
ICANN's General Practices for Vendor Non-Disclosure Agreements and Confidentiality Obligations

When exploring relationships with potential vendors, ICANN does not agree as a matter of course to hold a potential vendor's information as confidential. If a potential vendor needs to share their own confidential information with ICANN during the exploration stage and requests ICANN to agree to a non-disclosure agreement (NDA) to hold that information as confidential, ICANN evaluates such a request in order to make sure that there is a legitimate business need for ICANN to make that commitment. NDAs to hold a potential vendors' information as confidential are entered into deliberately only after internal evaluation and approval, and not as a routine matter.

Once ICANN enters into a vendor relationship, many of ICANN's vendor agreements also include confidentiality clauses through which the parties to the contract have the ability to identify materials that the other party is bound to hold as confidential and protect against inadvertent disclosure. The use of confidentiality clauses is a normal business practice. Vendors would likely be unwilling to contract with ICANN at all, or alternatively demand a much higher fee, if they were required to expose all business practices, pricing and trade secrets as a condition of performing work for ICANN knowing that such information might be shared by ICANN with third parties upon request. To that end, ICANN's ability to offer vendors the protection of confidentiality clauses is key to supporting ICANN's ability to contract, at favorable prices, with the vendors identified as best working with ICANN to support its mission.

Though confidentiality clauses are used regularly, ICANN's relationships with its vendors are informed by ICANN's commitment to transparency because of the public nature of ICANN's work. ICANN has in the past, and will continue, to specify in appropriate situations that ICANN will make certain contractual deliverables public, such as reports that might otherwise typically be provided for an organization's internal use. When ICANN receives a request for disclosure of information under ICANN's Documentary Information Disclosure Policy, if such information is subject to a confidentiality clause within a vendor agreement, ICANN typically reaches out to the vendor to see if disclosure (in full or in part) can be arranged. Finally, in light of ICANN's commitment to publish more information on vendors receiving over a certain aggregate dollar amount from ICANN over an annual period, ICANN updated its contracting practices in order to request that vendors explicitly authorize such a publication without their further approval. ICANN will continue to innovate its agreements and practices on confidentiality where appropriate.