



November 24, 2004

**VIA ELECTRONIC AND
FIRST CLASS MAIL**

John Jeffrey, General Counsel
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way #330
Marina del Rey, CA 90292

Re: Comments to 9 November 2004 Draft .net RFP

Dear Mr. Jeffrey:

I write to provide the comments of VeriSign, Inc. ("VeriSign") to the Draft .net Request for Proposals dated November 9, 2004 ("Draft RFP") published by ICANN. Our comments reflect VeriSign's commitment to the security, stability and integrity of .net both today and throughout the bid process. As a critical component of the Internet infrastructure, .net plays a vital role in commerce and communications. The many members of the community who heavily rely on the .net TLD cannot afford to have a registry operator chosen through a process that satisfies anything less than the highest standards of propriety, fairness and transparency.

It is our belief that the current Draft RFP falls short of meeting that standard, both by the process ICANN proposes to use to ensure the stability, security and integrity of the .net TLD and the way it treats VeriSign's rights as the current operator of .net. A summary of the most glaring shortcomings of the Draft RFP are listed below and described in more detail in Section I.A:¹

1. Assign appropriate weighting for a bidder's performance. Specifically, the RFP should:

a. assign and state clear and objective scoring methodology to be applied in the evaluation of criteria;

¹ This list is not intended to be exhaustive. VeriSign reserves the right to object to or challenge any aspect of the Draft RFP or any statements contained therein, including, without limitation, the processes and procedures used to develop the Draft RFP.

b. assign and state discreet weighting for each section or factor considered within the evaluation criteria;

c. assign a weighting as between the absolute and relative criteria with the absolute criteria having a heavier weighting than the relative criteria;

d. for the bidders that have met the absolute criteria, compare these bidders' absolute criteria weighting against each other (i.e. make a relative comparison of the bidders' ability to meet and exceed the absolute criteria);

e. following the award decision, make public both the rankings of the bidders as well as scores applied to each of the factors and criteria considered in the bid;

2. Make the identity and qualifications of the evaluators public prior to releasing the final draft of the RFP;

3. Eliminate requirement that bidders waive any rights they may have to challenge the RFP process or decision if such a waiver would be in conflict with that party's existing rights to make such challenges;

4. Ensure that any bidder's claims as to the ability to run a system of the scale and size required to ensure the integrity of the .net TLD are tested by performance testing during the evaluation process; and

5. Ensure that the evaluators are cognizant of the prohibition against VeriSign being disadvantaged by any evaluation criteria.

These shortcomings as well as other deficiencies are explained in more detail below.

I. The ICANN Selection Process

A. Detailed Discussion of Shortcomings Listed Above

1. Assign appropriate weight to a bidder's performance against "absolute criteria."

The Draft RFP indicates that the "absolute criteria" reflect those requirements that are so important that a bidder's failure to meet them results in the automatic rejection of its proposal. In relation to a bidder's performance against the less important "relative criteria," its performance against the absolute criteria should be accorded greater weight. The Draft RFP, however, does not establish this relationship. Quite the opposite, it attaches no importance to a bidder's ability to exceed the absolute criteria requirements themselves or as compared to other bidders. This inappropriately deemphasizes the most critical areas of performance and places undue importance on such areas as promotion of competition and improved implementation of GNSO policies. Thus, in critical areas, the Draft RFP does not distinguish an "A+" proposal from a

“C+” proposal. The Draft RFP therefore should be amended to provide that a bidder’s performance against absolute criteria is of predominant importance in relation to other criteria.

There is no indication that objective standards will be used to inform or constrain the evaluators’ ranking and assignment of relative weight to be provided to each evaluation criterion. Thus, rather than being open and transparent, ICANN has designed the Draft RFP so that the selection of the successor registry operator is not subject to scrutiny. By not indicating the relative weight provided to each evaluation criterion and each subfactor, and by not defining a numerical or other objective scoring method to be used to rate each proposal against ICANN’s requirements and against each other, the Draft RFP affords ICANN and the evaluators the maximum opportunity to exercise favoritism by enabling them to make weighting and scoring determinations after the fact. This prejudices the bidders’ ability to bid intelligently and leaves the selection process susceptible to bias and subjectivity.

