

# NAMC Oregon requests certification review of firms for commercial useful function

NAMC-Oregon strongly encourages public agencies to view certification as a partnership with the OMWESB office and require procurement teams to actively participate in compliance monitoring for the firms being utilized and counted under their MWESB program toward achieving goals.

The issue, to put it simply, is that certification at the state level is only one piece of the puzzle that is leveling the playing field for minority-owned businesses. The other piece is that certified firms must perform commercially useful functions. We want to underscore the importance of compliance and monitoring to ensure that certified firms are doing that – performing commercially useful functions.

A certified firm must actually perform a function or service by the business for which there is a demand in the marketplace, and for which the business receives payment not disproportionate to the work performed or in conformance with industry standards. Acting as a broker to provide for the performance of work by others does not constitute a “commercially useful function.”

We are dependent on agencies to be cognizant and responsive to this critical compliance issue that often precludes meaningful participation by legitimately certified firms - many of them MBE firms. Although individual firms have been certified by the state, certifying agents are simply not in the field to monitor practices. It is an expectation that contracting agencies like the state of Oregon, the city of Portland, Multnomah County, the Port of Portland, the Portland Development

Commission, Metro, Home Forward, the Portland Housing Bureau, Portland Public Schools and others are monitoring the use of all of our tax dollars.

The law prohibits certain acts related to certified firms. We recognize that there are many hard working firms available that are MWESB. Unfortunately, others are out to game the system and intentionally mislead the certification process. After certification, OMWESB does not ensure that firms perform commercially useful functions.

Under ORS 200.075, to perform a “commercially useful function” of firms:

(a) Entering into any agreement representing that a certified firm will be performing work or supplying materials under the public improvement contract without the knowledge and consent of the certified firm.

(b) Exercising management and decision making control over the internal operations of any certified firm.

(c) Using a certified firm to perform a subcontract or supply material under a public improvement contract to meet an established goal or requirement when the certified firm does not perform a commercially useful function in carrying out its responsibilities and obligations under the contract.

(d) Use of the certified firm’s name to meet a disadvantaged, minority, women or emerging small business enterprise goal or requirement on a public contract when the certified firm does not in fact intend to or does not actually perform the work under the subcontract or purchase and supply material to the project under a material supply contract.

(e) Use of any personnel of an uncertified business to operate, manage or otherwise control the certified firm.

(f) Failure to perform a commercially useful function in carrying out its functions under a subcontract or a material supply contract entered into with a contractor or subcontractor on a public contract when represented as a certified business to meet an established goal or requirement.

NAMC-Oregon believes many of these acts, particularly the use of personnel of uncertified firms, are currently taking place on publically funded projects. The outfits involved are popularly known as “fronts,” or standing in front of another person or company. For example, project staff should question when there is little or no interaction and visibility by the minority or woman owner of a purportedly certified firm on projects.

It is a known practice that some firms apply for certification with the intent to acquire work for other firms; acting as a “broker” is not performing a commercially useful function as required under ORS 200.075(3).

It is an agency’s responsibility to ask tough questions, hold its contractors and internal project managers accountable for achieving the real and important objectives of the programs, and ensure that the rules are being followed. Moreover, at the first sign of any questionable activity, the agency should take appropriate action.

NAMC-Oregon believes these are steps that could lead to more equitable participation by legitimately certified firms.



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# NED Leadership Group's input proves invaluable for Portland agency

BY ALANDO SIMPSON

The Neighborhood Economic Development (NED) Leadership Group (committee) was established in the fall of 2011. The role of the committee is to provide leadership and guidance to the Portland Development Commission on the implementation of the NED strategy, the budget and investment proposals.

The PDC uses the committee's advice regarding public education and outreach strategies and materials. Thus far, after the first five meetings the committee has touched upon numerous important topics, including:

**NED Committee Immediate Priorities**

- Creating the NED Leadership Group and holding the first meeting;
- The Small Business Development Technical Assistance Program;
- The Neighborhood Prosperity Initiative;
- The Grocery Store Initiative; and
- Alignment of PDC programs and projects with the NED and equity objectives.

