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ATTACHMENT TO  
NPIC/TDS/D-831-67

MEMORANDUM FOR THE RECORD

SUBJECT: Request for Overrun of [redacted] from Fiscal Year-1965 Funds for Contract No. [redacted]

1. Historical Background

The subject contract for the development of a Modulated Light Roll Film Viewer was let as a result of a concept originated late in 1963 by a former member of the Technical Development Staff, [redacted] concept was based on an existing piece of equipment, the [redacted] Automatic Dodging Printer, which was introduced to the aerial photo-mapping community in 1956 and which subsequently has been utilized extensively in duplicating aerial reconnaissance. The [redacted] Printer automatically dodges the duplicate print during the reproduction process in such a fashion that it compensates for generally undesirable photographic effects produced by intense reflections from water areas, sand, clouds, snow, fields, etc., as well as poorly illuminated areas resulting from cloud shadows and fall-off in camera lens performance. In spite of widely-held opinions that contact printers having automatic dodging provide duplicates having significantly improved image perceptibility in areas where these undesirable effects are present, NPIC was forced to cease routine utilization of this equipment because it was found to have inferior resolution to the high performance [redacted] printers made by [redacted] Company. However, the [redacted] printers have no automatic dodging capability.

[redacted] reasoned that the effect utilized in the [redacted] Printer might also be applied to film viewers in the illumination source (modulated-light) and that since the duplicates thus viewed would have been reproduced on the high performance [redacted] printers no reduction in resolution would result. In such an application the utilization of the automatic dodging principle would be at the discretion of the P.I. who might turn it off or on at will. Thus, the P.I. would only use the automatic dodging on the type of imagery which might be improved by such an effect and at his own discretion.

[redacted] of TDS, became a chief supporter of [redacted] concept. The concept was discussed with operational groups throughout the building and with other members of the Technical Development Staff. There were divided opinions as to its potential utility, but all the individuals who were familiar with electronic technology agreed that implementation of the concept appeared to be within the state-of-the-art.

Upon obtaining approval from appropriate authorities within the building, including the Technical Development Board, feasibility studies were simultaneously contracted with three different organizations, namely [redacted]

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25X1 Corporation. Each of these organizations was known to have competence in the field of electronic cathode ray tube applications and a reasonable acquaintance with reconnaissance exploitation processes. These studies were completed in the Spring of 1965. All of them included demonstration of operational breadboards. The [ ] study indicated a capability to reach the most significant objectives of the development which had to be compromised by technical limitations in the systems proposed by the other contractors. Extensive discussions with RCA technical representatives followed.

25X1 Toward the end of Fiscal Year 65 a satisfactory technical and cost proposal relationship was reached with [ ] and a contract was let for the development of two prototype Modulated Light Film Viewers. The contract was a CPFF type for a cost of [ ] a total of [ ]  
25X1 The contract was let on 30 June 1965 and the period of performance extended until 22 December 1965. Although it is unconventional and generally unwise to order two prototypes to be simultaneously developed, both PAG and IAS indicated the requirement for such a device in their operational spaces, and the feasibility studies had indicated that a practical implementation was within the state-of-the-art. In addition, the cost for the production of two items was relatively modest and appeared to be consistent with the technological effort anticipated by the [ ] engineers. Therefore, TDS and TDB agreed to the simultaneous development of two identical prototypes.

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25X1 At this point, [ ] resigned from the Technical Development Staff,  
25X1 and [ ] assumed responsibility for continuing this development. Shortly  
25X1 after this, [ ] responsibilities as Deputy Chief of the Development  
25X1 Branch precluded his adequate time commitment to this project, and it was  
25X1 reassigned to [ ] under the supervision of [ ] This reassign-  
25X1 ment of monitors was necessary in order to respond to managerial needs  
within the Development Branch; however, it also confused and degraded the  
management of this contract.

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At the same time we were making these changes in the monitorship, we were attempting to remain thoroughly coordinated with PAG and IAS in the accomplishment of this development. In this process the monitor [ ]  
25X1 took PAG and IAS representatives to the contractor's facility to comment on the physical design of the Modulated Light Film Viewers. The contractor took opportunity from the remarks made by these representatives to significantly alter his design approach without permission from the Contracting Officer or the technical monitor.

