



CONFIDENTIAL & BUSINESS PROPRIETARY

Article #: 030050	Date: 16 December 2011
Article Name: Evaluation question #50: Funding for Critical Registry Functions	AGB Reference: Section 1.2.2, attachment to Module 2 – Evaluation Questions and Criteria
Version #: v02	Category: Supplemental Notes

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1. SUPPLEMENTAL NOTES:

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1.7 Funding for the COI may be in a currency other than U.S. Dollars so long as the funding is based on the projected costs submitted in 50(a).

1.8 The purpose of the Continuing Operations Instrument is to ensure continued operation of the critical registry functions. As such, the applicant cannot be the entity providing the instrument as this would negate the risk that the COI is meant to address.

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1.1 Applicants should ensure that the appropriate financial institution’s communication/contact information is readily available at the time of submission to enable confirmation of balances by ICANN. ICANN will confirm the information with the listed financial institution.

1.2 As stated in the Applicant Guidebook (Notes section of Question 50a) “the cost estimates are tied to the cost for a third party to provide the functions, not to the applicant’s actual in-house or subcontracting costs for provision of these functions.” Calculations for the COI should be based on the estimated Emergency Back-End Registry Operator (EBERO) cost to maintain the five critical registry functions for a period of up to three years, and not on the applicant’s expected cash out-flow for the critical registry functions calculated on line H of section IIb of the Projection Template.

ICANN is building a model for these costs in conjunction with potential EBERO service providers. ICANN hopes to be able to share guidelines for determining the appropriate amount for the COI with applicants soon. However, absent these guidelines, the applicant is still required to provide its own estimates and explanation for the calculation of the COI Question 50.

1.3 To receive on score of 3 on this question, the financial instrument must be in place and a copy of the executed agreement submitted with the application.



1.4 The applicant may combine funds required for performing the critical registry functions across a number of applied-for gTLDs as long as the LOC specifies the amount for each applied-for TLD being evaluated.

1.5 As Add commands are not typically processed by EBEROs, except under exceptional circumstances, the COI calculation should not take into account Add commands.

1.6 The following beneficiary statement may be used on a letter of credit:

“The purpose of the LOC and its basic requirements are set forth in Item 50(a) and 50(b) and the Notes thereto in Attachment to Module 2 on page A-40 - A-44 of the Applicant Guidebook available at <http://www.icann.org/en/topics/new-gtlds/rfp-clean-19sep11-en.pdf>. The LOC may be drawn upon by ICANN by notice to the issuer of the LOC in the event of a failure of a critical registry function as described in the foregoing sections of the Applicant Guidebook.”

2. BEST PRACTICE SUGGESTIONS:

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2.1 Applicants should read each evaluation question in its entirety, including the notes, criteria, and scoring text. The answer should address all criteria specified, and include detailed rationale demonstrating a thorough understanding of the criteria (i.e., show your work).

2.2 If acronyms are used, applicants should spell out the first instance, even if the acronyms represent a common term/product/service.

3. QUESTION TEXT:

- (a) Provide a cost estimate for funding critical registry functions on an annual basis, and a rationale for these cost estimates commensurate with the technical, operational, and financial approach described in the application.

The critical functions of a registry which must be supported even if an applicant’s business and/or funding fails are:

- (1) DNS resolution for registered domain names

Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.

- (2) Operation of the Shared Registration System

Applicants should consider ranges of volume of daily EPP transactions (e.g., 0-200K, 200K-2M, 2M+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.



(3) Provision of Whois service

Applicants should consider ranges of volume of daily Whois queries (e.g., 0-100K, 100k-1M, 1M+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics for both web-based and port-43 services.

(4) Registry data escrow deposits

Applicants should consider administration, retention, and transfer fees as well as daily deposit (e.g., full or incremental) handling. Costs may vary depending on the size of the files in escrow (i.e., the size of the registry database).

(5) Maintenance of a properly signed zone in accordance with DNSSEC requirements.

Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.

List the estimated annual cost for each of these functions (specify currency used).

A complete answer is expected to be no more than 10 pages.

