



Decision

Matter of: Architect of the Capitol—*Bona Fide* Need for End-of-Year Purchase of Supplies

File: B-336373

Date: April 8, 2026

DIGEST

The Architect of the Capitol (AOC) obligated its fiscal year (FY) 2023 funds for a contract modification near the end of the fiscal year to purchase supplies in support of continuity of operations (COOP) planning for the legislative branch. We conclude that AOC properly recorded an obligation for the modification on September 27, 2023, in light of having a binding agreement on that date and having ordered the specific supplies in question on that date. We also conclude that AOC did not violate the *bona fide* needs rule when it obligated its FY 2023 funds to purchase the COOP supplies to be delivered in FY 2024. The quantity of supplies purchased and the delivery time was reasonable under the circumstances of creating stock in support of COOP planning. Although we have questioned the propriety of stocking supplies for more than one year prior to use when the supplies have a shelf life, we do not raise similar questions here in the context of COOP planning because AOC identified a need for the supplies at the time of obligation. The fact that an emergency does not materialize or that the supplies to respond to the emergency expire before use does not mean that the COOP supplies are not a *bona fide* need of FY 2023.

DECISION

The Architect of the Capitol (AOC) Office of Inspector General (OIG) asked whether AOC may obligate its fiscal year (FY) 2023 appropriation for a contract modification near the end of the fiscal year to purchase supplies.¹

¹ Letter from the Inspector General, AOC, to Comptroller General, GAO (May 7, 2024) (Request Letter).

In accordance with our regular practice, we contacted AOC to seek factual information and its legal views on this matter.² AOC provided facts and its legal views in its written response.³

BACKGROUND

AOC is responsible for the maintenance, operation, development, and preservation of the U.S. Capitol campus.⁴ AOC's Capitol Police Buildings and Grounds (CPBG) appropriation is available for "all necessary expenses" of AOC's "resilience and security programs."⁵ As a part of these programs, AOC explains that its Office of the Chief Security Officer (OCSO) maintains responsibility for purchasing and storing emergency supplies and personal protective equipment (PPE) under its continuity of operations (COOP) plan for multiple legislative branch stakeholders, including the House, Senate, AOC, U.S. Capitol Police, and Library of Congress.⁶ As a general matter, COOP planning is intended to facilitate the continued performance of essential functions before, during, and in the aftermath of a catastrophic emergency.⁷

AOC's FY 2023 budget request noted that OCSO had "expanded its mission with the creation of" a new Logistics Division to serve as "the central depository for

² GAO, *GAO's Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 2024), available at <https://www.gao.gov/products/gao-24-107329>; Letter from Assistant General Counsel, GAO, to General Counsel, AOC (July 2, 2024).

³ Letter from General Counsel, AOC, to Assistant General Counsel, GAO (Aug. 30, 2024) (Response Letter).

⁴ Response Letter, Attachment, AOC Contract No. AOCSSB23C1024 (Aug. 3, 2023) (Contract), Statement of Work (SOW), § 2.0, at 1; see 2 U.S.C. § 1811. The U.S. Capitol campus includes the U.S. House of Representatives, U.S. Senate, U.S. Capitol Police, and other legislative branch agencies. Contract, SOW, § 2.0.

⁵ 2 U.S.C. § 1865(b)(1); Response Letter, at 3. The name of the CPBG appropriation in the appropriation act is "Capitol Police Buildings, Grounds and Security." See Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. I, title I, 136 Stat. 4459, 4928 (Dec. 29, 2022).

⁶ Response Letter, at 1, 3.

⁷ See generally U.S. Department of Homeland Security, Federal Emergency Management Agency, *Federal Continuity Directive 1: Federal Executive Branch National Continuity Program and Requirements* (Jan. 17, 2017) (establishing the requirements for continuity planning in the executive branch).

emergency supplies, materials, and PPE.”⁸ The budget request describes warehousing and delivery services as “imperative for an effective emergency management program.”⁹