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As a result of these changes, [ ] sent us a letter on 14 October 1965  
25X1 in accordance with the "Limitation of Cost" clause of the contract, which requested additional funds to accommodate Changes in Scope indicated by the

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remarks of the PAG and IAS representatives amounting to a cost of [ ] including the fee and an anticipated overrun of the contract which would totally consume the existing funding level by 12 November 1965, more than a month before the end of the period of performance. In the face of criticism by the Contracting Officer and other Government representatives for the presumptuous assumption of these changes in requirement, [ ] admitted to an error in judgment, and a negotiated settlement was made with them with the following provisions: 25X1

25X1 (1) [ ] would assume [ ] of the overrun costs;

(2) The Government would assume [ ] of the overrun cost and \$ [ ] in costs associated with a change in scope which also carried an increase in fee of [ ] thus changing the contract cost to \$ [ ] and the fee to [ ] a total of [ ] 25X1  
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(3) The predelivery inspection of prototype No. 1 would be delayed from 17 December 1965 until 6 January 1966, and prototype No. 2 would be ready for inspection approximately 1 month later, on or about 6 February 1966.

2. Predelivery Inspection Meeting at [ ] on 6 January 1966. 25X1

This meeting was held for the express purpose of obtaining a predelivery inspection and approval from government representatives of the prototype No. 1 Modulated Light Film Viewer. NPIC technical monitors had been assured that the equipment was ready for such inspection. Because there had been some misunderstandings in previous contractual relationships regarding this development, which were placing inordinate responsibility on [ ] the assigned technical monitor, Messrs. [ ] accompanied him on this inspection trip. The trip was totally concerned with the technical performance of the Prototype No. 1 and since discussion of the administrative aspects of the contract were not anticipated, the Contracting Officer did not accompany us on this visit. The proceedings of this meeting are fairly well recorded in minutes prepared by [ ] and notes taken by the Government representatives. These records confirm the fact that the equipment was far from ready for predelivery inspection. None of the main features of the equipment performed in a fashion approximating the Government stated objectives or the performance specifications proposed by [ ] The Government representatives criticized [ ] thoroughly for their poor performance showing and their administrative indiscretion for inviting a predelivery inspection under such circumstances. At the same time [ ] representatives were cautioned not to commit additional Government funds in the process of correcting these performance deficiencies without prior approval of the Contracting Officer. 25X1  
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25X1 3. Meeting at [ ] on 8 February 1966 Regarding the Progress on the  
Image Perceptibility Program.

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This meeting was attended by [ ]  
from NPIC for the purpose of reviewing and evaluating [ ] progress on various  
tasks under another major contractual effort with them concerned with the  
development and evaluation of techniques for Improving Image Perceptibility.  
There was no intention or plan for discussing the Modulated Light Film Viewer  
development contract. However, after the discussion of the tasks under the  
Image Perceptibility contract had been completed, [ ] representatives requested  
opportunity to discuss the Modulated Light Film Viewer also.

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At this time they announced to us that the Modulated Light Film Viewer  
development project was in an overrun status and that the completion of the  
contract would cost an estimated [ ] fee, totaling  
approximately [ ] which would amount to an overrun of [ ] The  
Government representatives expressed justifiable alarm at this announcement  
and advised [ ] that as Technical Monitors they had no authority to confirm  
or deny the acceptability of these costs, and further advised them to imme-  
diately contact the Contracting Officer in this regard. [ ] further advised  
the Government representatives that all but [ ] of these addi-  
tional costs had already been expended by 1 February 1966.

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The minutes of this meeting prepared by [ ] which later were cited in  
their defense, incorrectly generalizes the Government representative's (Mr.  
[ ] instruction to them regarding their overrun status as follows:  
"He advised [ ] to continue on its present work schedule but not to make any  
new commitments until direction was received from the customer." [ ]  
recollection of his statements at that time is better represented by the  
previous description, which appears above.

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25X1 4. NPIC/TDS Reaction to the [ ] Overrun Announcement of 8 February 1966.

The news of the [ ] overrun status on the Modulated Light Film Viewer  
contract was brought back to [ ]  
[ ] (the Contracting Officer) on the following day. Immediate steps  
were taken in an attempt to determine the most beneficial position for the  
Government to take in this case. It was necessary to determine the difference  
in the cost of terminating the contract immediately and continuing it to its  
logical conclusion. This decision was complicated by the fact that TDS  
technical personnel were divided in their opinions concerning the feasibility  
of this development, and [ ] had shown poor performance to date and poor faith  
by virtue of their late announcement of this extensive overrun. Consequently,  
it would be difficult to believe that they could attain the required perform-  
ance within their new cost projections.

