



**Comment on
ICANN Use of Proceeds from
New gTLD Auctions**

Status: FINAL
Version: 4
7-Nov-2015

Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC) to the Preliminary Issue Report on New gTLD Subsequent Procedures¹. The BC's comments arise from its members' perspective as Business users and registrants, as defined in our Charter²:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

On 08-Sep-2015, ICANN's *New gTLD Auction Proceeds Discussion Paper*³ was posted for public comment. This comment embodies principles that the BC believes should be adhered to by any working group established to develop a framework for the consideration of disbursement of gTLD "last resort" auction funds for appropriate projects and purposes.

BC Comments

The BC appreciates this opportunity to provide comments on the use of more than \$58 million in new gTLD auction proceeds held by ICANN, noting that the final total may be higher by the end of the first round of new gTLD program delegations.

The purpose of this exercise, as the BC understands it, is

- to capture the information and input on this topic to date;
- to outline potential questions and issues; and
- to allow for additional input before this paper is submitted to the WG charter drafting team.

At this point in the consideration of how to use these auction proceeds, the BC has a greater interest in the principles guiding the charter drafting team and subsequent working group than in any particular outcome regarding specific uses of the proceeds. As such, we would like to contribute to the development of principles for the ultimate entity that will be making decisions about use of the funds, and for the chartering group.

The BC believes that the development of guiding principles should be the focus of both the drafting team and the working group, and that the guiding principles should be consistent with with ICANN's Mission Statement and its limited remit. We note that ICANN's Mission and bylaws may be revised as a component of the Enhancing ICANN Accountability process. Given the potential for revisions to ICANN's Mission Statement, we believe that the completion of any Policy Development Process regarding the use of auction funds should be deferred until Mission Statement revisions are finalized. The scope of ICANN's defined Mission will be a critical matter to guide funds disbursement.

¹ <https://www.icann.org/public-comments/new-gtld-subsequent-prelim-2015-08-31-en>

² Business Constituency Charter, at <http://www.bizconst.org/charter.htm>.

³ <http://gnso.icann.org/en/issues/new-gtlds/subsequent-procedures-prelim-issue-31aug15-en.pdf>

Additionally, the BC recommends that the group developing principles for disbursement:

1. be chartered to develop standards or best practices rather than to identify potential projects or beneficiaries to which funds should be allocated
2. give prominent consideration to ICANN's legal status as a nonprofit and its paramount need to maintain that status
3. somewhat greater weight should be accorded to the views of the GNSO given the fact that the auction proceeds arose from a new gTLD process developed by the GNSO
4. specifically designate the ICANN Board as a stakeholder whose views should be accorded serious consideration
5. ensure the participation of the broader global Internet community and consideration of its ideas and suggestions through one or more public comment periods soliciting feedback on the CCWG's preliminary work product
6. ensure that no party in the WG—whether SO, AC, or Board—should have any final control over the disbursement of auction funds
7. define beneficiaries and purposes that are not allowed, such as ICANN general operations; and establish a working definition of “conflict of interest” that negates potential favoritism toward ICANN insiders while recognizing that worthy project ideas may be submitted by individuals and entities with a history of ICANN involvement
8. have substantial consensus support for its draft
9. ignore project-specific proposals; and alert proposers that such ideas will be considered, after the working group concludes its activity, by the funds allocation group to be established as a result of the CCWG's efforts
10. stress test its final recommendations against any actual conflict of interest or appearance thereof, by giving the funds allocation group final decision-making authority
11. eliminate opportunities for self-dealing by any individual or group within or related to ICANN, including consideration of ensuring that the funds allocation group is composed solely of individuals who are aware of ICANN's mission and of the global public interest of Internet users but who have no present direct contractual or other business relationship with ICANN
12. set benchmarks regarding efficiency of fund usage and avoidance of wasteful expenditures, including excessive administrative costs

For the group allocating auction proceeds, the BC supports adherence to the following principles. The BC recommends that the body:

1. be charged with determining how the money should be allocated
2. serve as a fully independent panel of evaluators
3. operate independent of ICANN, with such independence maintained through rigorous controls or structural means
4. understand that it and its members must be competent, knowledgeable, and of well-regarded reputation and above reproach
5. understand that ICANN's continuing status as a nonprofit may be reliant on its independence
6. be composed of members with circumscribed interest in, or affiliation with, ICANN outside of this funds allocation group role
7. ensure members are paid for their time and/or expenses
8. focus on the requirement that it be a single-purpose entity that strives to eliminate any actual or perceived conflicts of interest
9. deliberate as to whether the ICANN Board should have any role in determining the allocation of the proceeds and management of the funds
10. be composed of at least five, but no more than nine members

Regarding the approach to determining use of the proceeds, we suggest that the drafting team first consider the preferred time framework for ultimate allocation of the auction proceeds.

For example, based upon potential project proposals, it is possible that the entire amount of approximately \$60 million could be expended in a single round for one or more one-time initiatives. Following disbursement, the allocation group could disband. In that scenario, some consideration must also be given to monitoring to ensure that the funds are actually used for the purposes for which they were disbursed and to evaluate funded project results against stated objectives.

Or, it may be decided that the base funds should be preserved for multiple years, with awards of funds distributed year after year. In that instance funds allocation group would operate as an ongoing entity. The multi-year approach would necessitate the establishment of investment guidelines (e.g., placement of the base funds in low-risk, investment-grade securities), procedures for limiting the terms and replacement of allocation group participants; and determination as to whether previously funded projects can reapply for new contributions, especially if they have produced demonstrably positive results.

Likewise, the CCWG may determine that auction proceeds be used to fund a single project each year, with a cap on annual expenditures (e.g., \$5million per year). This is a sole project variant of the multi-year model.

Adequate transparency regarding the investment and disbursement of funds should be accomplished through regular public reporting, regardless of whether it is decided that the fund is preserved over multiple years as a source of project funding.

Phil Corwin and Angie Graves led drafting of these comments, with edits by Aparna Sridhar and Steve DelBianco. These comments were approved in accordance with the BC Charter.