Most notably, the Draft RFP fails to recognize that stability of the Internet is the most important evaluation criterion and that measures in this area should be the most heavily weighted of all the criteria. Any other criteria are of little or no consequence to the operation of .net, if the stability of the registry or the security of the operating system were compromised, if technical qualifications are sub-par, or if the registry operator cannot provide the financial resources to provide services at the scale necessary to accommodate the ongoing growth of the .net TLD.

The Draft RFP does not articulate detailed, clear, and objective evaluation criteria with relevant subfactors under each criterion. The Draft RFP instead leaves identifying that detail and providing definition to the uncertainty of the evaluation process. Vague criteria -- such as “maintain .net registry functions efficiently and reliably,” “deliver high quality of service for all .NET users worldwide,” or “insur[e] a very high level of security and stability”² -- fail to meaningfully inform bidders of the standards against which their proposals will be measured. Accordingly, bidders cannot reasonably identify the standard against which they are to make their proposal. Further, this lack of definition will result in problems for the bid process, including (without limitation) the following:

- ICANN evaluators will be uncertain of how to interpret criteria, and, particularly when more than one person is involved in the evaluation, run the high risk of interpreting or defining one or more of the criteria differently among the various proposals.
- Prospective bidders will not be able to understand the criteria, causing bidders to articulate differently the meaning of various criteria. Bidders who are not selected may challenge the evaluation process as capricious and discriminatory. This is aggravated by the Draft RFP’s lack of any provisions for debriefings for unsuccessful bidders, in which

² Draft RFP at 14.

ICANN would evaluate the significant weaknesses or deficient factors in the bidder's proposal.

- The bidder who is selected may find that the conditions of the agreement are not consistent with its expectations given that the selected bidder relied on the published criteria to assess whether to make a bid for the proposed contract.

The decision-making process described in the Draft RFP is uncertain and not transparent. The Draft RFP does not prescribe the use by the evaluators of any standard notational scoring system (e.g., numerical scores, adjectival ratings, etc.) or narratives showing the relative differences among proposals and their strengths, weaknesses, and risks in terms of the evaluation criteria. Coupled with the absence of a standard method for evaluating proposals against identified criteria, this deficiency creates a high likelihood that the evaluators will not apply the evaluation criteria consistently and makes it virtually impossible to determine the basis on which one proposal may have been judged to be superior to another. Also contributing to the lack of transparency is the fact that the Draft RFP does not require the individual evaluators to document or record their evaluations according to any standard notational scoring system.

2. Set forth a clearly defined evaluation process, including the identity of those who will evaluate the proposals and select the winning proposals.

Section 5.2.4 of the .net Registry Agreement mandates that "ICANN *shall select* as the successor Registry Operator the eligible party that it *reasonably determines is best qualified* to perform the registry function." Section 5.2.1 of the .net Agreement further requires that the selection of the successor registry operator "shall" be made pursuant to an "open [and] transparent procedure." The Draft RFP, however, provides no basis for a "reasonable determination" as to the "best qualified" bidder.

As an initial matter, ICANN has apparently abandoned its previously announced plan to have an independent third-party professional firm manage the bidding process to help insure a fair and independent process and avoid bias and impropriety.³ Instead, ICANN has apparently delegated the critical responsibility of ranking the bids to a panel of evaluators hand-picked by ICANN whose identities and qualifications remain undisclosed to the bidders. Furthermore, there is no indication that the evaluators chosen by ICANN will be constrained by an objective process for ranking the bidders' proposals. Thus, there is no assurance that the vague and uncertain criteria enumerated within the Draft RFP will be applied on a fair and consistent basis to all bidders.

³ ICANN President Paul Twomey testified before the Senate Commerce Committee on September 20 that "ICANN is also seeking an independent third-party professional firm, (which will most likely be a well regarded global accountancy firm) to manage the .NET "Successor" registry Operator Process. ICANN believes that this will best ensure a fair and independent process and will avoid any perceptions of possible bias or impropriety on the part of ICANN . . ."

The lack of a clearly defined evaluation procedure and the failure to identify the evaluators and their qualifications are anathema to an “open and transparent” procedure and prevent ICANN from making a reasonable determination as to which bidder is “best qualified to perform the registry function.”