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25X1 [ ] sought without success to determine from the OL/PD  
25X1 representatives if we could hold the contractor to the then present contract  
25X1 price of [ ] if we accepted the equipment in its present state.

25X1 [ ] the senior scientists of the TDS Exploratory  
Development Lab, had both become skeptical of the likelihood of significant  
benefit from this development. [ ] remained convinced that the con-  
cept was based on well established principles which had been widely accepted  
as improvements in the display of aerial photography. He recommended that  
new specifications be drawn up on the basis of the recent experience with  
[ ] which would tie down the critical performance parameters once and for  
all and that [ ] be invited to propose the completion of the development of  
the Modulated Light Film Viewers against these more rigidly defined speci-  
fications on a Fixed Price basis. 25X1

25X1 5. Meeting of 23 February 1966 at NPIC to Receive and Evaluate a  
New Cost Proposal from [ ]

25X1 This meeting was prior to the formulation and presentation of new speci-  
25X1 fication requirements by [ ] It was attended by [ ] 25X1  
25X1 [ ] (the Contracting Officer), and several  
representatives from [ ] There was extensive discussion of the technical  
and administrative problems associated with this development contract. [ ] 25X1  
representatives gave the following report concerning the cost status and  
cost to complete.

25X1 The cost at 20 February 1966 had risen to [ ] including the [ ] 25X1  
25X1 that [ ] had agreed to absorb resulting in a net cost to the Government of  
[ ] plus approximately [ ] fee--a total of [ ] 25X1

25X1 They estimated an additional [ ] would be required to complete the 25X1  
25X1 task, which would have made the final total price [ ] including the  
fee. 25X1

25X1 [ ] level of commitment to these costs and to the associated per-  
formance guarantees for the equipment were entirely unsatisfactory to the  
Government. Consequently, they were instructed to go back and prepare a  
more specific proposal in terms of both cost and performance guarantees.

25X1 6. [ ] Letter of 1 March 1966.

25X1 On 1 March 1966 [ ] submitted a new performance proposal which it was  
25X1 willing to guarantee for a ceiling price of [ ] including fee. All 25X1  
25X1 this was over and above the [ ] they had agreed to absorb previously.  
(At the same time they informed the Contracting Officer that all work and  
charges against this contract had ceased as of 1 March 1966.) However, no

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member of the Technical Development Staff believed that the performance commitments in this proposal were reassuring enough to justify the level of additional funding [ ] was requesting in spite of the fact it was a ceiling price. Shortly thereafter, [ ] requested government technical representatives to visit their facility on the 7th of March to view improvements in the equipment performance. [ ] made this visit, and although there was visible improvement in the primary Light Modulating System, it was still not adequate for a meaningful evaluation of this technique and it was significantly short of the performance specifications.

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7. Meeting at NPIC with [ ] Representatives on 16 March 1966 to Define the Performance Commitments that Would be Necessary on [ ] Part Before NPIC Could Consider Acceptance of the Overrun Request.

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[ ] prepared a detailed critique of the previous performance commitments submitted by [ ] and indicated to the [ ] representatives how these commitments must be more precisely defined before the government would be willing to consider the risk of additional funds on this development contract. In addition to several [ ] representatives, [ ] were present at this meeting in which there was extensive technical discussion of the equipment performance problems. The [ ] representatives accepted our instructions and criticisms and indicated they would take them back to their office, evaluate them in depth, and advise us of their response within the next few days.

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8. [ ] Letter of 22 March 1966.

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This letter reiterated the proposal of 1 March 1966 to complete the tables in accordance with the 3rd paragraph of that letter for the ceiling price of [ ] also indicated that they were not interested in submitting a more detailed proposal in accordance with our request for additional performance specifications on 16 March 1966. [ ] further indicated that if we did not accept their new proposal they would deliver the equipment as is for the costs incurred to date which were approximately [ ]. They requested an answer no later than 28 March 1966. On this same date, 22 March 1966, TDS prepared a memorandum for the Chief, Procurement Division, Office of Logistics, in which we informed him of the [ ] ultimatum requiring a choice between accepting the equipment "as is" for [ ] or "completed" for [ ]. We also asked OL/PD for their advice concerning the possibility of holding the contractor to the existing contract price of [ ] if we accepted the equipment "as is".

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9. Procurement Division, Office of Logistics' Letter to [ ] of 25 March 1966.

