

FREQUENTLY ASKED QUESTIONS AND GENERIC ANSWERS: PREFERENTIAL PROCUREMENT REGULATIONS, 2017.

No.	Question	Generic Answer
1.	Why was it necessary to review the Preferential Procurement Regulations 2011?	It is government policy to promote inclusive economy, the preferential procurement regulations were identified as one policy instrument that can be used to promote this objective and to ensure that Small Medium and Micro enterprises are afforded more opportunities in government procurement.
2.	What is the aim of the Preferential Procurement Regulations 2017?	The Preferential Procurement Regulations, 2017 (PPRs, 2017) are issued by the Minister of Finance in terms of section 5(1) of the Preferential Procurement Policy Framework Act (PPPFA) No. 5 of 2000. The regulations aim to use public procurement as a lever to promote socio-economic transformation, empowerment of small enterprises, rural and township enterprises, designated groups and promotion of local industrial development.
3.	What are the main changes from the Preferential Procurement Regulations of 2011?	<p>There are at least four main changes in the PPRs, 2017 as compared to the 2011 regulations which can be summarised as follows:</p> <p>3.1. Regulation 4 empowers institutions to use prequalification criteria for preferential procurement; this ensures advancement of categories of persons or categories of enterprises in a specific tender. Enterprises must meet a prequalification criterion to be evaluated further. Only enterprises who meet the prequalification criteria are evaluated further.</p> <p>3.2. In Regulation 6 and 7, the thresholds for application of the 80/20 preference point system has been increased from maximum R 1 million to maximum R 50 million, likewise the 90/10 preference point system will be used for evaluation and award of all tenders above R 50 million.</p> <p>3.3. Regulation 9 which provides for subcontracting as condition of tender. Institutions will be required to identify tenders with an estimated value above R30 million that can be used for subcontracting to advance categories of persons or enterprises.</p> <p>3.4. Regulation 6(9) and 7(9) give Institutions power to negotiate a fair price with the preferred tenderers.</p>
4.	Can government achieve the 30% procurement from SMMEs and rural and	YES, institutions must plan properly their procurement, identify tenders that will be used to promote SMMEs, co-operatives, rural and township enterprises. Decide on the appropriate regulations to be used to achieve

	township enterprises announced by the President in the 2015 State of the Nation Address?	the desired policy outcome. Prequalification and subcontracting are the sub-regulations that can be used to achieve this.
5.	What should an Institution do if no responses to tenders are received from the identified categories?	The tender will be cancelled, however the institution must investigate reasons for the non-responsiveness. Furthermore, institutions must conduct industry / market analyses to ascertain the availability and competency of the sector or groups they wish to empower.
6.	How will the increase in the thresholds pertaining to the application of the 80/20 and 90/10 affect the fiscus? Will this not result in exorbitant increases to the budget of government, given the high premiums that will now be paid?	The increase in threshold may result in increased premiums; however institutions are required to do proper planning and use the provisions in the regulations to negotiate a fair market price and therefore ensure that a fair market price or value for money is achieved.
7.	The revised regulations refer to compulsory sub-contracting (sub-contracting as a condition of tender), as well as to sub-contracting under the prequalification criteria. Where will these sub-contractors be found?	It will be the responsibility of the procuring institution to make available a list of subcontractors drawn from the central supplier database managed by the National Treasury. Suppliers will be required to update their B-BBEE credentials in line with the regulations if they wish to be made available for subcontracting in future tenders. The process to search for the identified groups targeted for empowerment is documented in paragraph 14.17 of the implementation guide. Organs of state are requested to familiarize themselves with the process and check the CSD for updated information on this aspect. Please refer to Annexure 1 for detailed process on this aspect.
8.	Are the revised regulations sufficiently empowering to meet government's objectives?	National Treasury has tried its level best within the confines of the Constitution and the PPPFA to formulate sufficiently empowering regulations. It should be born in mind, however, that these regulations are an interim measure to promote and advance the interests of designated groups while the Procurement Bill is in the process of being drafted.
9.	Do the new regulations now make provision for set-asides?	The regulations do not provide for set-asides but make provision for prequalification on the basis of the criteria provided for in regulation 4. Any supplier that meets the prequalification criteria is eligible to be evaluated further in terms of any evaluation criteria stipulated in the tender.
10.	Can tenderers still submit sworn affidavits?	Yes, in line with the B-BBEE Codes of Good Practice on EMEs and QSEs. A sworn affidavit will still be accepted as proof of B-BBEE credentials.

