

Reconsideration Request Form

Version as of 21 September 2018

ICANN's Board Accountability Mechanisms Committee (BAMC) is responsible for receiving requests for reconsideration (Reconsideration Request) from any person or entity that has been adversely affected by the following:

- (a) One or more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);
- (b) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or
- (c) One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or Staff's reliance on false or inaccurate relevant information.

The person or entity submitting such a Reconsideration Request is referred to as the Requestor.

Note: This is a brief summary of the relevant Bylaws provisions. For more information about ICANN's reconsideration process, please refer to [Article 4, Section 4.2 of the ICANN Bylaws](#) and the Reconsideration Website at <https://www.icann.org/resources/pages/accountability/reconsideration-en>.

This form is provided to assist a Requestor in submitting a Reconsideration Request, and identifies all required information needed for a complete Reconsideration Request. This template includes terms and conditions that shall be signed prior to submission of the Reconsideration Request.

Requestors may submit all facts necessary to demonstrate why the action/inaction should be reconsidered. However, argument shall be limited to 25 pages, double-spaced and in 12-point font. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.

For all fields in this template calling for a narrative discussion, the text field will wrap and will not be limited.

Please submit completed form to reconsideration@icann.org.

1. Requestor Information

Name: Michael D. Palage

Address: Contact information Redacted

Email: Contact information Redacted

Phone Number (optional): Contact information Redacted

(Note: ICANN will publish the Requestor's name on the Reconsideration Website at <https://www.icann.org/resources/pages/accountability/reconsideration-en> in accordance with the ICANN [Privacy Policy](#). Requestor's address, email and phone number will be removed from the publication.)

2. Request for Reconsideration of:

Board action/inaction

Staff action/inaction

3. Description of specific action you are seeking to have reconsidered.

On 16-January-2022, the ICANN Board held a Special Meeting where several resolutions were adopted, including four which are the subject of this Reconsideration Request (2022.01.16.01 thru 2022.01.16.04). Currently the Requestor is NOT challenging the awarding of these IT contracts but is challenging the lack of transparency in the vendor selection process. Specifically, there is no information as to the services associated with these IT contracts, the identity of the vendor and the relative size of the contracts. Without this information, it is impossible for the Requestor or the broader ICANN community to determine if ICANN complied with its stated Procurement Guidelines.

4. Date of action/inaction:

The date of action/inaction was 16-January-2022.

5. On what date did you become aware of the action or that action would not be taken?

Requestor is unaware of the exact date on which the Board resolutions were posted on the ICANN website. In an abundance of caution, this Reconsideration Request was filed within 30 days of the date on which the Special Meeting was held.

6. Describe how you believe you are materially and adversely affected by the action or inaction:

In my twenty-three years of participating within the ICANN community I have always been a strong public advocate of Article 3.1 of the ICANN Bylaws which states in relevant part that “ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.”

Additionally, InfoNetworks one of the companies in which I have an ownership interest recently participated in a Request for Information (RFI) that ICANN held concerning SSAD. If ICANN issues a future RFP, Requestor would like to have confidence that ICANN will operate in an open and transparent manner and that any vendor selection will be in accordance with the stated ICANN Procurement Guidelines.

Additionally, In reviewing other recent ICANN Board resolutions, e.g. 2021.12.16.01 thru 2021.12.16.04 (which is not the direct subject of this Reconsideration Request), the ICANN Board appears to be engaging in a dangerous trend where it is over redacting information in clear violation of Article 3.1 of the ICANN Bylaws. Especially troubling is the fact that many of these financial figures were actually disclosed in whole or part in the Panel’s written decision or will be disclosed in ICANN’s future 990 tax returns.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

The entire ICANN community is adversely impacted when the ICANN Board and Staff ignore the openness and transparency requirements enshrined in the bylaws. The potential for harm is further heightened when this violation of openness and transparency violates the requirements set forth in ICANN’s Procurement Guidelines. Redacting the very nature of the IT service contracts that were previously part of a public RFP further erodes the trust within the ICANN community when ICANN Org issues these direct, no bid, contracts. Finally, given the heightened skepticism within the broader ICANN community regarding some of the recent SSAD ODA cost estimates, it sends the wrong message to the ICANN community to enter into direct no bid contracts in which the community has ZERO insight into the services that are being provided.

8. Detail of Board or Staff Action/Inaction – Required Information

Please provide a detailed explanation of the facts as you understand they were provided to the Board or the ICANN organization (acting through its Staff) prior to

the action/inaction and the reasons why the Board's or Staff's action or inaction was: (i) contrary to ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies); (ii) taken or refused to be taken without consideration of material information; or (iii) taken as a result of the Board's or Staff's reliance on false or inaccurate relevant information.

If your request relates to a Board or Staff action or inaction that you believe is contrary to established ICANN organization's policy(ies), the policies that are eligible to serve as the basis for a Reconsideration Request are those that are approved by the ICANN Board (after input from the community) that impact the community in some way. When reviewing Board or Staff action, the outcomes of prior Reconsideration Requests challenging the same or substantially similar action/inaction as inconsistent with established ICANN policy(ies) shall be of precedential value.