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By this letter the Procurement Division indicated to [ ] that we would accept the equipment in its present state of completion at the present maximum

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amount stated in the contract of [ ] had concurred with this action on the basis of assurances from [ ] that the contractor had virtually no recourse for claiming additional funds on this task order.

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10. [ ] Letter of 19 April 1966 to the Contracting Officer.

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With this letter [ ] reviewed the course of the contract to date and rejected the offer tendered by the Procurement Division on 25 March 1966. In turn they requested that a contract modification be issued bringing the contract cost up to [ ] plus the fee of [ ] making a total contract value of [ ] to deliver the equipment "as is".

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11. Procurement Division, Office of Logistics' Letter to [ ] of 22 July 1966.

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After considerable discussion between Procurement Division and TDS representatives, the Procurement Division established their position for refusing to recognize the additional cost claimed by [ ] and advised them of this position with this letter. The Government's position was based on the "Limitation of Cost" clause in the contract and the fact that [ ] had previously indicated their awareness of the procedures stated therein by their advanced notification of anticipated overruns in October 1965.

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12. [ ] Letter to Contracting Officer on 21 December 1966.

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In accordance with rather typical processes related to contractual procedures, no correspondence took place in regard to this contract until this letter (5 months later) in which [ ] reiterated their position in defense of claiming all costs to date and requested a meeting with government representatives "to amicably resolve the problems which have arisen."

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13. Meeting at PD/OL on 23 January 1967.

At this point, Messrs. [ ] were invited to visit the Chief, Procurement Division to discuss the latest [ ] letter (21 Dec 66). At this meeting, we were advised that he ([ ]) had not been familiar previously with [ ] claim that they had been instructed by [ ] to continue with their present work schedule as planned but not to make any new commitments until direction was received from the government. We were told that this commitment on [ ] part as he understood it compromised the Government's position and that consequently the Procurement Division recommended that we negotiate with [ ] for an equitable settlement. Mr. [ ] held firm and indicated that he would like to maintain the original position of holding the contractor to the contract price until he was satisfied that we must yield on this point in the negotiation process.

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25X1 14. Meeting with [ ] at Procurement Division on 24 January 1967.

This meeting was held in response to the request tendered by [ ] on 21 December 1966 for the purpose of coming to an "amicable" resolution of the problems associated with this contract. The first two hours of the meeting consisted of an extensive criticism of the government monitors and administrative procedures presented by [ ]. The Procurement Division representative, [ ] then attempted to explore the possibility that [ ] was open to negotiation on the subject. [ ] indicated they would only consider full reimbursement of the costs which had previously been claimed and that if we were not willing to honor these, they were obliged to take this case to the Board of Contract Appeals. At this time they held that the [ ] did not include the [ ] had previously agreed to absorb. With this pronouncement, the meeting was dismissed.

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25X1 15. Government Legal Preparations.

First, the Procurement Division got in touch with the Board of Contract Appeals and asked for counsel regarding this case. [ ] a lawyer on the Appeals Board was assigned. He obtained the contract files from the Procurement Division and interviewed [ ] regarding the history of the case. Subsequently, on 3 March 1967 he delivered a Memorandum of Opinion to the Procurement Division. We were advised by [ ] that his analysis of this opinion led him to believe that the Government had about a 30/70 position in this case. He explained that this meant if the case went before the Board of Contract Appeals he felt that the contractor would be awarded about 70% of his overrun claims, which at that time were for a total contract value of [ ] an increase of [ ] over the existing contract price. 70% of this overrun would amount to an award of approximately [ ] to the contractor. On this basis [ ] requested our concurrence to reopen negotiations with [ ] complied.

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25X1 16. Receipt of Equipment on 9 March 1967.

The equipment was delivered "in its present condition" to NPIC on or about 9 March 1967. The first prototype model was in essentially the same condition it was when it had last been viewed in February 1966 with the typical depreciation that occurs under storage conditions. The overall physical condition of the equipment could be rated as fair. Several minor features, such as the removable plastic diffuser and rubber snubbers on the microswitches were in poor condition. The only noticeable positive change in the equipment was the fact that the microscope feedback system had been installed and appeared to be operational. The quality of operation is as yet undefined. Performance of the equipment in the direct viewing mode appeared to be equivalent to that demonstrated by [ ] in February 1966.