11.	Do these regulations contain any changes to the local procurement provisions?	There are no major changes, except that National Treasury will be issuing circulars instead of instructions to make people aware of the Department of Trade and Industry's (the dti) designations of sectors and products.
12.	Is there still relevance for B-BBEE certificates in these Regulations?	Yes, all tenders are still subject to evaluation on the basis of B-BBEE credentials for the 80/20 and 90/10 preference point system. Proof of B-BBEE status level of contributor still includes B-BBEE status level certificate and a sworn affidavit for EMEs and QSEs, in line with B-BBEE legislation.
13.	Is cancellation of a tender subject to a closed list as in the 2011 regulations?	Yes, except that the PPR 2017 provide an addition to the list. Regulation 13(d) provides that a tender can be cancelled if there are material irregularities in the tender process.
14.	Can Institutions designate tenders for local procurement?	Yes, provided they follow the standards provided by the dti to designate products in tenders for local production and content in terms of regulation 8 (4). The standard will be released by the Department of Trade and Industry after which National Treasury will make it available to organs of state.
15.	Legislation makes it impossible for black businesses to progress. Is this correct?	Although there is room for improvement in the preferential procurement legislative environment, however, the Preferential Procurement Regulations, 2017 have broadened the scope for Black businesses to participate in government procurement. Prequalification on the basis of B-BBEE Status level, EMEs or QSEs, or subcontracting with EMEs or QSEs which are 51% owned by black designated groups of suppliers.
16.	Before black businesses can participate in procurement, the "hurdles" – which include the likes of financing requirements – should be removed. Is there merit to this argument? How could Treasury assist or amend going further?	The Preferential Procurement Regulations are concerned with leveraging public procurement to promote socio-economic objectives of government. Issues such as financing requirements are dealt with by other public sector institutions. In other words, all of government needs to play a role in the overall development of black business. Financing Institutions and the Departments of Economic Development and Small Business Development will be better placed in terms of how they are helping business to overcome financing and day to day hurdles faced by small and black business.
17.	Should big and/ or established businesses take risks on black businesses? If so, why?	The transformation agenda should form part of every responsible corporate citizen's programme. As such, established businesses are encouraged to take risks on Black businesses, hence the reason the regulations introduced compulsory subcontracting for contracts above R30 million. Government believes that established business can partner with government to uplift black business and therefore ensure an inclusive economy for South Africa.
18.	Are there any sectors that the regulations target for empowerment?	The regulations provide a broad empowerment scope, it will be up to organs of state to analyse the empowerment levels per sector and ensure that specific tenders address specific empowerment gaps per sector.
19.	Are prequalification criteria also applicable to all quotations irrespective	Prequalification criteria in terms of regulation 4(1) can be applied to any amount hence it is not linked to any threshold value for procurement or preference point system.

