

DOC5. NEUSTAR'S RESPONSE TO THE EVALUATION OF PROCEDURAL CRITERIA BY THE ICANN GENERAL COUNSEL

The General Counsel's report (the "Report") is intended to address how proposals meet the procedural criteria. NeuStar is concerned, however, that, in the Report, the importance of these criteria to the overall selection process is underestimated and that the analysis of each does not adequately reflect their importance to the successful and stable ongoing operation of the .org registry. NeuStar is specifically concerned that:

- **Criterion 2**—The report is entirely conclusory with respect to the ability of ISOC's unformed entity—Public Interest Registry (PIR)—to comply with ICANN-developed policies;
- **Criterion 3**—The report too narrowly focused its evaluation of competition on relationships with the incumbent operator;
- **Criterion 10**—The report does not adequately evaluate the consequence of a bidder not obtaining the VeriSign endowment; and
- **Criterion 11**—The report does not assess or take into account Gartner's evaluation of Criterion 11.

NeuStar response table

Error	Reference	ICANN staff required action
5.1 The Report's conclusion that the ISOC proposal satisfies Criterion 2 is not supported.	Procedural evaluation, criterion 2	Reconsider the assessment of ISOC's ability to comply with ICANN policies.
5.2 The analysis of the enhancement of competition for registration services is too narrow.	Procedural evaluation, criterion 4	Broaden the review of the evaluation to include the business model, the registration price, and financial stability.
5.3 The Report does not adequately assess the potential consequences of failure to obtain the VeriSign endowment.	Procedural evaluation, criterion 10	Discount applicants who are reliant upon the VeriSign endowment to fund their registry services.
5.4 The Report does not assess Gartner's evaluation of Criterion 11.	Procedural evaluation, criterion 11	Include criterion 11 in the procedural evaluation.

5.1 The Report's conclusion that the ISOC proposal satisfies Criterion 2 is not supported.

As a globally open TLD, the operation of the .org registry must comply with policies defined through ICANN processes, such as policies regarding registrar accreditation, shared registry access, the uniform dispute resolution policy, and access to registration contact data via Whois. Consideration will be given to the adequacy of mechanisms proposed for ensuring compliance with those policies.

With respect to Criterion 2, the Report states that “if the selected bidder does not meet the requirements of that criterion, its proposal would need to be rejected and attention turned to the next highest-ranking proposal.” In the evaluation under the criterion, however, the Report simply notes that it is sufficient that the new registry operator operate under a TLD agreement with ICANN and that the back-end registry provider has proven its ability to provide equal access in the past. For those applicants with existing registry operators, this analysis, NeuStar agrees, is likely sufficient. It is insufficient, however, with respect to ISOC.

The ISOC bid identifies the PIR as the entity that will actually sign an agreement with ICANN and will be responsible for the operation of .org. Unfortunately, PIR does not yet exist and ISOC maintains that it will be run entirely separately from ISOC. Although ISOC will not have any significant role in the registry, its proposal relied heavily on its own credentials and qualifications for its response to critical questions including the adequacy of its mechanisms for compliance with policy. Since ICANN states in its proposal that PIR, and not ISOC, will be responsible for Policy, there is no way for ICANN to accurately assess whether the entity will have mechanisms in place to ensure compliance. It is unclear even who the bidder is given that ISOC will have only a limited role in .org following formation of PIR. Therefore, the ISOC application cannot be measured against this criterion and ICANN Staff must reconsider their evaluation.

5.2 The analysis of the enhancement of competition for registration services is too narrow.

One of ICANN's core principles is the encouragement of competition in the provision of registration services at both the registry and registrar levels. Promotion of that principle will be a criterion. As one illustration of this criterion, a major purpose of the reassignment of the .org registry is to diversify the provision of registry services by placing the .org registry under different operation than the .com and .net registries. Consideration will be given to the extent to which proposed arrangements are consistent with this purpose. As another illustration, applicants are encouraged to refrain from prohibiting non-affiliated providers of backend services from offering their services in connection with other applications.

NeuStar contends that the General Counsel's evaluation of this criterion was too narrow in scope and did not address other aspects of competition that extend above and beyond whether, and to what extent, the incumbent registry operator plays a role in the applicant's proposal. Further attention to other critical aspects of competition could seriously impact the overall recommendation.