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Prototype No. II was delivered in good condition but essentially incomplete in that the main cathode ray tube had not yet been installed. Delivery of the equipment satisfied the "as-is" conditions of the agreement. The equipment is currently undergoing test and evaluation by the Equipment Performance Staff.

17. Meeting at [redacted] of 11 April 1967.

This meeting was arranged by [redacted] of OL/PD to reopen negotiations regarding the cost settlement of this contract. Several [redacted] representatives were in attendance. [redacted] and two contract auditors represented the Government. In their review of contract costs, the Government auditors determined that [redacted] had actually been expended on the contract. In the meeting we determined that this figure in fact included the [redacted] had agreed to absorb, which left a balance of [redacted]. When the agreed-upon minimum fee of [redacted] was added to this, the total contract price came to [redacted] which amounted to an overrun of [redacted]. By using additional information uncovered by the auditors, [redacted] was able to call into question about [redacted] more of the cost claim on the basis of unauthorized overtime charges and some costs that were incurred after the contractor had announced termination of charges (as of 1 March 1966) to the contract. However, [redacted] felt that their claim for most of these costs would hold up in court. Although the [redacted] price was considerably below the [redacted] had claimed, the Government representatives could not in good conscience accept this as an equitable settlement, in light of the fact that [redacted] had incurred practically all of these overrun costs before they formally announced to the Government that they expected to be reimbursed for them. [redacted] together bore in on the point that [redacted] had to accept a significant portion of the responsibility for the situation that had occurred. Although the government representatives were all well aware of the Appeals Board counsel's analysis of the extent of the Government's complicity, they continued to imply to [redacted] that the Government was not willing to defray all these costs and would be willing to go to the Board of Contract Appeals to prevent their payment. At an appropriate time the [redacted] representatives were asked to reconsider their position. After they had done so [redacted] began to review the bidding on the blackboard, considering the data and facts as he saw them. Finally, after being pressured by the government representatives to cut through the minutiae he offered to settle for [redacted] above the existing contract price. This would bring the new proposed contract price to a total of [redacted] including the fee of [redacted].

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The Government representatives asked to discuss this offer alone. In this session [redacted] indicated that he believed this settlement was

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considerably more favorable to the Government than would be obtained if we went to the Board of Contract Appeals. In light of all the factors in the case, [ ] had reached this same conclusion and concurred on this point. It was unanimously agreed that we would recommend acceptance of the [ ] offer. This would represent a negotiation of the [ ] Overrun downward by [ ] signed informal statements which confirmed the specific settlement reached by the two parties.

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18. Continuing Corrective Actions.

Steps have been taken to obviate a recurrence of this type of contract management error insofar as it is controllable by the Technical Development Staff. Some of the major steps are as follows:

(a) Procedures have been set up for more wide dissemination and feed-back of technical and legal opinions regarding development concepts within the Technical Development Staff so that the status of these opinions and the basis for them are known at all times by appropriate authorities, including the Assistant for Technical Development, his staff chiefs, the branch chiefs, the technical monitors, and the project team members.

(b) Development Staff personnel have been instructed to make more complete written records of all significant information referring to a contract for which they have responsibility. Such significant information is referred to the Staff Chief for sign-off and possible recommended action. In the case that it may imply changes in cost, this information is immediately forwarded in writing to the Assistant for Technical Development and the Contracting Officer. Copies are filed in the contract folder.

(c) Development Staff personnel have been further cautioned to make absolutely no commitments of any kind which the contractor may interpret as a basis for increasing the scope or cost of the contract. They have also been told to warn their respective contractors that unanticipated overrun costs will not be honored. They have been advised of appropriate procedures for anticipating necessary cost overruns or changes in scope including obtaining prior approval from the Assistant for Technical Development, other appropriate approval authorities, and the Contracting Officer before their introduction into the contract.

(d) The Technical Development Staff has devised written "boiler-plate" specifications for the contractor to use in reporting costs on a monthly basis, which are now included as a part of the contract. No other form of cost reporting will be accepted. This cost reporting form is designed to protect the Government from techniques contractors have used in the past to hide costs until they are ready to report them at their own convenience.

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(e) The Contract Board of Appeals is in the process of beefing-up the "Limitation of Cost" clause in the standard Government contract "boiler plate." This is in the response to the fact that many Government claims based on the assumed protection of this clause have not held up in court. However, it may be several years before this is approved for inclusion in the standard contract forms.

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[redacted]

Deputy Chief, Development Staff, TDS

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