



FairWinds Partners appreciates the opportunity to comment on the New gTLD Auction Rules (“Auction Rules”), as well as the work undertaken by ICANN staff to improve the Auction Rules since the publication of the Preliminary Auction Rules on November 1, 2013.

It is our belief that any further modifications to the Auction Rules should focus on improving the Auction Rules for all applicants, and should not impose new restrictions that benefit particular applicants at the expense of others. With this goal in mind, we would like to echo the following recommendations made during the initial Public Comment Period that we believe would improve the Auction Rules for all applicants in contention sets.

*Grant prevailing bidders a 9-month window to execute the Registry Agreement*

ICANN should clarify in the Auction Rules that winning bidders will be given a 9-month period to execute the Registry Agreement with ICANN, as well as a possible 9-month extension to this period.

As expressed in the comments made by Valideus:

“AGB § [5.1] allows all applicants 9 months to execute the RA; in contrast, AGB § 4.3.2 provides that an applicant prevailing at auction may be declared in default if they do not execute the RA within 90 days.”

Further, FairWinds believes that prevailing bidders should also be given an extension of up to 9 months to execute the Registry Agreement.<sup>1</sup>

The 90-day window cited in AGB § 4.3.2 provides an insufficient time frame for prevailing applicants that may wish to negotiate changes to their Registry Agreements. This requirement would unfairly circumscribe applicants that are allocated their gTLDs by way of the ICANN Auction, by forcing them to surrender the opportunity to negotiate their Registry Agreements, or risk being declared in default.

*Publish Auction Rules for indirect contention sets*

ICANN should publish clear rules for how indirect contention relationships will be handled as part of the final Auction Rules.

While String Confusion Objections have resulted in multiple contention sets with both direct and indirect relationships, the Revised Auction Rules merely include a placeholder that “the Auction Manager may issue an Addendum to the Auction Rules to address contention sets with both direct and indirect contention relationships.” The contents of such an Addendum should be finalized and communicated to applicants involved in an indirect contention set no less than 30 days before such applicants receive their notices of Intent to Auction.

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<sup>1</sup> AGB § 5.1 provides that “An applicant may request an extension of this time period for up to an additional nine (9) months if it can demonstrate, to ICANN’s reasonable satisfaction, that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement.”



*Restrict ICANN's ability to amend the Auction Rules*

The final Auction Rules should limit ICANN's ability to amend the Auction Rules to exigent circumstances requiring such changes.

As expressed in the Public Comment by Donuts, granting ICANN uncurbed discretion over the Auction Rules is not warranted and would bring about significant uncertainty for applicants involved in contention sets. Further, we echo Donuts' request that any amendment to the Auction Rules "should be announced publicly at least 30 days in advance of any auction," as allowing amendments to be made any time prior to the Deposit Deadline provides applicants with insufficient time to review changes before entering into auction.

*Provide a clear framework for determining End-of-Round prices*

The Auction Rules should provide a clear framework for how the End-of-Round Pricing will be determined.

Currently, the Auction Rules state that "the actual level of increment that is selected will be at the Auction Manager's sole discretion," affording the Auction Manager undue discretion in setting End-of-Round Prices and over the pace of the auction. Instead, price increments should be determined through a consistent framework, made known to applicants within the Auction Rules. As expressed in the comments by Donuts, these increments should be maintained absent exigent circumstances or agreement amongst all members of a particular contention set.

*Provide applicants with timely notification of the final Auction Rules and associated procedures*

Lastly, FairWinds asks that ICANN communicate the final Auction Rules and Bidder Agreement directly to all applicants that are in a contention set. We ask that this be done on a timely basis, no less than 30 days before the first round of Intent to Auction notices are issued. In doing so, we ask that ICANN also provide a clear overview of the timeline and process by which it plans to distribute Intent to Auction notices.

FairWinds would like to emphasize the imperative of moving forward with revisions to the Auction Rules in a manner that is responsible, yet expeditious. We appreciate the work undertaken by ICANN and Power Auctions LLC to speed up the auction process from that outlined in the Preliminary Auction Rules, but note that ICANN's Draft Auction Schedule still pushes auctions for applicants with high prioritization draw numbers out to January 2015. As such, it is imperative that additional revisions to the Auction Rules do not compromise ICANN's stated goal of commencing the first round of auctions in April 2014.

We thank ICANN for considering these requests.