(b) Applicants must provide evidence as to how the funds required for performing these critical registry functions will be available and guaranteed to fund registry operations (for the protection of registrants in the new gTLD) for a minimum of three years following the termination of the Registry Agreement. ICANN has identified two methods to fulfill this requirement:

- i. Irrevocable standby letter of credit (LOC) issued by a reputable financial institution.
 - The amount of the LOC must be equal to or greater than the amount required to fund the registry operations specified above for at least three years. In the event of a draw upon the letter of credit, the actual payout would be tied to the cost of running those functions.
 - The LOC must name ICANN or its designee as the beneficiary. Any funds paid out would be provided to the designee who is operating the required registry functions.
 - The LOC must have a term of at least five years from the delegation of the TLD. The LOC may be structured with an annual expiration date if it contains an evergreen provision providing for annual extensions, without amendment, for an indefinite number of periods until the issuing bank informs the beneficiary of its final expiration or until the beneficiary releases the LOC as evidenced in writing. If the expiration date occurs prior to the fifth anniversary of the delegation of the TLD, applicant will be required to obtain a replacement instrument.
 - The LOC must be issued by a reputable financial institution insured at the highest level in its jurisdiction. This may include a bank or insurance company with a strong international reputation that has a strong credit rating issued by a third party rating agency such as Standard & Poor's (AA or above), Moody's (Aa or above), or A.M. Best



(A-X or above). Documentation should indicate by whom the issuing institution is insured.

- The LOC will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee.
 - Applicant should attach an original copy of the executed letter of credit or a draft of the letter of credit containing the full terms and conditions. If not yet executed, the Applicant will be required to provide ICANN with an original copy of the executed LOC prior to or concurrent with the execution of the Registry Agreement.
 - The LOC must contain at least the following required elements:
 - Issuing bank and date of issue.
 - Beneficiary: ICANN / 4676 Admiralty Way, Suite 330 / Marina del Rey, CA 90292 / US, or its designee.
 - Applicant's complete name and address.
 - LOC identifying number.
 - Exact amount in USD.
 - Expiry date.
 - Address, procedure, and required forms whereby presentation for payment is to be made.
 - Conditions:
 - Partial drawings from the letter of credit may be made provided that such payment shall reduce the amount under the standby letter of credit.
 - All payments must be marked with the issuing bank name and the bank's standby letter of credit number.
 - LOC may not be modified, amended, or amplified by reference to any other document, agreement, or instrument.
 - The LOC is subject to the International Standby Practices (ISP 98) International Chamber of Commerce (Publication No. 590), or to an alternative standard that has been demonstrated to be reasonably equivalent.
- ii. A deposit into an irrevocable cash escrow account held by a reputable financial institution.
- The amount of the deposit must be equal to or greater than the amount required to fund registry operations for at least three years.
 - Cash is to be held by a third party financial institution which will not allow the funds to be commingled with the Applicant's operating funds or other funds and may only be accessed by ICANN or its designee if certain conditions are met.
 - The account must be held by a reputable financial institution insured at the highest level in its jurisdiction. This may include a bank or insurance company with a strong international reputation that has a strong credit rating issued by a third party rating agency such as Standard & Poor's (AA or above), Moody's (Aa or above), or A.M. Best (A-X or above). Documentation should indicate by whom the issuing institution is insured.



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- The escrow agreement relating to the escrow account will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee.
- The escrow agreement must have a term of five years from the delegation of the TLD.
- The funds in the deposit escrow account are not considered to be an asset of ICANN.
- Any interest earnings less bank fees are to accrue to the deposit, and will be paid back to the applicant upon liquidation of the account to the extent not used to pay the costs and expenses of maintaining the escrow.
- The deposit plus accrued interest, less any bank fees in respect of the escrow, is to be returned to the applicant if the funds are not used to fund registry functions due to a triggering event or after five years, whichever is greater.
- The Applicant will be required to provide ICANN an explanation as to the amount of the deposit, the institution that will hold the deposit, and the escrow agreement for the account at the time of submitting an application.
- Applicant should attach evidence of deposited funds in the escrow account, or evidence of provisional arrangement for deposit of funds. Evidence of deposited funds and terms of escrow agreement must be provided to ICANN prior to or concurrent with the execution of the Registry Agreement.

DISCLAIMER: This material is for information only and does not represent of all requirements and criteria that the applicant must satisfy. ICANN is not providing legal, financial, business or any other kind of advice. This material does not represent a modification to the Applicant Guidebook, or the terms and conditions to the new gTLD program. This material also does not represent a waiver of any ICANN policy, procedure or agreement. In the event that any information provided in this material appears to be inconsistent with any information published elsewhere by ICANN, please do not rely on this email without confirmation or clarification from ICANN.