ICANN must select evaluators that have no preconceived bias or financial interest in the outcome of the selection process. The Draft RFP, however, does not define whether biases (such as a belief that registries should be not-for-profit organizations, a belief that a thick registry model is preferable to a thin model, or antagonistic views toward one or more of the bidders) are included in the definition of conflicts of interest. Furthermore, the Draft RFP requires only that “panelists . . . disclose any potential conflict of interest.” It contains no specific provisions for eliminating evaluators with biases. Identification alone cannot ensure the impartiality of persons evaluating the proposals and making the selection. This is exacerbated by the lack of measurable criteria, making the process arbitrary, and subjective, and making it difficult to determine fairness.

3. Define a process through which participants can challenge the selection of a .net Registry Operator.

In addition to precluding review of the integrity of the Draft RFP prior to the submission of proposals, the Draft RFP requires all bidders to release ICANN from any and all liability associated with an improper selection of a successor registry operator. Through the Draft RFP, ICANN seeks to avoid responsibility for selecting a successor registry operator based on a fair application of the criteria represented in the RFP, as well its specific obligations under the .net Registry Agreement and the MOU. ICANN cannot discharge these responsibilities, and the inclusion of a mandatory release in the Draft RFP is inconsistent with the MOU, the .net Agreement, as well as contrary to established public policy. The Draft RFP therefore should be amended to strike or amend Item 5 of the “RFP Checklist” section found at page 17 of the Draft RFP.

Moreover, the Draft RFP is misleading to bidders and potentially prejudicial to VeriSign’s rights by failing to disclose to bidders VeriSign’s express rights in the .net Registry Agreement to challenge the Award by filing an objection within 10 days following the Award. ICANN’s failure to address in the RFP procedures for challenging the Award may prevent ICANN from being able to fulfill contractual or other obligations it may undertake to bidders generally or a bidder ICANN may choose at the conclusion of the process described in the Draft RFP. Any attempt to foreclose VeriSign’s express rights to challenge the Award, of course, would be a violation of the .net Registry Agreement and unenforceable.

4. The Draft RFP does not to ensure that bidders are qualified to operate one of the Internet’s largest domain name registries through objective responsibility standards.

Section 5.2.4 of the .net Agreement requires ICANN to select a successor registry operator based on the “*demonstrated* ability of the party to manage domain name or similar databases at the required scale.” However, the Draft RFP fails to provide any meaningful guidance to bidders as to how the criteria relating to their technical competence will be rated, nor does it provide any assurance that bidders’ representations about their technical capabilities will be verified by ICANN, suggesting that they will not be.

Moreover, ICANN has failed to establish a minimum standard that a bidder must meet, even without verification, to establish qualifications based on operating a database of similar size and capacity, despite the fact that ICANN’s paramount concern should be the stability of the Internet. Instead, the Draft RFP conflates the absolute and relative criteria in this critical arena, saying only that “very high” stability is an absolute criterion and “even higher” stability is a relative criterion. The Draft RFP thereby fails to provide any measurable standard by which to evaluate whether bidders are qualified to operate one of the Internet’s largest domain name registries.

VeriSign has operated the registry for the .net TLD for over a decade. During that time, the .net TLD has grown exponentially. We have made substantial investments to build and maintain the .net infrastructure to support this explosive growth. Through this experience, we know first-hand that the infrastructure needed to support a registry that is vitally important to the stable operation of the Internet and the domain name system is vastly more complex (and expensive) than that needed to support a comparably sized registry.

Because no other company has operated a domain name registry having the unique properties of .net, any bidder’s assurance of the capacity to assume operational responsibility of the .net registry should be viewed with skepticism. ICANN cannot ensure the continued stability of the .net TLD relying on the future-looking promises and self-interested written assurances of bidders. Accordingly, no award should be made unless ICANN makes an affirmative determination based on objective, reliable information that offerors (and all of their subcontractors) are responsible.

There is nothing in the Draft RFP, however, setting forth whether or how ICANN will make a responsibility determination. In particular, the Draft RFP sets no minimum experience requirements. Further, it establishes no mechanism for verifying bidders’ asserted capabilities through testing, facilities audits, or benchmark demonstrations. Instead of making an independent assessment of responsibility using clear, objective criteria, the Draft RFP relies only on each bidder’s promises to meet minimum performance requirements (referred to as “absolute criteria” in the Draft RFP). The stability and security of one of the Internet’s largest TLDs, however, should not rest on the willingness of bidders to promise that they will satisfy minimum performance requirements. For the sake of maintaining the security and stability of the .net registry, ICANN should make a determination of nonresponsibility absent reliable information clearly indicating that a bidder is responsible.

