

**RESOLUTION NO. 18-010
OF THE
BERKELEY UNIFIED SCHOOL DISTRICT
ADOPTING PREQUALIFICATION PROCESS FOR MEP SUBCONTRACTORS
PURSUANT TO PUBLIC CONTRACT CODE SECTION 20111.6**

WHEREAS, the Berkeley Unified School District ("District") desires to prequalify potential electrical, mechanical or plumbing contractors holding C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46 licenses ("MEP subcontractors") for projects using funds received pursuant to the Leroy F. Greene School Facilities Act of 1998 or any funds received, including funds reimbursed, from any future state school bond for a public project that involves a projected expenditure of one million dollars (\$1,000,000) or more;

WHEREAS, school districts are required to prequalify first-tier MEP subcontractors for all contracts for the aforementioned district projects using the requirements described in Section 20111.6 of the Public Contract Code;

WHEREAS, Public Contract Code section 20111.6 authorizes school districts to require prospective first-tier MEP subcontractors to submit a standardized questionnaire and financial statement (collectively "Prequalification Package") prior to bidding on the aforementioned district projects;

WHEREAS, Public Contract Code section 20111.6 authorizes school districts to establish a uniform system of rating bidders based upon the completed Prequalification Packages ("Prequalification Process");

WHEREAS, District staff have developed a standardized questionnaire for the Project in accordance with Public Contract Code section 20111.6 attached hereto as **Exhibit "A"** ("Questionnaire");

WHEREAS, District staff have developed a uniform system of rating potential MEP subcontractors based upon the completed Questionnaires and financial statements attached hereto as **Exhibit "B"** ("Rating System");

WHEREAS, the Rating System includes a process for potential MEP subcontractors to appeal certain decisions with respect to the Prequalification Process ("Appeal Process"); and

WHEREAS, the District desires to adopt the Prequalification Process, including the Questionnaire, Rating System, and Appeal Process for the Project.

NOW, THEREFORE, the Board of Trustees of the Berkeley Unified School District hereby finds, determines, declares, orders and resolves as follows:

Section 1. That the above recitals are true and correct.

Section 2. That the Questionnaire, the Rating System, and the Appeal Process are authorized pursuant to Public Contract Code section 20111.6.

Section 3. That the District's Superintendent, or designee, is authorized to implement the Prequalification Process, including accepting the final list of MEP subcontractors, consistent with Public Contract Code section 20111.6.

APPROVED, PASSED AND ADOPTED by the Board of Trustees of the Berkeley Unified School District on this _____ day of _____, 2018, by the following vote:

AYES: _____

NOES: _____

ABSTENTIONS: _____

President of the Board of Trustees of the
Berkeley Unified School District

Attested to:

Clerk of the Board of Trustees of the
Berkeley Unified School District

Exhibit "A"

**Prequalification Questionnaire
BERKELEY UNIFIED SCHOOL DISTRICT
PREQUALIFICATION QUESTIONNAIRE FOR
PROSPECTIVE MEP SUBCONTRACTORS**

_____, 2018

Pursuant to Public Contract Code section 20111.6, each prospective contractor holding C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46 licenses ("MEP subcontractors") shall submit the following information to establish its qualifications to perform construction work as a first-tier subcontractor on District projects using funds received pursuant to the Leroy F. Greene School Facilities Act of 1998 or any funds received, including funds reimbursed, from any future state school bond for a public project that involves a projected expenditure of one million dollars (\$1,000,000) or more.

A. SUBCONTRACTOR'S CONTACT INFORMATION

Firm name: _____

Address: _____

Telephone: _____

Fax: _____

Mobile Telephone: _____

E-mail: _____

By: _____ Date: _____
(Name of individual completing statement)

Years in business as a licensed contractor: _____

Types of work performed with own forces: _____

Years in business under current firm name: _____

Years at the above address: _____

B. CURRENT ORGANIZATION AND STRUCTURE OF THE BUSINESS

1. For Firms that Are Corporations:

- a. Date incorporated: _____
- b. Under the laws of what state: _____
- c. Provide all the following information for each person who is either (a) an officer of the corporation (president, vice president, secretary, treasurer), or (b) the owner of at least 10% of the corporation's stock.