In support of its COOP planning, AOC awarded a warehouse and delivery services contract on August 3, 2023.¹⁰ Pointing to the supply shortages created by high demand for critical PPE during the coronavirus disease 2019 (COVID-19) pandemic, AOC explained that it intended for the contractor to assume care and custody of supplies for disbursement under the COOP program.¹¹ The statement of work for the contract provides that “[t]he contractor may be requested to procure products on occasion as a reimbursable cost,” but does not identify the specific products or supplies that may be requested.¹² According to AOC, the contract was treated as a hybrid contract with firm-fixed price contract line items (CLINS) and when the contractor was requested to procure supplies, the cost was reimbursed under the contract on a reimbursable basis.¹³

AOC’s contracting office, as an internal procedural matter, establishes an annual cutoff date by which program offices must submit requisitions to the contracting office.¹⁴ The applicable cutoff date in 2023 was July 28, 2023.¹⁵ Almost two months after this cutoff date, OCSO submitted its internal request to modify the contract to add a CLIN for the contractor to procure supplies.¹⁶ The Internal Form listed the following items to be purchased for a total amount of \$4,560,500 along with the unit price per item: 115,000 BinaxNow COVID-19 tests; 100,000 USA made KN-95 masks; 100,000 3M N95 masks; 100,000 boxes of gloves in all sizes; and 100,000

⁸ Response Letter, Attachment, *FY 2023 Budget Request: Capitol Police Building, Grounds and Security*, at CPBG&S-8 (AOC Budget Request).

⁹ *Id.*

¹⁰ Response Letter, at 1, 3; Contract.

¹¹ Response Letter, at 1; Contract, SOW, § 2.0, at 1.

¹² Contract, SOW, § 5.0, at 4.

¹³ Response Letter, at 1; see Contract, SOW, § 5.0, at 1–4, and § 9.0, at 7. In its response, AOC explained that the contract incorrectly included the indefinite delivery-indefinite quantity clause. Response Letter, at 1.

¹⁴ Response Letter, at 2.

¹⁵ *Id.*

¹⁶ *Id.*; Response Letter, Attachment, *Modification Request Form for the Warehouse and Delivery Services Contract* (approved Sept. 27, 2023) (Internal Form).

containers of Lysol wipes.¹⁷ OCSO received an override of the cutoff date to permit processing of the modification.¹⁸

On September 27, 2023, AOC and the contractor signed a modification to add CLIN 0004 for the purchase of “materials/supplies” in the amount of \$4,560,500 in support of COOP planning.¹⁹ According to AOC, the modification was a binding agreement on September 27.²⁰ On the same date, AOC recorded an obligation in the amount of the modification against its FY 2023 lump-sum, annual CPBG appropriation that was expiring September 30, 2023.²¹ Without directing any delayed deliveries, AOC received the ordered supplies between October 10, 2023, and January 25, 2024.²²

In September 2023, OIG received a complaint about the year-end modification.²³ In its request to us, OIG stated, as a general matter, it does not question the propriety of purchasing COVID-19 test kits and PPE.²⁴ Rather, OIG questions the propriety of obligating FY 2023 funds for supplies to be delivered entirely in FY 2024 for what it considers to be an unreasonable quantity of supplies that are unlikely to be used in FY 2024 or at all prior to the end of their useful life.²⁵

¹⁷ Internal Form; see *also* Response Letter, at 3, 5 (providing the full name for the purchased supplies).

¹⁸ Response Letter, at 2; see *also* Internal Form (reflecting AOC approval of the proposed modification).

¹⁹ Response Letter, at 1–3, 5; Response Letter, Attachment, Contract, Modification 002, CLIN 0004 (Sept. 27, 2023) (Modification).

²⁰ Response Letter, at 3.

²¹ *Id.*; see *also* Pub. L. No. 117-328, 136 Stat. at 4928.

²² Response Letter, at 3, 4; Request Letter, at 2.

²³ Request Letter, at 1. The complainant expressed concern about whether a *bona fide* need existed for the supplies and whether the modification used reprogrammed funds. *Id.* AOC stated that the modification did not require any reprogramming of funds. Response Letter, at 6.

²⁴ Request Letter, at 3.

