

ICANN 30 JULY 2014 BOARD MEETING
Board Papers



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AGENDA – 28 OCTOBER 2014 BOARD MEETING – 90 minutes

Time, etc.	Agenda Item	Shepherd	Expected Action	Potential Conflict of Interest
Discussion & Decision 90 min	1. Main Agenda			
	1.a. ICANN 52 Location	Fadi Chehadé	For Decision	
	Item Removed From Agenda			
	1.c. GAC Secretariat Support	Cherine Chalaby	For Decision	
	1.d. AOB			

**Pages 3/34 - 18/34 Redacted
Privileged and Confidential
Confidential Negotiation Information**

**Pages 19/34 - 24/24 Redacted
Item Removed from Agenda**

ICANN BOARD PAPER NO. 2014.10.28.1c

TITLE: **Approval of Agreement with Australian Continuous Improvement Group Pty Ltd. for Secretariat Support to the GAC**

PROPOSED ACTION: **For Resolution**

EXECUTIVE SUMMARY:

Australian Continuous Improvement Group Pty Ltd. (ACIG) is a consulting firm that has provided secretariat support to the Governmental Advisory Committee (GAC). To date such support has been provided pursuant to temporary short-term interim agreements. ACIG is now seeking to finalize a longer-term (approximately 3 year) engagement. The temporary short-term agreements to date have not required Board approval; however, the longer-term engagement now under consideration would likely exceed the US\$500,000.00 contracting and disbursement limits of the current Disbursement Policy and would therefore require Board approval. The GAC has secured the informal commitment of some donor country GAC members to reimburse ICANN for any disbursements ICANN makes, and thus far the donor countries have been reimbursing ICANN. The BFC recommends that if the Board determines that it is appropriate to enter into the agreement with ACIG, the contract(s) be subject to confirmation that such payments and reimbursements comply with requirements of the Office of Foreign Assets Control (OFAC), the Foreign Corrupt Practices Act (FCPA), and other applicable laws and regulations focused on compliance with anti-corruption and government imposed economic sanctions. The interim agreement currently in place must be terminated by ICANN on or before November 6, 2014 or it automatically rolls into a term expiring in 2017, and the longer-term commitment would require Board approval.

DETAIL:

The GAC is not a legal entity, so the contracts with ACIG have been entered into with ICANN. The GAC has secured the informal commitment of some donor country GAC members to reimburse ICANN for any disbursements ICANN makes. The commitments by the donor countries are not embodied in a formal agreement, but to date all disbursements by ICANN have been timely reimbursed by the donor countries. The donor countries have established a not-for-profit association Switzerland, the GAC Secretariat Funding Association, to provide the funding under this agreement. The founding members of the GAC Secretariat Funding Association are Brazil, Norway and Switzerland. ICANN is informed that the donor countries generally intend to provide funding on an annual basis and that they and the GAC Secretariat Funding Association that they have formed are prepared to provide such information and take such actions as may be required to ensure that such payments and reimbursements comply with requirements of the Office of Foreign Assets Control (OFAC), the Foreign Corrupt Practices Act (FCPA), and other applicable laws and regulations focused on compliance with anti-corruption and government imposed economic sanctions.

ICANN did not follow its usual Procurement Guidelines or issue RFQs or RFPs in connection with this engagement, because the GAC did not want ICANN to control the engagement or be responsible for choosing the vendor, and because it was anticipated that the donor countries would assume financial responsibility for the agreement. However, the GAC prepared a request for proposals and selected the vendor in a competitive bidding process. The GAC negotiated the key economic and business terms of the arrangement, and ICANN's role was to provide administrative support in assisting the GAC chair in negotiating and documenting an agreement with the vendor.