Name	Position	Years with Co.	% Ownership

2. For Firms that Are Partnerships:

- a. Date of formation: _____
- b. Under the laws of what state: _____
- c. Provide all the following information for each partner who owns ten percent (10%) or more of the firm.

Name	Position	Years with Co.	% Ownership

3. For Firms that are Sole Proprietorships:

- a. Date of commencement of business: _____

4. For Firms that Intend to Bid as a Joint Venture:

- a. Date of commencement of joint venture: _____
- b. Provide all of the following information for each firm that is a member of the joint venture that expects to bid on one or more projects. Attach all additional references and/or information on separate signed sheets.

Name of Firm	% of Ownership of Joint Venture

5. Associated Firms

For any of the above business structures, identify every construction firm that any person listed above has been associated with (as owner, general partner, limited partner or officer) at any time during the past 5 years.

Person's Name	Name of Construction Firm & License No.	Dates of Person's Participation with Firm

Attach all additional references and/or information on separate signed sheets.

C. HISTORY OF THE BUSINESS AND ORGANIZATIONAL PERFORMANCE

1. Has there been any change in ownership of the firm at any time during the past 3 years? NOTE: A corporation whose shares are publicly traded is not required to answer this question.

☐ Yes ☐ No

If "yes," explain on a separate signed sheet.

2. Is the firm a subsidiary, parent, holding company, or affiliate of another construction firm? NOTE: Include information about other firms if one firm owns 10% or more of another, or if an owner, partner, or officer of your firm holds a similar position in another firm.

☐ Yes ☐ No

If "yes," explain on a separate signed sheet, including the name of the related company and the percent ownership.

3. Are any corporate officers, partners or owners connected to any other construction firms? NOTE: Include information about other firms if an owner, partner, or officer of your firm holds a similar position in another firm.

☐ Yes ☐ No

If "yes," explain on a separate signed sheet.

4. Has any owner, partner, CSLB qualifier or corporate officer of the firm operated as a contractor under any other name or license number (not listed above) in the last 5 years?

☐ Yes ☐ No

If "yes," explain on a separate signed sheet, including the name and license number of the other company.

5. State your firm's gross revenues for each of the past 3 years:

Year	Gross Revenue
	\$
	\$
	\$

6. How many years has your firm been in business in California as a contractor under your present business name and license number? _____

7. Is your firm currently the debtor in a bankruptcy case or was your firm in bankruptcy at any time during the last 5 years?

☐ Yes ☐ No

If "yes," please attach a copy of the bankruptcy petition and a copy of the Bankruptcy Court's discharge or any other document that ended the case, if any.

LICENSES AND REGISTRATION

8. Please provide the following information:
- a. Name of license holder exactly as on file with the Contractors State License Board: _____
 - b. License classification(s): _____
 - c. License #: _____
 - d. Expiration Date: _____
 - e. Public Works Contractor's Registration # as on file with Department of Industrial Relations: _____
9. Has any CSLB license held by your firm or its Responsible Managing Employee or Responsible Managing Officer been suspended within the last 5 years?
- ☐ Yes ☐ No
- If "yes," explain on a separate signed sheet.
10. Has your firm changed names or license number in the past 5 years?
- ☐ Yes ☐ No
- If "yes," explain on a separate signed sheet, including the reason for the change.

DISPUTES

11. At any time in the last 5 years, has your firm either (a) been assessed liquidated damages under a construction contract with any public or private owner or (b) had any claim exceeding \$50,000, either by or against it, filed in court or arbitration concerning its work or payment on a construction project?
- ☐ Yes ☐ No
- If "yes," explain on a separate signed sheet, identifying projects by owner, owner's address, and date of completion.
12. At any time in the last 5 years, has your firm, or any owners, officers or partners, been debarred, disqualified, removed or otherwise prevented from bidding on, or completing, any public works project?
- ☐ Yes ☐ No
- If "yes," explain on a separate signed sheet, including the name of the person who was associated with that company, the year of the event, owner, owner's address and basis for the action.

13. At any time in the last 5 years, has a public agency found your company was not a responsible bidder?

☐ Yes ☐ No

If "yes," explain on a separate signed sheet, including the year of the event, owner, owner's address and basis for the finding.

