(1) OPRD and contractors must not develop specifications that primarily benefit a contractor, directly or indirectly, to the detriment of OPRD or the best interest of the state.

(2) OPRD must not develop specifications that inhibit or tend to discourage public contracting with qualified rehabilitation facilities (QRF) under ORS 279.835 through 279.855 and OAR 125-055-0005 through 125-055-0045 where those specifications inhibit or tend to discourage the acquisition of QRF-produced goods or services without reasonably promoting the satisfaction of bona fide, practical procurement needs of OPRD.

(3) OPRD and contractors must not develop specifications that inhibit or tend to discourage public contracting under this division or policies of OPRD.

**Statutory/Other Authority:** ORS 279A.065(5)(a) & 279A.070

**Statutes/Other Implemented:** ORS 279A.065(5)(a), 279A.070 & 279A.140

**History:**

PRD 16-2009, f. & cert. ef. 12-4-09

PRD 12-2008, f. & cert. ef. 12-15-08

PRD 1-2007, f. & cert. ef. 2-7-07

**736-146-0120**

**Ethics in Sole Source**

OPRD may not select a sole-source procurement pursuant to ORS 279B.075 and avoid a competitive procurement if the purpose of the selection is to primarily benefit the contractor, directly or indirectly, to the detriment of OPRD or the best interest of the state.

**Statutory/Other Authority:** ORS 279A.065(5)(a) & 279A.070

**Statutes/Other Implemented:** ORS 279A.065(5)(a), 279A.070, 279B.075 & 279A.140

**History:**

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PRD 12-2008, f. & cert. ef. 12-15-08

PRD 1-2007, f. & cert. ef. 2-7-07

**736-146-0130**

**Fragmentation**

(1) A procurement may not be artificially divided or fragmented so as to constitute a small procurement, pursuant to ORS 279B.065, or an intermediate procurement, pursuant to ORS 279B.070.

(2) Limitations to Direct Awards or Small Procurements could include:

(a) a contract awarded as a small procurement may be amended to exceed \$100,000 only in accordance with rules adopted under this division.

(b) a procurement may not be artificially divided or fragmented so as to constitute a small procurement under this section.

(3) Limitations to Intermediate Procurements could include:

(a) a contract awarded under this section may be amended to exceed \$500,000 only in accordance with rules adopted under this division.

(b) this procurement may not be artificially divided or fragmented so as to constitute a intermediate procurement under this section.



**Statutory/Other Authority:** ORS 279A.065(5)(a) & 279A.070

**Statutes/Other Implemented:** ORS 279A.065(5)(a), 279A.070 & 279B.065

**History:**

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PRD 12-2008, f. & cert. ef. 12-15-08

PRD 1-2007, f. & cert. ef. 2-7-07

**736-146-0140**

**Ethics in OPRD and Contractor Communications**

(1) OPRD is encouraged to conduct research with contractors who can meet the state's needs. This research phase includes but is not limited to:

(a) Meetings;

(b) Industry presentations; and

(c) Demonstrations with contractors that, in OPRD's discretion, may be able to meet OPRD's needs.

(2) OPRD must document the items discussed during the research phase of solicitation development. The research phase ends the day of a solicitation release or request for a quote pursuant to an intermediate procurement, unless the solicitation or intermediate procurement provides for a different process that permits on-going research.

(3) Any communication between OPRD and contractors regarding a solicitation, that occurs after the solicitation release or request for a quote and before the award of a contract, must only be made in the solicitation and contracting phase within the context of the solicitation document or intermediate procurement requirements.

(4) Communication may allow for discussions, negotiations, addenda, contractor questions, and OPRD's answers to contractor questions about terms and conditions, specifications, amendments, or related matters. During this phase, telephone conversations, electronic communications and meetings must be documented in the procurement file. Written inquiries regarding the solicitation should be responded to by OPRD in writing.

(5) A record of all material communications regarding the solicitation by interested contractors must be made part of the procurement file pursuant to OAR 736-146-0050.

**Statutory/Other Authority:** ORS 279A.065(5)(a) & 279A.070; ORS 279A.025(3)(k)

**Statutes/Other Implemented:** ORS 279A.065(5)(a), 279A.070 & 279A.140; ORS 279A.025(3)(k)

**History:**

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PRD 12-2008, f. & cert. ef. 12-15-08

PRD 1-2007, f. & cert. ef. 2-7-07

**736-147-0030**

**Emergency Procurements Process**

(1) The Director of OPRD or person designated by the Director, may authorize OPRD personnel to award a public contract for goods and services as an emergency procurement. Emergency contracts are exempt from Department of Justice legal sufficiency review under OAR 173-045-0070 as set out in subsection (3)(b) of this rule.

(2) Pursuant to the requirements of this rule, OPRD may, in its discretion, enter into a public contract without competitive solicitation if an emergency exists. Emergency means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to public health or safety that requires prompt execution of a contract to remedy the condition.

(3) For contracts above \$100,000, when entering into an emergency contract, OPRD must:

(a) Encourage competition that is reasonable and appropriate under the circumstances;

(b) Award contract within sixty days following the event triggering the need for an emergency contract unless an extension has been granted by the Director of OPRD or person designated by the Director;

(c) Have a written report prepared and signed by an executive of OPRD who is responsible for oversight of the public contract within ten business days after execution of the public contract, said report to contain:

(A) A concise summary of the circumstances that constitute the emergency and the character of the risk of loss, damage, interruption of services, or threat to public health or safety created or anticipated to be created by the emergency circumstances;

(B) A statement of the reason or reasons why the prompt execution of the proposed public contract was required to deal with the risk created or anticipated to be created by the emergency circumstances;

(C) A brief description of the services or goods to be provided under the public contract, together with its anticipated cost; and

(D) A brief explanation of how the public contract, in terms of duration, services, or goods provided under it, was restricted to the scope reasonably necessary to adequately deal only with the risk created or anticipated to be created by the emergency circumstances.