5. Ensure that evaluation criteria do not impermissibly disadvantage VeriSign either on their face or through their application.

The Draft RFP's lack of detailed, clear and objective evaluation criteria is problematic in that it could impermissibly disadvantage VeriSign by permitting consideration of inappropriate factors. An example is the "additional relative criteria" concerning "the degree to which the applicant's proposal promotes competition in the registration of domain names." Unless evaluators are given a precise definition of "promoting competition," this criterion could impermissibly disadvantage VeriSign by permitting consideration of inappropriate factors such as: the number of domain name registrations serviced by VeriSign (alone or in relation to any other company), VeriSign's size, or VeriSign's incumbency as the registry for the .net and certain other TLDs. The Draft RFP provides no guidance on the standards for "promoting competition." ICANN therefore should at a minimum amend Item 7(i), pg. 15, of Part 2 of the RFP to acknowledge that the current .net contract explicitly states that VeriSign cannot be disadvantaged by any evaluation criteria.

B. Additional Shortcomings

1. The Draft RFP is not consistent with the GNSO's Final Report and includes new requirements that have no basis under ICANN's procedures.

ICANN must base the .net RFP on policies established as a result of a consensus of Internet stakeholders ("Consensus Policies").⁴ The Draft RFP, however, is not consistent with the GNSO's August 2004 Final Report, which purports to be the requisite consensus policy. Indeed, the Draft RFP essentially admits this point, stating in relevant part that the selection criteria are based "primarily" on the GNSO Council's Final Report.⁵

In particular, the relative criterion concerning support for non-English languages has no foundation in either the GNSO's Final Report or any other legitimate source. Further, while the GNSO requires a migration plan with absolute criteria related to security and stability, the Draft RFP includes that requirement with only relative criteria. In addition, while the GNSO's Final Report assigns the relative criteria at least an ordinal (though not defined) weight, the Draft RFP does not assign the relative criteria even these ranked weights. The origin or justification for these departures from the GNSO's final report is not disclosed.

2. The Draft RFP is not the product of a Consensus Policy.

⁴ See .net Registry Agreement Article 5.2.4 and 4.3; MOU Article V.C.4.

⁵ Draft RFP at 1.

Beyond discrepancies between the Draft RFP and the GNSO Final Report, the report itself does not represent a valid consensus policy. Annex A of ICANN's Bylaws, as amended, purports to prescribe the procedures by which the GNSO must conduct its policy development process ("PDP"). The Final Report and the actions of the .net subcommittee of the GNSO, as well as the actions of ICANN, have not complied with these and other applicable requirements. Among other failings, constituency statements were not received from all the constituencies as required. Further, the statements that were received were deficient.⁶

A significant number of other comments submitted during the policy development process were ignored by the GNSO. While the GNSO solicited public comments on the draft criteria, and in the Final Report attaches as Annex 4 such comments, the GNSO did not sufficiently consider or account for the comments submitted. For example, virtually all of VeriSign's earlier comments and correspondence to ICANN and the GNSO were ignored. In order to make the process meaningful, comments must be considered and feedback provided on which comments were accepted and rejected and the rationale behind such actions.⁷

3. The Draft RFP does not define a process through which potential participants, prior to the submission of proposals, can challenge the technical specification, the selection criteria and subfactors, the relative weighting of those criteria or subfactors, and the evaluation process.

ICANN has not provided a process for a prospective bidder to protest, prior to the submission of a proposal, the form or contents of the Draft RFP. Instead, ICANN requires a prospective bidder to prepare a bid, including the payment of the \$200,000 application fee, even though the bidder is unable to intelligently evaluate whether it is in the bidder's best interest to submit a proposal or how the bidder should develop its proposal if it decides to submit one. The lack of procedural safeguards at this stage in the bidding process prejudices subsequent review of the impartiality of the designation.

4. ICANN has not ensured that the decision of each individual involved in the selection process is supported by documentation.

The Draft RFP requires the evaluators to submit a "final written report" in support of their rankings. It does not, however, specify that such reports show relative differences among

⁶ VeriSign listed, in previous letters, numerous specific instances in which the GNSO failed to comply with the policy development process.