**Solidifying the 6 Neighborhood Prosperity Initiative (NPI) Districts and funding.**

NPI has identified the six neighborhood districts, and council has approved the six small urban renewals areas: Parkrose, Cully, 42nd Ave., Rosewood (NE/SE 160th between Stark and Halsey), SE Division-Midway (between 124th and 148th) and 82nd and Division.

**PDC Partnership with Urban Innovation Roundtable (UIR)**

2012 Skanner MLK Breakfast keynote speaker Mike Green of nationally recognized America 21 Project has put together a group of local leaders and has identified the group as the UIR with Dwayne Johnson being the Portland partner.

**PDC Budget**

This has become a major interest for the NED Committee. It was identified that it is crucial to understand PDC's goals and priorities which come from TIF funding and the city's general fund, which in turn make up the budget.

**Development Opportunity Services (DOS) Program.**

The PDC's DOS program needs to offer more education and mentoring regarding its function and purpose. The city of Portland's System Development Charges (SDCs) hinder development, and especially affect small contractors.

*Alando Simpson from the City of Roses Disposal and Recycling represents NAMC-Oregon on the NED Leadership Committee. More information about the committee is available on the PDC website at <http://www.pdc.us>.*

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## Keeping It In The Family: Putting the Success in a Company Succession Plan

BY ESTHER R. HARRIS

Death.

A morbid topic, right? We do not want to talk, think or, God forbid, act on this ultimate fate. Doing so means recognizing it. Death signifies something far beyond our control and yet is inevitable for all human beings.

Most people play the probabilities game – if you're young, middle aged or even early old and healthy, you will probably live another day. Few think or plan for the possibility of death or incapacitation that lurks behind each daily step. To do so acknowledges that it could happen to us – and that's downright scary.

Instead we live, work, play and love without much daily thought to what all life must eventually face: death. We even have different ways of referring to it. For example, in my family we never say a person died, we always say they "passed on." From the most faithful to the atheist, death is a feared truth.

Small business owners do not like to dwell on this gloomy topic. The typical make-up of someone who built, owns and runs a small business is that of a highly motivated individual. Small business owners have faced huge obstacles to make concrete what would otherwise remain an abstract idea. In essence, they have defied the odds and succeeded where others failed. Thus, they move too quickly for death to catch up with them – or so they hope.

The majority of people work for someone else. Being an employee comes with its own set of parameters. You are not in charge of all aspects of your job, you must do what you are told, and your salary or wage might not reflect your work product but a compromise you agreed to. However, the employee performs a specific detailed function, which means the worker can go home within a reasonable time and expect to get paid, whether or not every single thing on the work to-do list was completed.

In contrast, a small business owner is rarely "off the clock." There are a trillion things to do, from small tasks like changing a light bulb to huge projects like dealing with a plumbing leak or payroll snafu.

No matter what the business, owners tend to be the handyman (or woman), janitor, IT guy (or gal), cook, roofer, plumber, administrative assistant, accountant, payroll manager, human relations department . . . well, you get my drift.

Americans are genetically engineered for entrepreneurial endeavors. So when it comes to taking on a business partner or hand over your company's reins, who better to entrust your life's work to than someone you raised? A person who grew up watching, helping and learning about your business from the inside-out? Your son or daughter is the perfect candidate to carry on what you created.

Historically in the United States, sons apprenticed under their fathers to do the work their fathers and forefathers did for generations. When education was made free and mandatory for kindergarten through 12th grade, this changed the generational dynamic and opened doors for children to choose different paths than their ancestors. The idea of exploring a person's labor interests as opposed to carrying on a tradition of employment slowly became the norm.

Most children today do not follow in their parents' footsteps, but try to find their dream job, something that suits their individual passion and talent. Accessible higher learning further enabled this shift. Colleges offer an array of courses and majors to choose from, which opens up different avenues of employment for young people to explore.

With fewer children following in their parents' footsteps, we see many businesses lasting only the lifetime of a single owner or being taken over by a larger company. When children do decide to pick up the family line, they usually face unique challenges.

For one thing, while their kids are off at school, they are running the family business. So family time may be limited.

Further, with all the rapid computer and internet growth and development, how business is conducted has changed overnight. Young people – and even top executives — may conduct a sensitive business meeting over the internet via Skype or arrange for a meeting via a text message.