	of the procurement value (less than R30 000), or does this regulation only kick in for procurement actions from above R 30 000.	
20.	Are the PPR 2017 Regulations applicable to disposal Management?	The preferential procurement regulations do not deal with the sale and leasing of state assets (disposal management). When it comes to the disposal of assets, there are various prescripts and guidelines that govern such disposal. They are the Supply Chain Management Guide to Accounting Officers and Accounting Authorities and the Treasury Regulations. Reference is specifically made to TR16A 3.1, TR16A 7 and regulation 40 of the Municipal Supply Chain Management Regulations.
21.	How will organs of state make available the list of subcontractors?	The process to search for the identified groups targeted for empowerment is documented in paragraph 14.17 of the implementation guide. Organs of state are requested to familiarize themselves with the process and check the CSD for updated information on this aspect.
22.	Can primary contractors subcontract with suppliers who were not on the list of subcontractors provided by the organ of state?	The organ of state will make available the list of suppliers registered on the CSD for subcontracting purposes. A contractor may not use a contractor who is not registered on the CSD and who does not meet the subcontracting requirements of the tender.
23.	Is there a prescribed value for negotiations/ can organs of state negotiate with preferred suppliers irrespective of the value of tender?	There is no prescribe value for negotiating with preferred tenderers; organs of state must determine in their policies if there is a need to prescribe a threshold for negotiating. Practitioners must familiarise themselves with paragraph 19 of the implementation guide on negotiating a fair market price.
24.	Is the PPPFA applicable to construction / infrastructure procurement?	Yes, although the PPRs 2017 removed reference to works in order to align with the provisions of the Constitution and the Act, it does not mean that the regulations do not apply to procurement of goods and services for construction and infrastructure purposes.
25.	It is a requirement of the B-BBEE Act that procurement must be done in terms of the B-BBEE sector specific code of good practice. Is the point score card as per the Regulations 6 and 7 applicable to the generic and sector codes?	Regulations 6 and 7 are generic and apply across sectors. It is up to the organ of state to study each sector charter on which a tender will be issued to determine the empowerment level and within the provisions of the regulations decide on the correct regulation to advance empowerment in the sector.
26.	Who vets the list of subcontractors that would be made available to the main	The contractor will be responsible for carry out due diligence on their subcontractors. An organ of state will evaluate the tender as a single tender with the subcontracting arrangement. Practitioners must familiarise themselves with paragraph 5 and 14 of the Implementation Guide related to subcontracting.

	contractor in terms of the subcontracting requirements?	
27.	One of the pre-qualification criteria upon which a supplier may be evaluated is on the basis of B-BBEE status level of contributor. Yet, in regulations 6 and 7, it is stated that if a supplier does not submit proof of their B-BBEE status level, or the supplier scores 0 B-BBEE points, they may not be disqualified, but will just score zero. Is this not a contradiction between the two provisions?	There is no contradiction in these provisions; practitioners must bear in mind that not all tenders will be subject to prequalification criteria. Prequalification is at the discretion of the organ of state to empower or advance the empowerment agenda in an identified tender. Where prequalification is used before a tenderer can be evaluated further, it means that those who do not meet the prequalification criteria will be disqualified before evaluation in terms of preference points and price. However in a normal tender advertised (i.e. where there is no prequalification criterion / criteria), the tenderer may not be disqualified but may score 0 for preference points when evaluated in terms of 80/20 or 90/10.
28.	Will the lowest acceptable price be based on the price that is announced during the opening of the bid?	No. Prices announced/ readout at the opening of tenders are subject to the evaluation of those tenders on the basis of meeting mandatory criteria, administrative criteria and functionality criteria, amongst others before those prices are regarded as acceptable prices. The PPPFA defines “acceptable tender” as “any tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document”.
29.	Negotiating is limited to three preferred tenderers, what about the fourth and other tenderers?	The regulations provide for a list of three in order to control the process and avoid a long drawn out process of negotiations. Note also that not all tenders will be subjected to negotiations, only those where in the view of the organ of state are far above market prices.
30.	Will it be incorrect to allow subcontracting below R 30 million?	Organs of state may allow for subcontracting for procurement below R 30 million to advance designated groups.
31.	Who will be responsible for approving subcontracting? Can it be delegated?	The accounting officer/ accounting authority is responsible for determining a procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective. They also determine how this system will be effectively implemented including developing organizational policies and designing a system of delegations.
32.	Are there guidelines on remedies to support provisions of regulation 14?	The implementation guide has been developed for all aspects of the regulations where it was deemed to assist organs of state with implementing the Preferential Procurement Regulations 2017. A few aspects on remedies are provided in the guide.
33.	What is fair market price?	Market-Related Pricing means the determination of fair and reasonable pricing to both parties considering the quality, output performance, and other factors and that is realistic for the performance of the work