ACIG provides general secretariat assistance for the GAC. Activities include: maintaining a calendar of events, timelines and deadlines and informing the GAC Chair, Vice Chairs and members of upcoming events in timely manner; maintaining a GAC work plan to include GAC work streams and relevant deadlines; in conjunction with ICANN support staff maintaining a register of

correspondence and advice to the Board of ICANN; working with ICANN on support issues such as translation of GAC documents; working with ICANN staff to disseminate information on GAC activities to external stakeholders including ICANN constituencies and staff, business and other nongovernment stakeholders; providing content management of the GAC website and information for uploading; providing a briefing paper outlining recommendations and best practices to make use of the GAC website as a collaborative and functional tool; preparing and distributing agendas, briefing and summary papers and other materials to support formal GAC meetings; drafting issue papers containing background information and identifying potential public policy considerations and, if known, the positions of other constituencies in ICANN; keeping GAC members informed of relevant issues raised during meetings; preparing minutes and meeting communiqués; and managing processes and procedures to support these activities.

The key terms of the long-term agreement are:

Confidential Business Information

Unless earlier terminated, the agreement would remain in effect until shortly after the second ICANN meeting of 2017.

In the first year, ACIG will bill ICANN in five 20% installments. Thereafter, ACIG will bill ICANN quarterly. ICANN expects that the donor countries will reimburse ICANN for all disbursements to ACIG through the GAC Secretariat Funding Association.

Risk under the agreement is mitigated by ICANN's having the right to terminate the agreement on ten days notice if termination is necessary to ICANN's overall business needs. For example, should the donor countries not provide reimbursement of ICANN disbursements, ICANN could elect to terminate the agreement. This termination right effectively operates to limit ICANN's exposure to one or two quarters of disbursements; if ICANN invoices the donor countries for one quarter of disbursements and the donor countries for any unforeseen reason do not provide reimbursement, ICANN could elect to terminate the agreement and only be liable for fees incurred prior to the date of termination.

The Board is being asked to authorize the CEO to enter into all required contracts and make all required disbursements to ACIG, subject to regular reporting requirements on actual spending amounts. Provided the donor countries continue to reimburse ICANN for all disbursements, there would be no budgetary impact on ICANN. Confidential Business Information

RECOMMENDATION:

The BFC has recommended that if the Board determines that it is appropriate to enter into the agreement with ACIG, the Board authorize the CEO or his designee, to enter all required contracts with, and make all required disbursements to, ACIG, and accept reimbursement for these disbursements from the donor countries, subject to confirmation that such payments and reimbursements comply with requirements of the Office of Foreign Assets Control (OFAC), the Foreign Corrupt Practices Act (FCPA), and other applicable laws and regulations focused on compliance with anti-corruption and government imposed economic sanctions. In light of the fact there is no formal agreement with the donor countries or the GAC Secretariat Funding Association to provide funding for a three year term, Staff further recommends that the contract be modified to provide for a one year term, with ICANN having the right to extend the term of the agreement for additional successive one year terms¹ with at least 90 days written notice prior to the expiration of the then current term.

PROPOSED RESOLUTION:

Whereas, Australian Continuous Improvement Group Pty Ltd. (ACIG) is a consulting firm that has provided secretariat support to the GAC pursuant to temporary short-term interim agreements.

Whereas, ACIG and ICANN desire to finalize a longer-term engagement.

Whereas, the temporary short-term agreements to date have not required Board approval; however, the longer-term engagement now under consideration would likely exceed the US\$500,000.00 contracting and disbursement limits of the current Disbursement Policy

¹ The initial one year term would run from November 7, 2014 until shortly after the third ICANN meeting in calendar year 2015. If extended, the first extended term would run for one year, from shortly after the third ICANN meeting in calendar year 2015 until shortly after the third ICANN meeting in calendar year 2016. The final extended term (if extended), would run for less than one year, from shortly after the third ICANN meeting in calendar year 2016 until shortly after the second ICANN meeting in calendar year 2017).

and would therefore require Board approval.

Whereas, the GAC has secured the informal commitment of certain donor country GAC members to reimburse ICANN for any disbursements ICANN makes under the proposed agreement and the donor countries have established a not-for-profit association in Switzerland, the GAC Secretariat Funding Association, to provide the funding under this agreement.

Whereas, the recommended ACIG agreement shall provide for a one-year term, with ICANN having the right to extend the term of the agreement for an additional successive one-year term, and a second successive term to expire at or around 31 July 2017, upon at least 90-days written notice prior to the expiration of the then current term, with total disbursements during any one-year period not to exceed US\$900,000.