That can make for some tensions when working with a parent. Modern electronic correspondence is usually unheard of for most people born before 1960. They would never run their business that way. The pre-1990s generation still picks up the phone to ask Bob the Builder how he is doing before checking on the specs of a particular joint venture. They probably built the business up, by and large, through building and maintaining excellent relations. Basically, they have impeccable work ethics, integrity and produce the highest of quality on the job. Thus, by hard work, learning things the first time, reputation, relationships and actual production quality, the small business owner has created a successful and trusted business and reputation. They turned a dream into reality.

But if the older and younger generations of a family can find a way to meet in the middle, the end result can be rewarding for both the individuals and the family business. The Colas family, the McDonalds and the Simpsons are three families that have figured out how to turn their businesses into multigenerational ventures. They are among the few in the Oregon construction world who will pass on their business legacy through their children.

These companies have a common theme: all of the children grew up as their dad's sidekick and worked in their father's company from childhood through college. When they graduated from college, they all choose to become involved in the family business.

### **Colas Construction Inc.**

Colas Construction, Inc. is a general contracting company started by Hermann Colas. Son Andrew and daughter Aneshka also work in the company, while Hermann's youngest son is breaking ground in a different line of work. They are always devoted to excellence and have built a successful business, by in large, by hiring based on proved level of production and relationships.

Andrew Colas said the family members are "very close and believe in pride and passion on all jobs." All of the children grew up with respect for the trade so that they appre-

*continued on page 6*

# Senate General Government Hearing, May 23, 2012 Senator Chip Shields, Chairman

TESTIMONY BY MARK MATTHEWS, PRESIDENT OF NAMC-OREGON, AND NAMC-OREGON BOARD MEMBER BRANDON FLINT.

“Chair Shields, committee members, my name is Mark Matthews and I am the President of NAMC-Oregon, the Oregon chapter of the National Association of Minority Contractors. We are a national trade group representing the interest of minority contractors throughout the United States.

“Thank you for this opportunity to speak with you this morning about issues our members are encountering in their efforts to contract with the State of Oregon, and other issues that we believe continue to prevent our minority contractors and our members from competing on a level-playing field in the public contracting arena. I will try to be brief, but welcome an opportunity to discuss these issues further.

“NAMC-Oregon has been working to address what we see as a major issue preventing opportunities for minority contractors: DMWESB compliance. What I meant by this is the degree to which the rules and regulations related to implementation of both the federal DBE Program and (the) state of Oregon MWESB Program are being implemented and enforced to ensure that the goal of the program is being achieved, namely leveling the playing-field and creating opportunities for certified-firms who have been historically discriminated against.”

### ODOT Disparity Study Results.

“ODOT completed its update disparity study last fall. The results of that study showed that African-American and Subcontinent Asians continue to have significant disparities in contracting with ODOT. Based on that study, ODOT has

proposed a race conscious goal of 5 percent for those two groups. NAMC-Oregon had issues with the study and provided written comments.

“We questioned the methodology because we believe that the availability of the firms ready, willing and able to work on ODOT projects is significantly higher than the study shows. Additionally, we believe that the study does not in any way address the absence of firms based on the historical discrimination in the construction industry; societal discrimination has prevented the creation of more minority-owned firms.

“To that end we have urged ODOT to have higher goals and to take special measures to address the disparity that exists for African-Americans, the group that has been