		through either price analysis, which examines the total price, or cost analysis, which examines the individual cost elements that collectively comprise the total price. Techniques are: price competition (where the deviation between the lowest and highest price is less than 15%); catalogue or established price lists at a set date; prices from other similar purchases; historical pricing where supported by appropriate documentation; price based on prior competition; independent in-house price estimate; comparison to substantially similar items, comparison to similar prices in a specific geographical area, and the workings are accurate, complete and current.
34.	What is the difference in subcontracting in regulation 4 and 9?	Subcontracting in regulation 4 relates to subcontracting used for prequalification purposes and is not linked to a value. In regulation 9 prequalification is triggered by R 30 million estimated value of the contract. Organs of state must determine if it will be feasible for subcontracting where the value of the contract is estimated above R 30 million.
35.	Who determines market related prices?	It is the responsibility of the organ of state to conduct market related prices; such exercise must be documented for audit purposes.
36.	Can organs of state prequalify on the basis of CIDB grading?	Organs of state must adhere to CIDB rules when dealing with tenders related to construction, and the preferential procurement regulations do not seek to override CIDB rules. However the Preferential Procurement Regulations, 2017 were developed as a framework that cuts across industries and sectors, therefore only the categories as defined in the regulations may be used as prequalification criteria and CIDB grading is not one of the criteria for prequalification in terms of Preferential Procurement Regulations, 2017.
37.	Can an EME or QSE subcontract?	Any tender may be subjected to subcontracting requirements, therefore whoever is awarded the tender that is subjected to subcontracting requirements, must subcontract. Therefore an EME may also be required to subcontract. However organs of state must be careful that tenders subjected to subcontracting do not lose business value to an extent that no tenderers are interested because there is no profit to be made out of the contract.
38.	Is an organ of state allowed to specify a township or rural area for the purposes of subcontracting?	The regulations do not provide for specifying townships or rural or underdeveloped areas but make a provision for all enterprises in rural or under developed areas or townships irrespective of their geographic locations to compete equally if the tender prequalifies on the basis of township, rural or underdeveloped area or where it is used for contracts above R 30 million.
39.	Can an organ of state subcontract less than 30%?	Where an organ of state after a thorough analysis of the market comes to a conclusion that the best/highest percentage the subcontracting can achieve is less than 30%, it can still allow for that in order to empower designated groups. However the benchmark provided by the regulations is a minimum of 30% and organs of state must always try to achieve what is in the regulations. Organs of state should guard against not subcontracting at all, just because a minimum of 30% is not capable of being achieved. It is important that

		institutions keep in mind the objectives of these regulations, in other words, not only adhere to the letter of the law, but the spirit as well.
40.	Can an organ of state negotiate with a supplier who is offering a price far lower than the market price which is deemed not viable for the project?	The regulations do not provide for negotiating to increase prices. However it is up to the organ of state to ensure that, where a supplier offers a price that is deemed to be not viable to supply goods or services as required by the organ of state, measures are in place to mitigate the risk; these may include confirming with the supplier if they will be able to deliver on the price, if they confirm that they cannot, they should be disqualified on the basis of being non-responsive. If they confirm that they can deliver, an organ of state can have a very tight contract to mitigate the risk of non-performance. Further action on failures by the supplier to deliver should be handled in terms of the contract including performance warnings and listing on the database of restricted suppliers.
41.	Can commercial viability be used as objective criteria?	Commercial viability is not a preference matter; it may form part of functionality evaluation criteria therefore it may not be used as objective criteria in terms of section 2(1)(f) of the Act or Regulation 11 of PPR 2017.

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ANNEXURE 1

1. Search

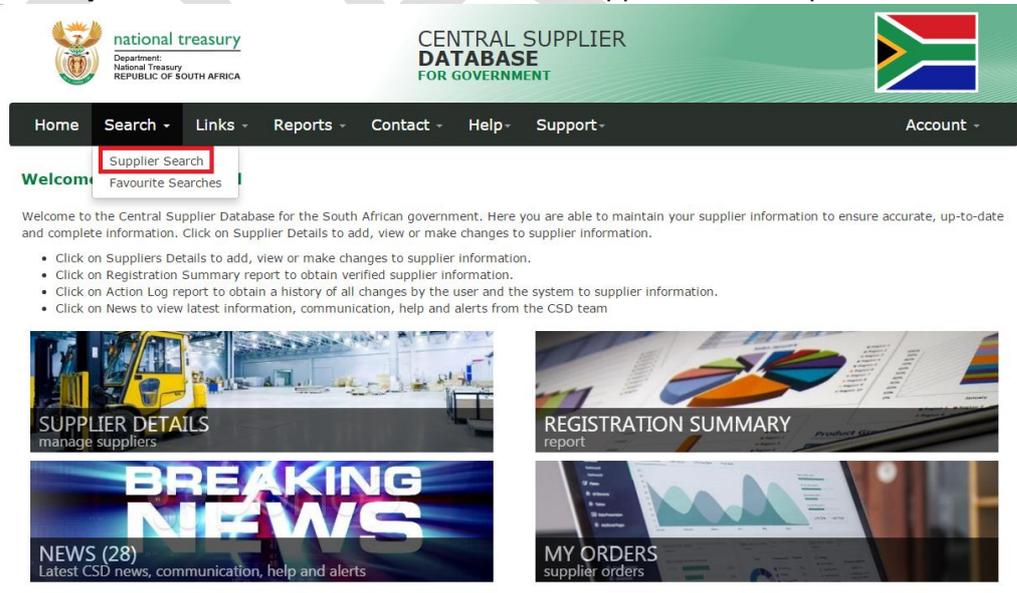
1.1. Add a query created by a CSD primary or secondary user of an Organ of State (OoS) as a favourite search