²⁵ Request Letter, at 2–3. OIG and AOC expressed different opinions on the existence and term of the useful life for the supplies. OIG states that all the supplies had a shelf life. *Id.* at 2. According to OIG, the BinaxNow COVID-19 test kits had an expiration date of August 2024 when purchased, the Lysol wipes were effective for one to two years, the masks had a three to five year shelf life according to the Centers for Disease Control, and the gloves had a shelf life of about five years. *Id.* In contrast, AOC states that only the BinaxNow COVID-19 test kits and Lysol wipes
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DISCUSSION

At issue is whether AOC complied with the recording statute and the *bona fide* needs statute when it obligated its FY 2023 appropriations for the modification to purchase COOP supplies near the end of the fiscal year.

Recording Statute

The recording statute, 31 U.S.C. § 1501(a)(1), requires that an agency record the full amount of an obligation when there is sufficient documentary evidence of “a binding agreement” for “specific goods to be delivered . . . or work . . . to be provided” that is signed during the period of availability of the appropriation used.²⁶ By establishing criteria to record an obligation, the statute addressed the practice by some agencies of adopting “strained” or “overly broad” concepts of obligation for the purpose of impermissibly reducing the amount of expiring, unobligated appropriations.²⁷ The criteria ensures that contracting parties understand and accept their rights and duties under the agreement and that Congress, as part of its oversight role, has a reasonably precise picture of an agency’s financial requirements so it can more accurately assess the agency’s future appropriation needs.²⁸

An agreement that lacks a specific, definite description of the goods is not firm and complete and, as such, is not recordable as an obligation.²⁹ For example, in B-308944, July 17, 2007, we concluded that the Department of Defense (DOD) did not incur an obligation on September 17, 2004, against its FY 2004 appropriations, when it submitted an order to purchase “equipment through the Pentagon IT Store.”³⁰ Instead DOD incurred an obligation in FY 2005 when it perfected the order

had a shelf life. Response Letter, at 3. AOC states the COVID-19 test kits had a 12 month shelf life and the Lysol wipes had a 24 month shelf life. *Id.* In its August 2024 response, AOC notes that it had disbursed 30,780 of the 115,000 BinaxNow COVID-19 test kits; 720 of the 100,000 USA made KN-95 masks; 580 of the 100,000 boxes of gloves; none of the 100,000 3M N95 masks; and 3,800 of the 100,000 containers of Lysol wipes. *Id.* at 3.

²⁶ See e.g., B-336036, Feb. 12, 2025; B-330628, Dec. 9, 2024.

²⁷ 54 Comp. Gen. 962, 964 (May 15, 1975); 51 Comp. Gen. 631, 633 (B-174981, Apr. 7, 1972).

²⁸ B-308944, July 17, 2007; 64 Comp. Gen. 410, 414 (B-214551, Mar. 25, 1985).

²⁹ 31 U.S.C. § 1501(a)(1); B-308944, July 17, 2007.

³⁰ B-308944, July 17, 2007, at 6 (citation omitted). Congress does not want an agency to record an obligation against its current appropriation based on an incomplete agreement whether that agreement is with a private contractor as here or another agency as in B-308944 when DOD submitted orders to a revolving fund of
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by e-mailing the descriptions of the specific items sought from the Pentagon IT Store.³¹ In contrast, as to a different order, we concluded that DOD did incur an obligation on the same date it submitted the order to purchase “XEROX 3400 Printers” because the order was sufficiently specific to obligate DOD’s FY 2004 appropriation.³²

Applying our previous decisions, the totality of the circumstances here are sufficient for us to conclude that AOC properly recorded an obligation for the modification to purchase COOP supplies. The contract and modification by themselves lack the requisite specificity for a contractor to determine what supplies the agency sought when it modified the contract to add CLIN 0004 for “materials/supplies.” However, the Internal Form that AOC prepared before processing the modification shows that AOC knew the specific supplies it sought along with the associated quantity and unit price per item. Further, OIG reviewed contract documentation and determined that, on the date the modification was signed, AOC ordered the specific supplies at issue.³³ In its response to us, AOC states that the modification “became effective with a binding written agreement between the AOC and the contractor” on September 27, 2023.³⁴ Based on these circumstances, in particular OIG’s review of the contract documentation, it is clear to us that AOC properly recorded an obligation for the modification on September 27, 2023.³⁵

the Department of Interior. See 31 U.S.C. § 1501(a)(1) (establishing the recording criteria for agreements between “an agency and another person (including an agency)”).