14. In the past 5 years, has any claim against your firm or by your firm against an owner been filed in court or arbitration concerning your firm's work or payment on a construction project?

☐ Yes ☐ No

If "yes," explain on a separate signed sheet, including the project name, court or arbitration case name and number, and a brief description of the status of the claim.

INSURANCE

15. Does subcontractor have liability insurance with a policy limit of at least \$1,000,000 per occurrence and \$2,000,000 aggregate?

☐ Yes ☐ No

16. Does subcontractor have current workers' compensation insurance as required by the California Labor Code or is subcontractor legally self-insured pursuant to California Labor Code section 3700 et seq.?

☐ Yes ☐ No

17. In the last 5 years, has any insurance carrier, for any form of insurance, refused to renew an insurance policy for your firm?

☐ Yes ☐ No

If "yes," explain on a separate signed sheet, including the name of the insurance carrier, form of insurance and year of the refusal.

CRIMINAL MATTERS AND RELATED CIVIL SUITS

18. Has your firm or any of its owners, partners or officers ever been found liable in a civil suit, or found guilty in a criminal action, for making any false claim or material misrepresentation to any public agency or entity?

☐ Yes ☐ No

If "yes," explain on a separate signed sheet, identifying who was involved, name of the public agency, date of the investigation and grounds for the filing.

19. Has your firm or any of its owners, partners or officers ever been convicted of a crime involving any federal, state, or local law related to construction or a crime involving fraud, theft, or any other act of dishonesty?

☐ Yes ☐ No

If "yes," explain on a separate signed sheet, identifying who was involved, name of the public agency, date of conviction and grounds for the conviction.

SAFETY

20. Within the past 5 years, has the California or federal OSHA cited and assessed penalties against your firm, or any associated firm, for "serious," "willful" or "repeat" violations of its safety or health regulations?

☐ Yes ☐ No

If "yes," explain on a separate signed sheet, identifying the citation(s), nature of the violation(s), project, and amount of penalty paid, if any.

21. Within the past 5 years, has the EPA or any Air Quality Management District or any Regional Water Quality Control Board cited and assessed penalties against your firm or the owner of the project on which your firm was a contractor?

☐ Yes ☐ No

If "yes," explain on a separate signed sheet, describing the citation(s).

22. State the subcontractor's Workers' Compensation Experience Modification Rate for the past 3 premium years:

Year	Modification Rate

If your EMR is 1.00 or higher, you may attach a letter of explanation.

23. Within the past 5 years, has there ever been a period when your firm and/or any associated firm had employees but was without workers' compensation insurance or state-approved self-insurance?

☐ Yes ☐ No

If yes, explain on separate signed sheet, including the date(s) and reason(s) for the absence of workers' compensation insurance.

PREVAILING WAGE AND APPRENTICESHIP COMPLIANCE

24. In the past 5 years, has there been more than one occasion in which your firm was required to pay either back wages or penalties for failure to comply with California prevailing wage laws or federal Davis-Bacon prevailing wage requirements?

☐ Yes ☐ No

If "yes," explain on a separate signed sheet, describing the nature of the violation(s), project, owner, and amount paid, if any.

25. At any time during the past 5 years, has your firm been found to have violated any provision of California apprenticeship laws or regulations, or laws pertaining to use of apprentices on public works projects?

☐ Yes ☐ No

If "yes," explain on a separate signed sheet, including date(s) of such findings and attaching the DAS' final decision(s).

BONDING

26. In the last 5 years, has any surety paid on your firm's behalf as a result of a default to satisfy any claims made against a payment or performance bond issued on your firm's behalf?

☐ Yes ☐ No

If "yes," explain on a separate signed sheet, including the amount of each claim, name and telephone number of claimant, date of and grounds for the claim, and present status.

D. PROJECT REFERENCES

On the form attached as Exhibit A, list all California K-12 projects (both under construction and completed) during the past 5 years, with a subcontract price over \$100,000, in which your firm under all firm names identified in Section B participated. Please identify if the projects used the lease-leaseback project delivery method. Use and attach additional signed sheets when needed to explain or clarify any response or to include more responses with all requested information.