To enable the CSD primary and secondary user of an OoS to reuse and share search queries, new function was developed to allow the creation and maintenance of favourite queries. The favourite queries are defined for 3 audiences:

- **My favourites:** For use by the CSD primary and secondary user that defined the query. Nobody else will be able to view or execute the query;
- **Published Internal:** Only OoS users linked to the same OoS as the CSD primary and secondary user that defined the query will be able to view and execute the query effective from publish start date. The query will be available until the publish end date. Note: maximum publish end date is twelve months from start date; and
- **Published External:** Suppliers will be able to view and execute the query effective from the publish start date. The query will be available until the publish end date.

To add a favourite query, the user needs to action the following steps:

- **Step 1:** Click on Search and select the Supplier Search option.



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- **Step 2:** Complete basic search elements like supplier commodity, delivery location, tax complaint -, local address – and verified bank account indicator and click on Search.

Supplier Search

Click here to get more info on this section

Supplier Commodity: Catering services
 Delivery Location: Centurion Central, City of Tshwane
 Sort by: <Sort Options>
 Results Per Page: <Number of Results>

Tax Compliant
 Local Address
 Verified Bank Account

Search

- **Step 3:** The matching records for the search input provided will be displayed. The multiple matching records resulting from the search will enable the additional filters and PPPFA filters options to further refine the search. The user may apply additions criteria to refine the search results. Once the user is satisfied with the results, click on Add search to favourites and select Add new favourite.

Supplier Search

Click here to get more info on this section

Supplier Commodity: Catering services
 Delivery Location: Centurion Central, City of Tshwane
 Sort by: <Sort Options>
 Results Per Page: <Number of Results>

Tax Compliant
 Local Address
 Verified Bank Account

Search

+ Click here for additional filters
 + Click here for PPPFA filters

12 Results

Results to Report: **Add search to favourites -**
 Add new favourite

Page 1 of 1

MAAA... Tax Status:
 Has Local Address:

- **Step 4:** Complete the editable fields as follow:
- Step 4.1: Capture the **Name** of the query. The Name of the query is a required field that contains a maximum of 60 characters.
- Step 4.2: Capture the **Description** of the query. The Description of the query is a required field that contains a maximum of 250 characters.
- Step 4.3: **Publish internal** will enable the CSD primary and secondary user of an OoS to share the query with other CSD users of the same OoS. Once selected, Publish start and end dates are required fields with a future date and time.
- Step 4.4: **Publish external** will enable the CSD primary and secondary user of an OoS to share the query with Suppliers. Once selected, Publish start and end dates are required fields with a future date and time.

- Step 4.5: Capture the **Procurement reference nr.** The Procurement reference nr is an optional mandatory field that may be used to reference a request for tender or request for quotation. The Procurement reference nr contains a maximum of 120 characters.
- Step 4.6: Click on Save. A message will display "Favourite saved successfully" and a unique query reference number will be assigned to the query.