Resolved (2014.10.28.xx), the Board authorizes the President and CEO, or his designee(s), to take all actions to enter into the required contracts with, and make all required disbursements to, ACIG, and accept reimbursement for these disbursements from the donor countries, subject to confirmation that such payments and reimbursements comply with requirements of the Office of Foreign Assets Control (OFAC), the Foreign Corrupt Practices Act (FCPA), and other applicable laws and regulations focused on compliance with anti-corruption and government imposed economic sanctions.

PROPOSED RATIONALE

Secretariat support services for GAC activities are important to ensure that the GAC is able to fulfill its role of providing advice to ICANN on issues of public policy, and especially where there may be an interaction between ICANN's activities or policies and national laws or international agreements. The GAC and its Chair and Vice Chairs require considerable secretariat support in connection with their activities in support of ICANN. To date such support has been provided pursuant to temporary short-term interim agreements with Australian Continuous Improvement Group Pty Ltd. (ACIG).

The GAC and ICANN wish to provide for longer-term secretariat support for the GAC.

Because the GAC is not a legal entity with an established budget, a mechanism needs to be established for engaging a consulting group to provide such services to the GAC. ICANN's Disbursement Policy limits ICANN officers from contracting for or disbursing more than US \$500,000.00 per obligation. Fees payable to ACIG could exceed the contracting and disbursement limits of the Disbursement Policy.

Accordingly, to ensure that the GAC receives secretariat support services, the Board is therefore authorizing the President and CEO to enter into all required contracts and make all required disbursements, with ACIG, with the understanding that disbursements under the proposed contracts are anticipated to be reimbursed by one or more donor countries. The GAC has secured the informal commitment of certain donor country GAC members to reimburse ICANN for any disbursements ICANN makes under the proposed agreement and the donor countries have established a not-for-profit association in Switzerland, the GAC Secretariat Funding Association, to provide the funding under this agreement. The Board's action will have a positive impact on the community because it supports the important role that the GAC plays in providing advice to ICANN on issues of public policy.

Although ICANN did not follow its usual Procurement Guidelines or issue RFQs or RFPs in connection with this engagement, the GAC prepared a request for proposals and selected the vendor in a competitive bidding process and finds the proposed contract to be a viable, cost-effective solution. The process for selection of this vendor does not call for public consultation as the GAC's assessment of the suitability of the vendor is the primary consideration.

If the donor countries reimburse ICANN in full for all expenditures under the agreement, there will be no financial impact on ICANN to enter into the agreement. If the donor countries fail to reimburse ICANN in full for all expenditures, ICANN could be responsible for payment of as much as US\$900,000 per year under the agreement, but financial exposure and risk is mitigated by ICANN's having the right to terminate the agreement on ten days notice if termination is necessary to ICANN's overall business needs.

There is no impact on the security or the stability of the DNS due to the engagement of ACIG to provide GAC secretariat support.

This is an Organizational Administrative function that does not require public comment.

Submitted by: Xavier J. Calvez

Position: Chief Financial Officer

Date Noted: 27 October 2014

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Directors and Liaisons,

Attached below please find the Notice of date and time for a Special Meeting of the ICANN Board of Directors:

28 October 2014 – Special Meeting of the ICANN Board of Directors - at 21:00 UTC – This Board meeting is estimated to last 90 minutes.

<http://www.timeanddate.com/worldclock/fixedit.html?msg=Special+Meeting+of+the+ICANN+Board&iso=20141028T14&p1=137&ah=1&am=30>

Some other time zones:

28 October 2014 – 2:00pm PDT Los Angeles

28 October 2014 – 5:00pm EDT Washington, D.C.

28 October 2014 – 10:00pm CET Brussels

29 October 2014 – 8:00am AEDT Sydney

29 October 2014 – 5:00am CST Taipei

Main Agenda

- 1. ICANN 52 Location (for decision)**
- 2. NETmundial Informational Briefing**
- 3. GAC Secretariat Support (for decision)**
- 4. AOB**

MATERIALS -- [Once materials are available, you can find them here on BoardVantage](#)

If you have trouble with access, please let us know and we will work with you to assure that you can use the BoardVantage Portal for this meeting.

If call information is required, it will be distributed separately

If you have any questions, or we can be of assistance to you, please let us know.

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