E. FINANCIAL INFORMATION

Subcontractor must submit a reviewed or audited financial statement with accompanying notes and supplemental information for the past 2 full fiscal years. A letter verifying availability of a line of credit may also be attached; however, it will be considered supplemental information only, and is not a substitute for the required audited or certified financial statement.

CERTIFICATION

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

Date: _____

Proper Name of Subcontractor: _____

Signature by an officer of the Subcontractor: _____

By: _____ (Print Name)

Title: _____

EXHIBIT A

1. Project Name/Identification:

- a. Project Name: _____

- b. Project address/location: _____

- c. Owner (name of district reference and tel. no.): _____

- d. Architect (name and tel. no.): _____

- e. Construction Manager (name and tel. no.): _____

- f. General Contractor (name and tel. no.): _____

- g. Scope of Work: _____

- h. Original completion date: _____
- i. Actual date of completion: _____
- j. Time extensions granted: _____
- k. Initial subcontract value: _____
- l. Final subcontract value: _____

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____
Name

Exhibit "B"

Prequalification Rating System

**BERKELEY UNIFIED SCHOOL DISTRICT
SUBCONTRACTOR PREQUALIFICATION EVALUATION PROCEDURE**

_____, 2018

Name of Subcontractor: _____

- 1. Confirm Prequalification Statement Submitted is Responsive** – if the answer to any of the questions is "no," then the Prequalification Package is nonresponsive.

A. Completeness

Did the Subcontractor provide all requested information in its submitted Prequalification Statement?

Yes No

B. Signed Under Penalty of Perjury

Is the Prequalification Questionnaire signed under penalty of perjury by an individual who has the authority to bind the Subcontractor on whose behalf he or she is signing?

Yes No

- 2. Incomplete, Misleading or Inaccurate Information** – if the answer to any of the questions is "yes," then reject the Subcontractor.

A. Is the information provided by the Subcontractor misleading or inaccurate in any material manner?

Yes No

B. Is the information contained in the Prequalification Package out of date, and not updated under penalty of perjury, so that it is no longer accurate?

Yes No

- 3. Confirm Essential Criteria**

a. K-12 School Projects (See Section D. of Questionnaire)

Has the Subcontractor contracted for construction involving a minimum of three (3) California K-12 projects during the past five (5) years, each with a subcontract value over \$50,000?

Yes No

(If no, then Subcontractor is not qualified)

b. License (See Section C.9. of Questionnaire)

Has the Subcontractor held all current, active contractor's license(s) necessary to perform its work for at least five (5) years, without suspension or revocation?

Yes No

(If no, then Subcontractor is not qualified)

c. Registration (See Section C.8. of Questionnaire)

Is the Subcontractor currently registered as a Public Works Contractor with the Department of Industrial Relations?

Yes No

(If no, then Subcontractor is not qualified)

d. Disqualification (See Sections C.12. and C.13. of Questionnaire)

Has the Subcontractor ever been disqualified, debarred, forbidden, or found non-responsible or otherwise prohibited, from performing work and/or bidding on work for any school district or other public agency within the State of California in the past five (5) years?

Yes No

(If yes, then Subcontractor is not qualified)

e. Bankruptcy (See Section C.7. of Questionnaire)

Has Subcontractor declared bankruptcy or been placed in receivership within the past five (5) years?

Yes No

(If yes, then Subcontractor is not qualified)

f. Insurance (See Section C.15. of Questionnaire)

Does Subcontractor have liability insurance with a policy limit of at least \$1,000,000 per occurrence and \$2,000,000 aggregate?

Yes No

(If no, then Subcontractor is not qualified)

g. Workers' Compensation (See Section C.16. of Questionnaire)

Does Subcontractor have current workers' compensation insurance as required by the California Labor Code or is Subcontractor legally self-insured pursuant to California Labor Code section 3700 et seq.?

Yes No

(If no, then Subcontractor is not qualified)

h. Criminal Matters and Related Civil Suits (See Section C.18. and C.19. of Questionnaire)

Has the Subcontractor, or any of its owners or officers, been found liable in a civil suit or guilty in a criminal action of making a false claim or material misrepresentation to a public agency, or been convicted of a crime involving the bidding, award or performance of a contract on a government construction project or any crime involving fraud, theft, or any other act of dishonesty?