³¹ B-308944, July 17, 2007.

³² *Id.* at 4 (citation omitted).

³³ Request Letter, at 2. Based on OIG’s review of the contract documentation for the modification, OIG states that AOC ordered, on September 27, 2023, certain supplies and the supplies identified by OIG match those listed in AOC’s Internal Form. *Id.* (listing the supplies ordered on September 27, 2023).

³⁴ Response Letter, at 3.

³⁵ Notwithstanding our conclusion, AOC should ensure that it both creates and retains the necessary documentation, including e-mails or other written communications to the contractor identifying the specific supplies sought, to ensure that it properly records its obligations in accordance with 31 U.S.C. § 1501. Proper recording of obligations is essential to avoid violations of the Antideficiency Act. See *id.* § 1341(a) (prohibiting agencies from obligating in excess, or in advance, of an available appropriation unless otherwise authorized by law).

Bona Fide Needs Statute

While the modification in question was signed during FY 2023, it may be properly charged to AOC's FY 2023 appropriation only if AOC had a *bona fide* need for the supplies in FY 2023. Under the *bona fide* needs statute, 31 U.S.C. § 1502(a),³⁶ a time-limited appropriation is available only to fulfill a genuine or *bona fide* need of the period of availability of the appropriation.³⁷ Known as the *bona fide* needs rule, this rule, similar to the requirements of the recording statute, serves Congress's oversight role because an appropriation's limited period of availability for obligation requires the agency to return to Congress "to justify continuing the program or to debate about how much is needed to carry on the program at the same or a different level."³⁸

Compliance with the *bona fide* needs statute is measured at the time the agency incurs an obligation and depends on the facts and circumstances of the particular transaction.³⁹ In this instance, the modification was signed near the end of FY 2023 and AOC obligated its annual FY 2023 appropriation.⁴⁰ We have long recognized that an appropriation is just as much available to supply the needs of the last days of

³⁶ The *bona fide* needs statute provides that "[t]he balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with [the recording statute]." 31 U.S.C. § 1502(a).

³⁷ *E.g.*, B-336079, Nov. 20, 2025; B-308944, July 17, 2007; B-308010, Apr. 20, 2007. Congress provided AOC, and most agencies, with statutory exceptions to the *bona fide* needs statute. *E.g.*, 41 U.S.C. §§ 3902, 3903, 3904(g). One exception authorizes AOC to sign a multiyear contract to purchase supplies or services for the needs of up to five years, subject to certain conditions. 41 U.S.C. §§ 3903, 3904(g)(2); *e.g.*, B-322455, Aug. 16, 2013. Another exception authorizes AOC to sign a contract to procure severable services for the needs of up to 12 months with the period of performance beginning in one fiscal year and ending in the next, subject to certain conditions. 41 U.S.C. §§ 3902, 3904(g)(1); *e.g.*, B-336079, Nov. 20, 2025. AOC did not state that it used any exception to the *bona fide* needs statute.

³⁸ 64 Comp. Gen. 359, 362 (B-217722, Mar. 18, 1985).

³⁹ B-309530, Sept. 17, 2007; B-308010, Apr. 20, 2007; 37 Comp. Gen. 155, 159 (B-130815, Sept. 3, 1957).

⁴⁰ Response Letter, at 1, 3; Modification.

a fiscal year as any other day or time in the year and that the timing of an obligation, does not, in and of itself, establish anything improper.⁴¹

In the context of the purchase of supplies, as a general matter, the relevant date to ascertain whether the supplies to be purchased are a *bona fide* need of a particular fiscal year is the date that the supplies will be used.⁴² Thus, the agency generally obligates the appropriation available in the fiscal year in which the supplies will be used.⁴³

In limited circumstances, supplies may be a *bona fide* need of a fiscal year prior to the fiscal year in which the supplies will be used. First, under what is sometimes referred to as the lead-time exception, an agency may use a current year appropriation for supplies to be used in the subsequent fiscal year where the supplier requires a lead-time to deliver, produce, or fabricate the supplies; the time between contracting and delivery is necessary and not excessive; and the purchase is not for commercial supplies readily available from other sources.⁴⁴ While AOC mentioned that “[i]n prior years” there were “shortages, demand and supply chain issues and other delays” that “contributed to significant lead time and availability,” AOC does not point to a supplier required lead-time for the supplies purchased here.⁴⁵