Add New Favourite

[Click here to get more info on this section](#)

Name

Description

Publish internal

Publish external

Publish external start date

Publish external end date

Procurement reference nr

Save [Back to search](#) [Back to favourites](#)

Supplier search criteria

Supplier commodity Catering services

Delivery location Centurion Central, City of Tshwane

Tax compliant

Local address

Verified bank

B-BBEE status level of contributor - Level 1 Contributor
- Level 2 Contributor

Enterprise type

Designated Groups which are at least 51% owned by black people

- **Step 5:** After the query has been saved successfully, a unique query reference number will be assigned to the query. The user will be able to maintain the search criteria by clicking on Update Search Criteria



Update Existing Favourite

Click here to get more info on this section

Query reference nr 14

Created by [redacted]

Created date 2017-04-20 5:19:08 PM

Name Catering services

Description Catering Services in Centurion

Publish internal

Publish external

Publish external start date 2017/04/20 16:30

Publish external end date 2017/05/01 12:00

Procurement reference nr RFP 0021/2017

Save Back to search Back to favourites Update Search Criteria

Supplier search criteria

Supplier commodity Catering services

Delivery location Centurion Central, City of Tshwane

Tax compliant

Local address

Verified bank

B-BBEE status level of contributor - Level 1 Contributor - Level 2 Contributor

Enterprise type

Designated Groups which are at least 51% owned by black people

1.2. How to search and execute a favourite search query created by a CSD primary or secondary OoS user

To search and execute a favourite search query, the user needs to action the following steps:

- **Step 1:** Click on Search and select the Favourite Searches option.

The screenshot shows the top navigation bar with 'Search' selected. A dropdown menu is open, with 'Favourite Searches' highlighted. Below the navigation bar, there is a welcome message and a list of links: 'Supplier Search' and 'Favourite Searches'. The main content area features several tiles: 'SUPPLIER DETAILS', 'REGISTRATION SUMMARY report', 'BREAKING NEWS', and 'MY ORDERS supplier orders'.

- **Step 2:** The Favourite Searches screen will display all valid favourite search queries available to the user. The queries would have been created by the user themselves or by other users within the same OoS who has published the queries internally.

Home Search - Supplier Details Links - Reports - Contact - Help- Support- Account -

Favourite Searches

[Click here to get more info on this section](#)

My favourites

Published internal

Published external

Search query

Search

Query reference nr	Name	Procurement reference nr	Created by	Published Internal / Dates	Published External / Dates	Run search	Edit / View	Remove
2	Bridge in Centurion	RFP 021/2017	xasibtedksesruxnd@treasourygoocoxe		✓ / 2017-04-20 12:00 - 2017-05-31 11:51	▶	✉	🗑️
3	Stationery		xasibtedksesruxnd@treasourygoocoxe			▶	✉	🗑️
14	Catering services	RFP 021/2017	xasibtedksesruxnd@treasourygoocoxe		✓ / 2017-04-20 17:20 - 2017-05-01 12:00	▶	✉	🗑️

- **Step 3:** If the specific query the user is looking for is not visible in the query list, the user may enter a query reference nr, name of the query or procurement reference nr in the Search query field. Click on Search. Only valid entries matching the search query criteria will be displayed in the query list. In the example below, the procurement reference nr was used as the search criteria. The query list was reduced to only queries matching the search criteria.

Home Search - Supplier Details Links - Reports - Contact - Help- Support- Account -

Favourite Searches

[Click here to get more info on this section](#)

My favourites

Published internal

Published external

Search query

Search

Query reference nr	Name	Procurement reference nr	Created by	Published Internal / Dates	Published External / Dates	Run search	Edit / View	Remove
2	Bridge in Centurion	RFP 021/2017	xasibtedksesruxnd@treasourygoocoxe		✓ / 2017-04-20 12:00 - 2017-05-31 11:51	▶	✉	🗑️
14	Catering services	RFP 021/2017	xasibtedksesruxnd@treasourygoocoxe		✓ / 2017-04-20 21:09 - 2017-05-01 12:00	▶	✉	🗑️

- **Step 4:** To execute a favourite search query, the user can select one of the queries to be executed by clicking on the triangle next to the applicable query. This will trigger the query to run and produce the



supplier search results. The user will be able to view the results and export the results to a report by clicking on Results to Report.

Supplier Search

[Click here to get more info on this section](#)

Supplier Commodity

Tax Compliant

Delivery Location

Local Address

Sort by

Verified Bank Account

Results Per Page

Search

+ [Click here for additional filters](#)

+ [Click here for PPPFA filters](#)

12 Results

[Results to Report](#)

[Add search to favourites](#)

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