Yes No

(If yes, then Subcontractor is not qualified)

i. Claims in Excess of \$50,000 and/or Liquidated Damages (See Section C.11. and C.14. of Questionnaire)

Has the Subcontractor, at any time in the last 5 years, either (a) been assessed liquidated damages under a construction contract with any public or private owner or (b) had any claim exceeding \$50,000, either by or against it, filed in court or arbitration concerning its work or payment on a construction project?

Yes No

(If yes, then Subcontractor is not qualified)

4. Contact References

The District must contact each of Subcontractor's references from a minimum of three (3) of its most recent K-12 school district projects.

5. Complete Evaluation Worksheet

Insert total score from evaluation worksheet

Subcontractor must have 52 out of 110 points or higher to qualify

Total Points

6. Appeal Process

If the Subcontractor decides to appeal the District's qualification decision, it shall follow this procedure:

- a. Within three (3) working days of notification from the District, Subcontractor shall submit a written request to the District asking for an explanation of any aspect of the District's determination.
- b. Within three (3) working days from receipt of the District's written response to the Subcontractor's request, Subcontractor may submit, in writing, a request for reconsideration by the District's staff. Subcontractor may submit with the request any information that it believes supports a finding that District's determination should be changed.

If the Subcontractor chooses not to avail itself of this process, the proposed prequalification rating may be adopted by the District without further proceedings.

**BERKELEY UNIFIED SCHOOL DISTRICT
SUBCONTRACTOR PREQUALIFICATION EVALUATION REFERENCE FORM
_____, 2018**

(To be utilized by District to evaluate references)

The District should fill out the information in Section I and then telephone the contact person. The District should then ask the questions in Section II, ensuring that it obtains the information as to whether the Subcontractor's performance in that area was unsatisfactory, below average, average or above average. The District should then complete section III with that information and enter the average of the Total Numerical Rating of all the Evaluation Reference Forms for that Subcontractor at the corresponding place on the Evaluation Worksheet.

Section I - General Project Information

Name of Subcontractor:	Total Contract Costs:
	Contract Start/End Dates:
Project Title:	Actual Completion Date:
Scope of Work:	
Name of Public Agency/School District:	Telephone Number of Contact Person:
Name of Contact Person:	Date and Time of Interview of Contact Person:
Architect Firm:	Principal Architect in Charge of Project:
General/Prime Contractor:	Name of Contract Person for General/Prime Contractor:
Telephone Number of Contact Person for General/Prime Contractor:	Date and Time of Interview of Contact Person for General/Prime Contractor:

Section II – Telephone Interview Questions

1. Planning and Coordination of Work

Did the Subcontractor pursue and develop a thorough understanding of the scope of work? Was the Subcontractor able to plan and execute complex critical path tasks for successful completion? **Please rate the Subcontractor with respect to planning and coordination of work as either unsatisfactory, below average, average, or above average.**

2. Quality of Work

Were there quality-related problems on the project? Were these problems attributable to the Subcontractor? Was the Subcontractor cooperative in trying to resolve problems? If not, provide specific examples. **Please rate the Subcontractor with respect to quality of work as either unsatisfactory, below average, average, or above average.**

3. Performance and Accountability

- a. Scheduling - Rate the Subcontractor's performance with regard to adhering to project schedules. Did the Subcontractor meet the project schedule? If not, was the delay attributable to the Subcontractor? **Please rate the Subcontractor with respect to scheduling as**

either unsatisfactory, below average, average, or above average.

- b. Subcontractor (Project) Management - Rate the Subcontractor’s ability to manage and coordinate its own subcontractors (if no subcontractors, rate the Subcontractor’s overall project management). Was the Subcontractor able to effectively resolve problems? If not, provide specific examples. **Please rate the Subcontractor with respect to project management as either unsatisfactory, below average, average, or above average.**

- c. Change Orders - Rate the Subcontractor's performance with regard to change orders and extras. Did the Subcontractor unreasonably claim change orders or extras? Were the Subcontractor's prices on change orders and extras reasonable? If not, provide specific examples.

Please rate the Subcontractor with respect to change orders as either unsatisfactory, below average, average, or above average.