Neutral, third-party business model

NeuStar contends that it is not merely a numerical ownership percentage of the incumbent registry operator that determines the competitiveness of a proposal, but that the overall business structure of the operator in large part determines how effective the registry operator will be in enhancing competition in the delivery of registry services. Thus, the business structure of each of the applicants is an important indicator of (i) its ability to deliver services in a fair and even-handed manner, (ii) ensuring diversification of the marketplace by separating registry and registrar activities, and (iii) guaranteeing focus on the intended user community.

When considering the top five technical candidates according to the Gartner Report—DotOrg Foundation, Global Name Registry, ISOC, NeuStar, and RegistryOrg—NeuStar is the *only* applicant that does not either operate as a registrar nor has any financial interest from VeriSign. Thus, only NeuStar can guarantee that the current .org registry operator will not be a part of the new management and that it will not operate as both a registry and registrar within the .org top-level domain.

The ISOC proposal in particular raises competitive concerns because of ISOC's reliance on a registry operator—Afilias—that is a consortium that is owned by a group of registrars who collectively control the majority share of the domain name market. Given that the registrar owners of Afilias will profit from the sale of .org domain names at both the registry and registrar level and the other 75+ ICANN-accredited registrars will not, this ownership model raises competitive issues in terms of relative pricing flexibility. A number of registrars submitted letters to ICANN expressing their preference and support for a neutral registry model such as NeuStar's for this very reason.

The report incorrectly makes no mention of the above or applied any consideration of how the business model of Afilias could potentially impact the competitive landscape compared to other competitive models offered by other applicants.

Registration price

NeuStar's business model—one in which NeuStar is directly responsible for all aspects of registry management—enables NeuStar to offer the lowest initial domain name registration price. Such a low price will no doubt benefit all members of the Internet and especially the noncommercial community. NeuStar believes that this factor should have been considered in the General Counsel's evaluation of competition and not disregarded simply because this was also partially addressed in the Gartner evaluation.

Financial stability

A registry operator cannot be successful nor enhance competition if it does not have the requisite financial resources to manage the top-level domain and pass on any cost-savings leveraged through economies of scale. Therefore, a more comprehensive review of each applicant's financial health should be considered to ensure that:

- The applicant has the ability to deliver the highest quality registry services;
- The applicant has the financial means to fund new, proposed services;
- The applicant can fulfill a long-term commitment to operating and funding the operation through the term of the proposed contract; and
- The applicant can support the proposed outreach efforts with the non-commercial community.

NeuStar believes that it has the financial strength and ability to fund all of the above activities in transitioning and administering the .org TLD¹. Moreover, unlike many of the other proposals, such financial strength does not rely at all on the VeriSign endowment.

5.3 The Report does not adequately assess the potential consequences of failure to obtain the VeriSign endowment.

To the extent that a proposal contemplates the availability of the VeriSign US\$5 million endowment (see [subsection 5.1.4 of the current .org Registry Agreement](#)), the proposal should demonstrate that it meets the qualification and use requirements of that endowment. Proposals that employ the endowment should also include detailed commitments about the uses to which the endowment would be put, and consideration will be given to the extent to which those uses are consistent with the smooth, stable transition and operation of the .org TLD for the benefit of current and future .org registrants.

NeuStar must reiterate the critical importance of selecting a financially stable registry operator for the .org TLD. The .org user community is highly dependant upon the continued operation and services of the TLD. Any action by ICANN or the selected operator that would endanger such operation would be irresponsible. Thus, to the extent that the VeriSign endowment is an important aspect of a bidder's proposal, any concern that the endowment will not be available cannot be minimized.

In the Report, the General Counsel notes that “[b]ecause several issues beyond ICANN’s control may effect the entitlement of a bidder to receive the entitlement as projected, steps should be taken to ensure that it is clear that bidders assume all risks of not receiving endowment funds.” Despite this warning, the report indicates that only two of the possible winning bidders would see a reduction in the attractiveness of their bids. This analysis fails to take into consideration, however, the fact that for every bid that relies upon the endowment, there would be an effect on the very aspects of their bids that serve as key differentiating factors and that they use to demonstrate service to the .org community. With respect to ISOC, the Report states that the effect of not obtaining the endowment will be “[s]omewhat slower introduction of new services (including no-cost and low-cost services)” and “diminished outreach activities intended to increase brand awareness.” This loss, however, eliminates the exact criterion ultimately used by the Staff to select the ISOC bid over NeuStar’s. Indeed, in scoring many of the applicants as they did, the various evaluators simply assumed receipt of the endowment. Nowhere are the potentially severe effects of unavailability of these funds adequately considered.