Next, we have recognized an exception to the *bona fide* needs rule referred to as the stock-level exception. Stock, here, generally refers to “readily available common-use standard items.”⁴⁶ In limited circumstances, an agency may use a

⁴¹ 38 Comp. Gen. 628 (B-138574, Mar. 25, 1959); see also 8 Comp. Dec. 346, 348 (1901) (writing about a time limited appropriation, the Comptroller General of the Treasury noted that “[a]n appropriation should not be used for the purchase of an article not necessary for the use of a fiscal year in which ordered merely in order to use up such appropriation,” but such “appropriation is just as much available to supply the needs of the [day before the end] of a particular [fiscal] year as any other day or time in the year” and to conclude otherwise “would work as an undeserved punishment to those” who conserve “their appropriations for exigencies that are liable to arise at any time during the year”).

⁴² B-221204-O.M., Jan. 31, 1986; 35 Comp. Gen. 692 (B-128065, June 11, 1956).

⁴³ *Id.*

⁴⁴ B-309530, Sept. 17, 2007; 38 Comp. Gen. 628 (B-138574, Mar. 25, 1959); 37 Comp. Gen. 155 (B-130815, Sept. 3, 1957).

⁴⁵ Response Letter, at 4.

⁴⁶ 44 Comp. Gen. 695, 697 (B-156161, May 11, 1965); 32 Comp. Gen. 436, 438 (B-114578, Apr. 7, 1953).

current year appropriation to replace stock previously used that the agency continues to need even though the agency will not use the replacement stock in that year or to purchase “additional stock for expanded office needs.”⁴⁷ We have upheld such uses provided that the stock quantity and delivery time was reasonable under the circumstances.⁴⁸ At issue here is the stock-level exception.

We applied the stock-level exception in B-251706, August 17, 1994, to the use by the U.S. Department of Agriculture (USDA), Farmers Home Administration (FmHA) of its FY 1991 funds for a June 1991 order of a sizeable number of office chairs as part of a project to relocate and improve its headquarters office with delivery scheduled to occur in four shipments during November and December 1991.⁴⁹ In concluding that USDA did not violate the *bona fide* needs rule when it obligated FY 1991 funds, we noted that replacement stock need not be used in the fiscal year of obligation and stock “need not be merely replacement items but could be additional stock for expanded office needs.”⁵⁰ Such expanded office needs may include supplies needed to respond to legitimately anticipated dangers and exigencies. For example, the September 11, 2001, terrorist attacks heightened the nation’s awareness of terrorist activity and the need for ongoing vigilance.⁵¹ In B-301152, May 28, 2003, in a published memorandum we concluded that GAO could purchase protective hoods for use in the event of a terrorist attack on government facilities involving explosives or chemical or biological weapons. We advised that a reasonable quantity of protective hoods based on an estimate of the number of people in the GAO headquarters building at any one time would be a *bona fide* need of GAO.⁵²

Here, AOC saw an urgent need to prepare for virulent, infectious disease by creating a stock of emergency supplies in support of its COOP planning.⁵³ As in B-251706, August 17, 1994, and B-301152, May 28, 2003, the quantity of supplies purchased and the time between contracting and delivery was reasonable in the circumstances here. Explaining the quantity of supplies purchased, AOC points to the number of legislative branch personnel across the U.S. Capitol campus, a July 2023 uptick in

⁴⁷ B-251706, Aug. 17, 1994, at 4; 44 Comp. Gen. 695 (B-156161, May 11, 1965); 29 Comp. Gen. 489 (B-95380, June 1, 1950).

⁴⁸ B-309530, Sept. 17, 2007; B-301152, May 28, 2003; B-251706, Aug. 17, 1994.

⁴⁹ B-251706, Aug. 17, 1994.

⁵⁰ *Id.* at 4.

⁵¹ B-303964, Feb. 3, 2005.

⁵² B-301152, May 28, 2003.

⁵³ Response Letter, at 2, 3; AOC Budget Request.