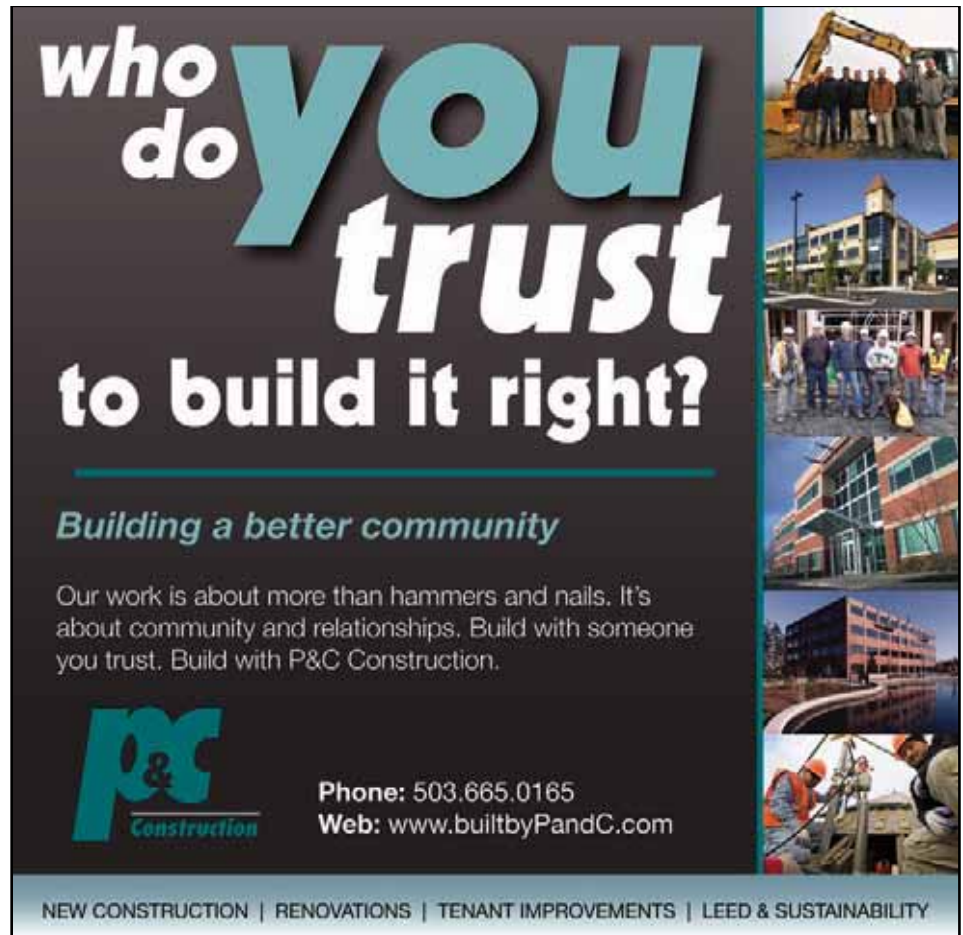
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## **In the Family** *continued from page 4*

ciate all sides of construction. Andrew says his dad always told him – and showed him — how to “stand for something.”

### **McDonald Excavating Inc.**

McDonald Excavating Inc. specializes in excavation work such as earthwork, grading and underground utilities. Mike McDonald started the company in 1980 and now runs it with his son Ryan.

Ryan has an easy going manner that belies his sharp-as-cut-glass business acumen.

“When your family name is on the door, there’s more at stake than the business agreement,” Ryan said. “No option to learn by failure. There was a huge pressure to learn every aspect of the work from the ground up, incorporating new trends while maintaining practices tried and tested by my father.”

Mike, meanwhile, said he enjoys “the work for its own sake ... good contracting builds a good reputation in the industry.” He says retirement isn’t an option right now because he loves coming into the office and overseeing projects too much to give them up.

### **City of Roses Disposal & Recycling Inc.**

City of Roses Disposal & Recycling, Inc. is a construction waste hauling company. Alonzo Simpson founded the company and currently runs it with his son Alando.

The father and son are growing the company and are looking to seize the market with futuristic sustainability procedures that serve a dual function and make for good business and green earth.

Alando Simpson, is all about keeping it local. “Paying a corporation that’s not locally based is investing into their economy rather than our local economy,” he said. “We must invest and put our jobs and dollars back into our community.”

The Colas, McDonald and Simpson families have all had to figure how to legally structure ownership of their businesses so all of the children in each family receive a fair deal. This is a private discussion, one that brings up all sorts of issues, many of which have both little and everything to do with the business and its future.

Which brings us back to the topic of death. Have you ever had a loved one pass on? It is then that you truly get to know the folks closest to you and, more importantly, closest to the decedent. Think about what happened during this sad time.

For the small business owner, there is more than a grain of truth in the phrase (which also happens to be the Boy Scout motto), “failing to plan is planning to fail.” One expert in the field said a significant number of small businesses fail because patriarchs of the family do not plan to transition the business.