⁷ Furthermore, a determination of the propriety of the GNSO recommendation as a Consensus Policy is not possible at this time given that ICANN has not yet established an Independent Review Panel required by Section 4.3.2 of the .net Registry Agreement and ICANN's Bylaws, to review any challenge by the .net registry operator to "Consensus Policies" established by the ICANN Board.

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proposals and their strengths, weaknesses, and risks in terms of the evaluation factors. It does not indicate whether evaluators are performing a comprehensive evaluation or if the factors are divided among evaluators. Moreover, without measurable criteria, these reports cannot objectively demonstrate the evaluations, show differences among proposals and their strengths, weaknesses, and risks in terms of the evaluation factors. Without a scoring methodology and without defined ways to objectively measure the evaluation factors, the decision process is necessarily and thoroughly subjective.

II. Specific Provisions of the Draft RFP

Set forth in the attached appendix are additional comments regarding specific provisions of the Draft RFP, organized according to the organizational headings contained in the Draft RFP.

I look forward to receiving your response. If you have any questions, please do not hesitate to contact me.

Sincerely,

/S/

Kevin C. Golden
Vice President, Associate General Counsel
VeriSign, Inc.

Cc: ICANN Comment Email Box (net-rfp-comments@icann.org)

Appendix

VeriSign Comments Regarding Specific Provisions of the Draft RFP

A. RFP INTRODUCTION

- The procedure for selecting the successor operator was not developed through an open and transparent process. Although ICANN provided “opportunities for public review and comment,” ICANN did not meaningfully incorporate the public review and comment into the Draft RFP, devaluing the provision of opportunities for comment.

Procedure: Finalization of RFP

- It is insufficient that the RFP selection criteria are based “primarily” on the GNSO’s Final Report. ICANN must base the Draft RFP on policies established as a result of a consensus of Internet stakeholders.
- The fact that “[s]ome relative criteria are closely related to, and differ only in a matter of degree from, some absolute criteria” confuses the absolute and relative criterion, affording ICANN the opportunity to apply the standards inequitably in violation of .net Registry Agreement Article 2.1.3.

Procedure: Evaluation and Reporting Period

- ICANN provides no information as to how it will select the “team of independent technical and business/ financial experts.” Neither does ICANN provide any assurances of the evaluators’ impartiality, nor provide bidders with an opportunity to object to the selection of the evaluators.
- There is no indication that objective standards will be used to inform or constrain the evaluators’ ranking of the relative criteria. This prejudices the bidders’ ability to bid intelligently and leaves the selection process susceptible to bias and subjectivity.
- ICANN has not specified how many days the bidders will have to respond to the written report prepared by evaluators. Bidders must be given sufficient time to prepare an appropriate response.
- ICANN has unreasonably limited, to a two weeks, the time allotted to the highest-ranking bidder to negotiate the terms of the registry agreement with ICANN. There are no safeguards guaranteeing that ICANN will negotiate reasonably with the highest-ranking bidder providing ICANN the unchecked ability to potentially block the best-qualified bidder by refusing to agree to reasonable terms.
- ICANN plans to post its “proposed form of agreement” only *after* the proposal submission period has closed. Accordingly, bidders will not be aware of the terms of the

contract on which they are bidding until after they have borne the costs of preparing the proposal and paid the substantial application fee. By withholding the terms of the contract until after bidders have submitted their proposals and paid the required fees, ICANN denies bidders the opportunity to make an informed evaluation as to whether it makes economic business sense to submit a proposal and/or how to structure it.

Procedure: Consideration by the ICANN Board

- The ICANN Board is not bound by the evaluators' determination of the highest-ranked bidder. Instead, the highest-ranked bidder is given two weeks to agree to terms developed by ICANN, which are made available only after the proposal submission has ended. In the event that ICANN is unable to reach agreeable terms with the highest-ranked and best qualified bidder within this limited time period, ICANN intends to award the contract to the second, or ostensibly the third or fourth ranked bidder, regardless of the bidder's inferior qualifications. This diminishes the criteria purportedly deemed paramount to the selection of the successor registry operator, and it wholly undermines the integrity of the re-bid process. Most importantly, the procedure strategically developed by ICANN threatens the stability of the Internet in clear violation of the MOU, the .net Registry Agreement, and sound public policy.