COVID-19 infection rates, and increased requests for PPE from the agencies supported by AOC.⁵⁴ For example, AOC explains that the purchase of 115,000 COVID-19 test kits was based on an estimate of four kits per person for approximately 30,000 legislative branch personnel.⁵⁵ AOC also purchased 100,000 of each of these PPE items for legislative branch personnel: KN-95 masks, N95 masks, boxes of gloves, and containers of Lysol wipes.⁵⁶ The supplies ordered on September 27, 2023, were received between October 10, 2023, and January 25, 2024.⁵⁷ AOC explained that it was possible to use the stocked supplies within one fiscal year based on usage rates from the prior fiscal year, the virulence of COVID-19, demand from personnel, and other factors.⁵⁸ Under these circumstances of COOP planning in response to legitimately anticipated dangers and exigencies, AOC had a *bona fide* need for the supplies in FY 2023.

In the past we have questioned the propriety of stocking supplies for more than one year prior to use when the supplies have a shelf life.⁵⁹ In B-134277, December 18, 1957, we considered the purchase by the Department of Veterans Affairs (VA) of a chemical to be carried in stock for more than a year prior to use. We questioned the propriety of the purchase where the chemical stocked may have been incapable of storage without deterioration before use.⁶⁰ Although some of the supplies that AOC purchased had a shelf life,⁶¹ the circumstances here are distinguishable from those in B-134277. The supply purchase here was specifically focused on AOC's COOP planning that provides for AOC to purchase and store emergency supplies for the legislative branch.⁶² In this context of COOP planning, we do not object, from the *bona fide* needs perspective, to the possibility that the supplies may expire prior to

⁵⁴ Response Letter, at 4.

⁵⁵ *Id.* at 4, 5.

⁵⁶ *Id.* at 5.

⁵⁷ *Id.* at 3, 4; Request Letter, at 2.

⁵⁸ Response Letter, at 4. AOC distributed 547,560 KN-95 and N95 masks in FY 2022 and purchased 200,000 masks by the modification. *Id.* at 5. AOC distributed 592,422 COVID-19 tests in FY 2022 and purchased 115,000 COVID-19 test kits by the modification. *Id.* Although AOC distributed fewer gloves and Lysol wipes in FY 2022 than the quantity purchased by the modification, AOC also noted the existence of supply shortages in prior years. *Id.*

⁵⁹ B-134277, Dec. 18, 1957.

⁶⁰ *Id.*

⁶¹ See note 25, *supra* (describing the shelf life for the supplies).

⁶² Response Letter, at 1, 3, 5.

use so long as the agency has identified a need for such supplies at the time of obligation. Here, AOC identified a need for the supplies at least in FY 2023. The fact that an emergency does not materialize or that the supplies to respond to the emergency expire before use does not mean that the supplies are not a *bona fide* need of FY 2023.

Last, we consider the impact of AOC's July 28, 2023, cutoff date on our *bona fide* needs analysis for an appropriation expiring on September 30, 2023. As AOC explains, the cutoff date is an internal deadline established by AOC's contracting office "[t]o efficiently and effectively obligate annual and expiring appropriations."⁶³ The cutoff date does not shorten the period of availability of AOC's appropriation. We see no basis to infer from AOC exceeding or waiving its internal cutoff date that the agency did not have a *bona fide* need here for the supplies. Prudent management of a time limited appropriation counsels in favor of an agency establishing similar internal deadlines so that the agency, through early identification of funds soon to expire, may obligate any unobligated amounts before the amounts expire.

CONCLUSION

We conclude that AOC properly obligated its FY 2023 funds for a contract modification near the end of the fiscal year to purchase supplies in support of COOP planning for the legislative branch. AOC properly recorded an obligation for the modification on September 27, 2023, in light of having a binding agreement on that date and having ordered the specific supplies in question on that date. And AOC did not violate the *bona fide* needs rule when it obligated its FY 2023 funds to purchase the COOP supplies to be delivered in FY 2024. The quantity of supplies purchased and the delivery time was reasonable under the circumstances of creating stock in support of COOP planning. Although we have questioned the propriety of stocking supplies for more than one year prior to use when the supplies have a shelf life, we do not raise similar questions in the context of COOP planning here because AOC identified a need for the supplies at the time of obligation.



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⁶³ *Id.* at 2.