There are two ways a business can be halted due to owner health: incapacity and death.

A small business owner must consider incapacity, a situation in which a person does not die, but can no longer work. What if the owner cannot work tomorrow? No biggie. But what if the incapacitation stretches out one week, 90 days, six months or longer? How can the business survive and thrive?

Small business owners must have a formal legal plan in the event of incapacity. For example, if a small business owner is incapacitated, who has the authority to assume the owner’s position? If it is a father and son/daughter business, an arrangement where children can legally represent the owner is best so the business can continue. However, this does not automatically happen because you are the son/daughter and your father/mother is incapacitated; it must be done and evidenced by a legal document.

What about an extreme case where a father and his son/daughter both become incapacitated? Who then will assume the role to make decisions on behalf of the business? Who is designated as a substitute? Is anyone else familiar with the daily operations of the business? How do your employees get paid? Think about the question of fairness.

Striving for what is equitable, not equal, is key when dividing among family. For example, the son or daughter who earned a majority stake in the business should receive a majority interest when dear dad departs this life. But for every rule, there is also an exception.

So many questions – not all complicated, but definitely detailed and all requiring designation in order to keep the small business going. How does anyone know where to start?

Michael Levelle, a succession planning attorney, thinks the first step should be creating – and maintaining – records that are neat, chronological and easy to interpret. While he acknowledges the task is time

consuming, he stresses that “there’s no substitution for keeping excellent records.”

For example, could someone walk in and look at your files? Would they know exactly what to do for payroll or a recent contract? Could they figure out how to set the alarm at the office? Most small business owners keep a lot of this type of information inside their heads instead of writing it down somewhere. Very few small business owners keep a crucial “what if something happens to me” checklist on file. Here are some things to think about:

- Where are important contacts kept? and What is the preferred method of contact (text, email, phone call, house call, Facebook, Twitter)?
- Where are important documents – tax documents, supplier details, contractor lists, etc. – located?
- In an emergency, where would someone find accountant information, checking accounts and which ones are used to pay what?
- Is there a document location sheet that shows where important documents are stored? Are files stored digitally or are they hard-copy files?

The truth is that everyone wants to keep death as the greatest unknown. But whether you plan to keep your business in the family or see it to non-family, preparing your business to survive after you’re gone requires plenty of thought. Find advisers you trust and with whom you are comfortable communicating sensitive details, and begin this conversation.

*(Author’s note: This writer is so very grateful to Mike and Ryan McDonald, Alando Simpson, and Andrew and Aneshka Colas for their time, input and beautiful narratives of their strong, unique family business histories. Without the expert guidance of succession planner attorney Michael Levelle this article could not have been written. This article recommends you seek legal or succession advice, and is in no way meant to offer any suggestion in that area beyond that you seek professional counsel to set up a succession plan for the future of your business. And last, any and all errors are those of the author, with no disrespect to the busy wonderful folks who took the time to meet with me.)*

## NAMC-Oregon Membership Guidelines

Membership in NAMC Oregon is open to any MBE certified by the state of Oregon and in business for more than 2 years. The organization values the assistance of our partners who work with us to achieve our goals. For that reason, associate member status is available for firms that are neither certified nor active in the construction industry. The chapter's membership committee reviews member applications on a rolling basis and looks for potential members who have a high standard of performance practices, financial strength and business capacity, and have a history supporting the goals and objectives of the organization, as represented by their utilization history. MBEs working on improving these issues are referred to MCIP for further training and development before officially becoming members of NAMC Oregon.

NAMC Oregon works and advocates for all MWESB businesses, but continues to have a strong focus on the development of minority businesses to encourage parity in the market place. NAMC Oregon does not compete with other organizations advocating on behalf of minority business issues, but hopes to work in concert with all who are working toward improved status and opportunities for Small Businesses in Oregon. Both NAMC Oregon and many of our members are active members of many small business advocacy organizations.

NAMC Oregon does not support companies that work to manipulate the system by engaging in business ownership flipping, impermissible pass-throughs or other potentially fraudulent activities, because we feel it takes away opportunities for those who are playing by the rules, and defeats the purpose of the certification program.