Procedure: Probity and Conflict of Interest

- While the bidders are rightly precluded from contacting members of the "independent" evaluation panel, there is no equivalent guarantee that members of the evaluation panel will not themselves contact bidders and engage in discussions with those bidders. Nor is there an apparent prohibition against this mode of communication. Procurement law is replete with instances where the contracting party improperly engages in unilateral discussions with a pre-selected bidder with the intent and effect of ensuring that the pre-selected entity is the "successful" bidder. That ICANN does not specifically prohibit this foreseeable danger or provide procedural safeguards to prevent it is particularly worrisome since the Draft RFP purports to require bidders to release ICANN from all liability resulting from defects or improprieties in the re-bid process.

Procedure: Criteria for Selection of Independent Evaluators

- Through this provision, ICANN has attempted to reserve for itself discretion to designate any evaluators it so chooses. Those evaluators, in turn, would enjoy unchecked discretion to rank the bidders utilizing an undisclosed method or no method at all. This procedure is inimical to an open and transparent re-bid process. The manner of selecting evaluators as well as the identities and background qualifications of those evaluators should be subject to public scrutiny. ICANN's statements that it will properly select evaluators are insufficient and do not transform this selection process into one that is "open and transparent."

- ICANN asserts that it will evaluate the professional backgrounds of the potential panelists in order to “identify any conflicts of interest” that would prevent them from making an objective evaluation of the proposals. In addition to not making this information publicly available, ICANN fails to identify what constitutes a potential “conflict.” It is not clear, for instance, whether inherent biases, such as, for example, a preference for a nonprofit registry operator, would constitute a potential “conflict” sufficient to preclude a particular candidate from becoming an evaluator. It is also unclear whether ICANN will select only third-party evaluators in order to promote a fair and independent process and to avoid what ICANN’s president has conceded may otherwise be perceptions of possible bias or impropriety on the part of ICANN.

B. RFP Part 2: Technical and Financial Information

Equivalent Access for Registrars

- ICANN states that the support of additional languages, other than English, will be considered as a relative criterion, but it does not indicate whether all other languages will be weighed equally or whether some particular languages will be deemed more valuable than others. Thus, a bidder is not informed, for instance, as to whether the provision of services in Chinese languages might be deemed superior to the provision of services in Russian, or whether all languages other than English are weighted equally. The lack of clear and objective criteria sets the stage for after-the-fact justifications for the panel’s selection and deprives the bidders of a common standard by which they will be judged, thereby vitiating transparency and openness.

Registry Operations

- The Draft RFP is vague as to how the provision of additional registry services will be ranked. ICANN or the evaluators may have preferences for certain services not known to the bidders; this possibility also undermines the openness and transparency of the bidding process. A bidder may be capable of and amenable to providing a particular service but without the benefit of knowing how additional registry services will be scored, bidders are unable to bid intelligently, and ICANN and the evaluators are able to exercise favoritism in the selection process with impunity.
- The Draft RFP does not require bidders to *demonstrate* their ability “to manage domain name or similar databases at the required scale” as required, for example, by the Article 5.2.4 of the .net registry agreement. The Draft RFP merely requires bidders to subjectively describe their business operations. In an attempt to win a bid, performance can be subjectively described without any *demonstration* of real performance as is required by the .net Agreement. The lack of verification of bidders’ ability to fully satisfy objective requirements through further investigation and testing additionally limits the openness, transparency and accountability of the decision-making process and risks the stability of the Internet.

Financial Strength and Stability

- The Draft RFP gives no indication of how the financial strength and stability of each bidder will be gauged. Nor does the Draft RFP make any attempt to define ICANN's minimum requirements for financial strength and stability. As a result, evaluators are left to apply subjective, possibly inconsistent, measures.
- The financial disclosure requirements must give due consideration to the legal constraints on public companies to maintain the confidentiality of certain non-public information.

Technical Competence

- The Draft RFP fails to provide any meaningful guidance to bidders as to how the criteria relating to their technical competence will be rated, nor does it provide any assurance that bidders' representations about their technical capabilities will be verified by ICANN. Section 5.2.4 of the .net Agreement requires ICANN to select a successor registry operator based on the "*demonstrated* ability of the party to manage domain name or similar databases at the required scale."
- The Draft RFP states that bidders "should include [their] own proposed version of appendices C, D, E, O, P, Q, and R based on the current .net registry agreement," but it does not state whether the proposed appendices will be used as evaluation factors. In addition, while the Draft RFP lists nineteen subfactors in connection with the "technical plan and capabilities," the relative importance of these subfactors is not stated. There is, therefore, no basis for a meaningful comparison or evaluation among the proposals. Thus, the list of subfactors creates a substantial risk of favoritism, including by enabling ICANN or the evaluators to determine the relative importance of the subfactors after the fact.
- Similarly, the Draft RFP does not define "thick" and "thin" registry models and does not specify the bases for comparing the relative strengths, weaknesses and risks of these models.