- d. Working Relationships - Rate the Subcontractor's working relationships with other parties (i.e., owner, designer, prime contractors, other subcontractors, etc.). Did the Subcontractor relate to other parties in a professional manner? If not, provide specific examples. **Please rate the Subcontractor with respect to working relationships as either unsatisfactory, below average, average, or above average.**

- e. Paperwork Processing - Rate the Subcontractor's performance in completing and submitting required project paperwork (i.e., submittals, drawings, requisitions, payrolls, etc.). Did the Subcontractor submit the required paperwork promptly and in proper form? If not, provide specific examples. **Please rate the Subcontractor with respect to paperwork processing as either unsatisfactory, below average, average, or above average.**

- f. Litigation – Did the Subcontractor threaten litigation or arbitration of any claims? Did the Subcontractor actually file for litigation or arbitration against the District? Did the District agree to settle any litigation or arbitration? If not, who prevailed in the trial or arbitration? **Please rate the Subcontractor with respect to litigation as either unsatisfactory, below average, average, or above average.**

[RATING SHEET ON NEXT PAGE]

Section III - Numerical Rating

If the contact person rates the Subcontractor unsatisfactory in any area, please attempt to provide written comments in Section II to explain the rating(s) assigned.

Subcontractor's Name: _____

	Unsatisfactory	Below Average	Average	Above Average	RATING
1. Planning and Coordination of Work	-5	0	7	15	
2. Quality of Work	-5	0	1	5	
3. Performance and Accountability					
a. Scheduling	0	1	2	4	
b. Supervision; Subcontractor and Project Management	0	1	3	5	
c. Change Orders	0	1	2	4	
d. Working Relationship	0	0	1	2	
e. Paperwork Processing	0	0	1	2	
f. Litigation	0	0	3	3	
<i>Maximum Possible: 40</i>					
TOTAL:					

**BERKELEY UNIFIED SCHOOL DISTRICT
SUBCONTRACTOR PREQUALIFICATION EVALUATION WORKSHEET**
_____, 2018

Name of Subcontractor: _____

1. Essential Criteria

If any one of the essential criteria is not met, there is no need to complete the remainder of the evaluation.

2. References

Use the attached Evaluation Reference Form for each reference contacted for Subcontractor. Insert the average of all the scores from all references for Subcontractor.

Average Numeric Rating from Evaluation Reference Forms	=	Max 40 Points
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_____ Points

3. Years in Business Under Current License (See Section C.6. of Questionnaire)

More than 10 years	=	10 Points
5 to 10 years	=	5 Points
Less than 5 years	=	0 Points

_____ Points

4. Size of Completed Project Subcontracts (See Section D of Questionnaire)
Choose the one with the highest point value that Subcontractor meets.

3 Completed subcontracts larger than \$1 million	=	10 Points
5 Completed subcontracts larger than \$500,000	=	8 Points
3 Completed subcontracts larger than \$500,000	=	6 Points
3 Completed subcontracts larger than \$250,000	=	4 Points
3 Completed subcontracts larger than \$50,000	=	2 Points

_____ Points

5. Liquidated Damages Per Project (See Section C.11. of Questionnaire)

0 Incidents	=	10 Points
1 to 3 Incidents	=	5 Points
4 or more Incidents	=	0 Points

_____ Points

6. Non-Compliance with Applicable Laws (See Sections C.20, 21, 23, 24 and 25. of Questionnaire)

0 Projects	=	10 Points
1 to 5 Projects	=	5 Points
6 or more Projects	=	0 Points

_____ Points

7. Workers' Compensation Modifier (See Section C.22. of Questionnaire)

Less than or equal to 0.85	=	10 Points
More than .85 and less than 1.0	=	5 Points
More than 1.0	=	0 Points

_____ Points

8. **Financial Strength – Working Capital** – excluding entire line of credit (See Section E of Questionnaire)

25% or more than \$1 million	=	10 Points
10% or more than \$500,000	=	5 Points
Less than 10% or \$500,000	=	0 Points

_____ Points

9. **Financial Strength – Net Worth** (See Section E of Questionnaire)

More than \$2 million	=	10 Points
Equal to \$1 million	=	5 Points
Less than \$1 million	=	0 Points

_____ Points

Maximum Points:	= 110
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TOTAL POINTS