## NAMC Oregon 2011 - 2012 Partner List

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**Senate** *continued from page 5*

seen significant disparities in all of the studies that have been done since 1995.”

**COMPLIANCE CONCERNS**

“One of the areas of concern that we raised in our comments on the disparity study, as well as in other discussions with ODOT, have been compliance concerns. Two areas primarily over the past few months: DBE substitutions and terminations, and DBE trucking.”

**DBE TRUCKING**

“First, with respect to DBE trucking, ODOT’s study showed that about 75% of the dollars paid to African-American DBE firms were for trucking and flagging. On the trucking component, we have raised with ODOT concerns that the trucking arrangements on their projects are often contrived to overstate DBE utilization; essentially, there is an abuse of the rule that allows for a non-DBE subcontracted or leased truck to actually count as a DBE in certain circumstances.”

**DBE Terminations and Substitutions**

“We have also raised concerns about DBE subcontractors being terminated without good cause shown. This is a concern because on contracts that have DBE goals, if a contract is awarded because a prime has indicated that they have achieved the DBE goal, to permit them to turn around and terminated that DBE once the contract is underway is to invite abuse.

“What we believe happens in these situations is that the prime contractor decides to perform the work themselves. We sent a public records request to ODOT in December requesting this information and did not receive anything from them until early this month; five months later and they charged us almost \$1,000.00 to provide us a one-page listing of DBE firms that have been terminated or substituted in the past three years.

“The issue here is that DBE termination or substitution require approval by ODOT. There should be a central depository of this information, and it should have not taken five months to retrieve that information. The Office of Civil Rights should have been tracking this issue and involved in the decision-

making since it is a DBE-compliance issue.”

**CERTIFICATION & COMMERCIALLY USEFUL FUNCTION COMPLIANCE CONCERNS**

“Another issue that we have been looking at is the compliance gap that exists between certification of firms by OMWESB and the work some certified firms perform on projects, both state and local.

“The issue is that firms are certified based on their proven ability to ‘control’ a particular type of work, electrical, for example. However, there is sometimes a disconnect between that certification and that firm’s ability to perform a ‘commercially useful function,’ which is a statutory requirement.

“For example, many of our members complain of some certified firms being aided on a project by a non-certified firm to such an extent that they appear to be no more than ‘front’ or ‘pass-through’ companies for other firms who either actually perform the work with their own employees or provide all the materials and

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resources for those firms to do any work. The contracting agencies are not doing compliance to ensure certified firms are in fact performing commercially useful functions, and OMWESB is not doing any sort of field checks for that purpose either. Thus we have a serious compliance gap.”

**GENERAL CONSTRUCTION CONTRACTING ISSUES: RETAINAGE**

“In addition to compliance issues, we have also been engaged with ODOT, AGC and other stakeholders on public contracting laws generally.

“For example, for the past several months there have been a series of meeting with AGC and ODOT on ODOT’s proposal to eliminate retainage from its projects and to require prime contractors to not hold retainage from their subcontractors.

“The issue here is that in Oregon, and nationally, there is a problem with subcontractors not being paid retainage when they have completed their work. Many complain of having to wait several months, and even years, before receiving retainage payments.

“In these meetings, ODOT has acknowledged that close-out on their projects often take as much as two years. For a small minority contractor to wait two years to receive 5 percent of the value of a contract is essentially making them wait two years to see any profit from the work.

“ODOT eliminating retainage as federal law allows them to do is something we support and look forward to having become effective.”

**CM/GC PROCESS**

“Another issue that we have great interest in is protecting the CM/ GC contracting process.

“We have been sending a representative to the work group put together by Senator Beyer. We are hopeful that the CM/GC process not only survives, but is expanded.

“It has been our experience that this process provides not only best value for the agencies, but also more opportunities for minority contractors and our members.

“Again, I want to thank the committee for its time and I am happy to answer any questions and provide any additional information.”

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**DJC**

921 SW Washington, Suite 210  
Portland, OR 97205  
(503) 226-1311  
www.djcoregon.com

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For Information, contact the DJC publisher:  
Rynni Henderson / 503.802.7202  
rynni.henderson@djcoregon.com




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