Security and Stability

- Although the security and stability of the Internet must be ICANN's paramount concern, ICANN has failed to establish a bare minimum standard for security and stability and has instead conflated the absolute and relative criteria in this critical arena providing no measurable standard by which bids can be evaluated. Indeed, the Draft RFP establishes that bidders must insure a "very high" level of security and stability as an absolute criterion. The ability and commitment to provide "even higher" levels of security and stability is a relative criterion. "Very high" and "even higher" are not articulable standards, and they fail to provide proper benchmark levels of security for the operation of a critical Internet registry.

- Notwithstanding the importance of a registry operator's geographic footprint, the absolute criteria fail to require a commitment to geographic diversity of infrastructure or minimum requirements for the number of active locations and hot stand-bys.
- Neither the absolute nor relative criteria in this section address overall architecture design. Consequently, there are no standards or requirements for evaluators to assess the end-to-end stability or soundness of a registry operator's systems.

Additional Relative Criteria

- The additional relative criteria are wholly vague and uncertain, providing no guidance to evaluators or bidders, including as to whether the standards are weighted equally or whether ICANN attributes greater value to one standard over another. This failure alone undermines the integrity of the bidding process.
- The first relative criterion listed in this section, "the degree to which the applicant's proposal promotes competition in the registration of domain names," could be used to disadvantage VeriSign unless evaluators are given a precise definition of "promoting competition" that would prevent them from applying a definition that would disadvantage VeriSign. In the context of this bid, the lack of definition of this factor is misleading to the evaluators and others.

Transition Plan

- ICANN has neither specified whether the referenced transition plan is an "absolute" or "relative" criterion nor attempted to identify criteria by which to evaluate proposed plans for transitioning the registry function from the current facilities. Instead, the Draft RFP requires bidders to submit "proposed criteria for the evaluation of the success of the transition." ICANN is required to determine, as a preliminary matter, the pertinent evaluation criteria in order to provide bidders with a common standard so that they can intelligently prepare their proposals. ICANN's failure to identify standards that would ensure a seamless transition of the Internet's most important registry threatens the stability of the Internet in the event that someone other than VeriSign is selected as the successor registry operator.

C. RFP Checklist

- The Checklist includes a catch-all provision that requires bidders to grant ICANN the unlimited ability to access additional "documentation or other information" or to take *any other steps* that "in ICANN's *sole judgment*, *may* be pertinent to [the] application." This provision allows ICANN the ability to consider information beyond the scope of the standards articulated throughout the Draft RFP in the event that ICANN, in its sole judgment thinks additional information *may* be pertinent. In addition, there is no requirement that ICANN exercise this plenary power on an equal basis; thus, ICANN can perform a rigorous investigation of one or more bidders while seeking no additional

information from others. This provision is anathema to an open and transparent competitive process in that it forces bidders to cede to ICANN unbridled discretion in the selection process irrespective of the standards articulated in the Draft RFP.

This provision also threatens to compromise the confidentiality, objectivity and integrity of the evaluation process by permitting ICANN to engage in communications with a bidder that would give that bidder a competitive edge. Discussions should be conducted in a way that scrupulously avoids disclosure of the relative strengths and weaknesses of competing bidders, technical information or ideas, or pricing data from any bidder's proposal. Moreover, to ensure the fairness of the process, ICANN should not communicate such competitively sensitive information to the public or anyone within ICANN not having a legitimate need to know. These concerns are especially pronounced because ICANN has not committed to maintaining the confidentiality of bidders' proprietary information.

- The Checklist improperly requires bidders to release ICANN from claims arising from ICANN's improper consideration of proposals. ICANN must be fully accountable for evaluating proposals in accordance with its stated criteria through, among other things, an appropriate independent review of its decision. ICANN's attempt to remove the ability to contest the selection process is a clear violation of Article 5.2.5 of the .net Registry Agreement as well as public policy.