(d) Maintain a copy of report described in (c) of this rule in OPRD's emergency public contract file.

**Statutory/Other Authority:** ORS 279A.065(5)(a) & 279A.070; ORS 279A.025(3)(k)

**Statutes/Other Implemented:** ORS 279B.080; ORS 279A.025(3)(k)

**History:**

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PRD 13-2008, f. & cert. ef. 12-15-08

PRD 1-2007, f. & cert. ef. 2-7-07

**736-147-0040**

**Price Agreements**

(1) OPRD may create price agreements designed for the exclusive use of OPRD or use DAS multi-agency price agreements.

(2) OPRD may create price agreements for the purposes of achieving continuity of product, securing a source of supply, reducing inventory, combining requirements for volume discounts, standardization among agencies, and reducing lead time for ordering.

(3) If OPRD conducts a purchase of goods or services pursuant to a DAS or OPRD price agreement, OPRD does not need to undertake an additional competitive solicitation.

**Statutory/Other Authority:** ORS 279A.065(5)(a) & 279A.070; ORS 279A.025(3)(k) & ORS 282.020

**Statutes/Other Implemented:** ORS 279A; ORS 279A.025(3)(k) & ORS 282.020

**History:**

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PRD 13-2008, f. & cert. ef. 12-15-08

**736-147-0050**

**Mandatory Use Contracts and Mandatory Use Price Agreements**

(1) For the purposes of this rule, a Mandatory Use Contracts or Mandatory Use Price Agreements means a public contract, DAS price agreement, or other agreement that OPRD is required to use for the procurement of goods and services.

(2) If DAS State Procurement Office establishes a price agreement that is designated mandatory for state agency use, OPRD may procure applicable goods and services pursuant to the Mandatory Use Contract or Mandatory Use Price Agreements unless otherwise specified in this division.

(3) OPRD is exempted from Mandatory Use Contracts or Mandatory Price Agreements for acquisition except for duties or obligations OPRD has under ORS 279A.250 to 279A.290 and OPRD's contracting activities related to information technology, as defined in ORS 276A.230, photogrammetric mapping, as defined in ORS 672.002, or telecommunications, as defined in ORS 276A.206.

**Statutory/Other Authority:** ORS 279A.065(5)(a) & 279A.070; ORS 279A.025(3)(k) & ORS 282.020

**Statutes/Other Implemented:** ORS 279B.090; ORS 279A.025(3)(k) & ORS 282.020

**History:**

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PRD 1-2007, f. & cert. ef. 2-7-07

**736-147-0060**

**Amendments for Intermediate Goods or Services Procurements**

(1) OPRD may amend a public contract awarded as an intermediate procurement in accordance with OAR 137-047-0800, but the cumulative amendments shall not increase the total contract price to a sum that is greater than 125 percent of the procurement threshold.

(2) Any public contract with a total value amended over \$250,000 and every \$250,000 thereafter must be approved by the OPRD Designated Procurement Officer and Department of Justice.

**Statutory/Other Authority:** ORS 279A.065(5)(a) & 279A.070; ORS 279A.025(3)(k) & ORS 282.020

**Statutes/Other Implemented:** ORS 279A.050, 279A.065(5), 279A.070 & 279A.140; ORS 279A.025(3)(k) & ORS 282.020

**History:**

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**736-147-0070**

**Reinstatement of Expired or Terminated Contracts**

(1) If OPRD enters into a contract for goods or services and that contract subsequently expires or is terminated, OPRD may reinstate the contract subject to the following:

(a) The type or aggregated value (including all amendments) of the contract, after reinstatement, falls under OPRD procurement thresholds in accordance with this division;

(b) OPRD may reinstate and amend for time only;

(c) The purpose must be for:

(A) Fulfillment of its term, up to the maximum time period provided in the contract; or

(B) Completion of a deliverable, provided:

(i) The deliverable, including but not limited to goods, services, or work, was defined in the contract as having a completion date or event; and

(ii) OPRD documents the uncompleted work as of the date of the reinstatement of the expired contract in the procurement file.

- (d) The expired or terminated contract was previously properly executed; and
  - (e) The failure to extend or renew the contract in a timely manner was due to unforeseen circumstances, unavoidable conditions or any other occurrence outside the reasonable control of OPRD or the contracting party.
- (2) OPRD may amend an expired contract for time only in accordance with section (1) of this rule. OPRD may amend the contract purposes other than time in accordance with OAR 137-047-0800.
- (3) If OPRD reinstates and amends an expired contract for time, pursuant to this rule, OPRD may compensate the contracting party for work performed in the interim between the expiration of the original contract and the effective date of the reinstatement and amendment.
- (4) Once a contract is reinstated, it is in full force and effect as if it had not expired or terminated.

**Statutory/Other Authority:** ORS 279A.065(5)(a) & 279A.070; ORS 279A.025(3)(k) & ORS 282.020

**Statutes/Other Implemented:** ORS 279A; ORS 279A.025(3)(k) & ORS 282.020

**History:**

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