NeuStar submits that the only acceptable answer to the problem in the selection process is to significantly downgrade any application that cannot show that it can live up to its proposal in its entirety, even absent the endowment. Only four bidders can make this claim and, of those four, NeuStar has demonstrated the strongest technical and policy plans for .org. NeuStar’s proposal for operation, differentiation, and further development of the .org TLD, including enhanced outreach and the funding of a Global

¹ See http://www.icann.org/tlds/org/applications/neustar/images/C50_4FinancialBacking.pdf

Policy Council, will be fully funded by NeuStar. The availability of the endowment is irrelevant to NeuStar's capabilities and proposals with respect to .org.

The Preliminary Staff Report, based upon this Report by the General Counsel, would leave operation of .org, in the event the endowment funds are not available, to an organization with a lower technical score and no ability to pursue policy and outreach activities.² The risk of such an outcome is not acceptable. The Board would better serve the Internet community by selecting an operator that shows the strongest technical solution and the ability to succeed on the non-technical aspects of the proposal without resort to or reliance upon the additional \$5 million.

5.4 The report does not assess Gartner's evaluation of Criterion 11.

ICANN intends to place significant emphasis on the completeness of the proposals and the extent to which they demonstrate that the applicant has a thorough understanding of what is involved, has carefully thought through all relevant issues, has realistically assessed all requirements for implementing the proposal, has procured firm commitments for all necessary resources, and has formulated sound plans for executing the proposal. Applicants are strongly encouraged to retain well-qualified professional assistance (e.g., technical, engineering, financial, legal, marketing, and management professionals, as appropriate) in formulating their proposals. Proposals that are presented in a clear, substantive, detailed, and specific manner will be preferred.

Criterion 11 not only judges the completeness of the proposal but also the ability of the applicant to create a realistic solution and demonstrate the ability to deliver that solution. Therefore evaluation of the Criterion plays a significant role in determining the best applicant.

Criterion 11 was scored by Gartner but was not included in Gartner's process of ranking the applicants. It was intended to be used in the Procedural Evaluation, however it was not actually evaluated in that report, either. The only place Criterion 11 is used is to justify the Staff's selection of ISOC. Page 9 of 11 of the Preliminary Staff Recommendation states, "The ISOC proposal is also in the "A" category as evaluated by Gartner with respect to Criterion 11 addressing completeness of proposal and soundness of plans."

Criterion 11 is a critical criterion to the evaluation of the applicants since it measures the following critical elements of the proposal:

- "Completeness";
- Ability of the applicant to "understand what is involved";
- Whether the applicant has "thought through all of the relevant issues";

² The ISOC bid raises a question as to the eligibility of ISOC to receive the endowment. ISOC maintains that it will create a separate "arms-length" entity with separate staff and a separate board to run the .org registry. Indeed, ISOC states in its proposal that Afilias has committed to provide a \$250,000 line of credit for the operation of .org in the event that ISOC and that unformed entity do not have sufficient funding. Thus, given that Afilias, a for-profit company, is the only truly identifiable and qualified bidder under the ISOC bid, it is unclear whether the ISOC bid actually qualifies for the endowment.

- Has obtained “firm commitments for all of the necessary resources”; and
- Has “formulated sound plans for executing the proposal”.

In essence criterion 11 measures the credibility and the plan and the ability of the applicant to actually deliver on that plan. None of the evaluations, including the General Counsel Report, address this criterion, and apparently ICANN Staff gave no weight to this criterion in making their recommendation.

It should be noted that NeuStar received the highest rating of all applicants for this evaluation criteria (3.82) and was rated significantly higher than the ISOC (3.51). ICANN Staff must include a thorough evaluation of Criterion 11 and give it the appropriate weighting in the selection of the .org registry.