If your request relates to a Board or Staff action or inaction taken without consideration of material information, please provide a detailed explanation of the material information not considered by the Board or Staff. If that information was not presented to the Board or Staff, provide the reasons why you did not submit the material information before the Board or Staff acted or failed to act. "Material information" means facts that are material to the decision.

If your request relates to a Board or Staff action or inaction that you believe is taken as a result of Board's or Staff's reliance on false or inaccurate relevant information, provide a detailed explanation as to whether an opportunity existed to correct the material considered by the Board or Staff. If there was an opportunity to do so, provide the reasons that you did not provide submit corrections to the Board or Staff before the action/failure to act.

Reconsideration Requests are not meant for those who believe that the Board or Staff made the wrong decision when considering the information available. There has to be identification of material information that was in existence of the time of the decision and that was not considered by the Board of Staff in order to state a Reconsideration Request. Similarly, new information – information that was not yet in existence at the time of the decision – also is not a proper ground for reconsideration.

Reconsideration Requests are not available as a means to seek review of country code top-level domain ("ccTLD") delegations and re-delegations, issues relating to Internet numbering resources, or issues relating to protocol parameters.

Please keep this guidance in mind when submitting requests.

Provide the Required Detailed Explanation here:

The ICANN Board and Staff “action” involves over redacting the ICANN Board resolution regarding ALL aspects of two IT contracts that were the subject of previous public RFPs. The ICANN Board and Staff “inaction” involves not following the ICANN Bylaws (regarding openness and transparency) by publishing a minimum set of data to allow the public to determine in the requirements in Section 3.3. of the Procurement Guidelines for a direct no bid contract had been met.

Requestor is NOT currently challenging the award of the two no bid IT contracts, since neither the Requestor nor the broader ICANN community has NO insight into the nature of the IT service contracts. Without any insight into the nature of the contract, it is impossible for the Requestor or the ICANN community to determine if a no-bid contract is permissible under Section 3.3 of the Procurement Guidelines:

- This does not seem to have been an emergency situation.
- There does not seem to be any specialized professional services, as both IT service contracts were subject to a public RFP.
- Given the resolution states that these contracts are for IT services, it does not appear to qualify as “lobbyists, advisors to CEO or departmental functions, law firms and economists.”
- Given that the value of these IT service contracts appears to be in excess of \$500,000 based on the need for ICANN Board approval, this does not seem to qualify as a “small or less significant items.”
- Without knowing the nature of the IT services or the previous RFP, it is impossible to determine if this no bid contract is “a natural continuation of previous work carried out by the vendor or service provider, and in which competitive bidding would not improve value to ICANN.”
- Given that there were previous RFPs, it is highly doubtful that “there is only one potential provider or when the provider has a measurably superior capacity, expertise and/or knowledge, which might be subjectively determined.”
- While the “incumbent provider [may have] demonstrate[d] a clear historic pattern of charging reasonable prices and providing consistently good quality service” without knowing what previous RFP these IT services are associated with, it is impossible for the Requestor or ICANN community to know if this criteria has been met.

9. What are you asking ICANN to do now?

At a minimum, ICANN should disclose the services associated with each IT contract by including a reference in each corresponding resolution to the previous RFPs that were issued. Additionally, a value range (NOT THE EXACT DOLLAR AMOUNT) of each contract should be provide, e.g. <\$50K, \$50K-\$150K, \$150K-\$250K, \$250K-\$500K, >\$500K. ICANN’s Procurement Guidelines

contain specific recommendations and requirements based upon the dollar amount of the contract. Without knowing these dollar amounts it is impossible to determine which recommendations and requirements in the Procurement Guidelines apply.

Additionally, if these IT services are directly/indirectly connected with the new gTLD program and are being paid in whole or in part by applications fees associated with the 2012 gTLD round, then the exact number should be disclosed to provide a proper accounting of the fees previously collected.

10. Please state specifically the grounds under which you have the standing and the right to assert this Reconsideration Request, and the grounds or justifications that support your request.

(Include in this discussion how the action or inaction complained of has resulted in material harm and adverse impact. To demonstrate material harm and adverse impact, the Requestor must be able to demonstrate well-known requirements: there must be a loss or injury suffered (financial or non-financial) that is a directly and causally connected to the Board's or Staff's action or inaction that is the basis of the Reconsideration Request. The Requestor must be able to set out the loss or injury and the direct nature of that harm in specific and particular details. The relief requested must be capable of reversing the harm alleged by the Requestor. Injury or harm caused by third parties as a result of acting in line with the Board's or Staff's decision/act is not a sufficient ground for reconsideration. Similarly, injury or harm that is only of a sufficient magnitude because it was exacerbated by the actions of a third party is also not a sufficient ground for reconsideration.)

There are two potential material harm and adverse impact considerations, one non-financial and the other potentially financial. Addressing the non-financial harm and impact first. I have dedicated most of my adult professional life toward protecting and promoting the ICANN multi-stakeholder model. Unfortunately, right now the ICANN multi-stakeholder model finds itself at a dangerous precipice where there are systemic threats confronting it in other fora.

One such threat is the inability of ICANN to timely implement consensus policies as highlighted in a DomainIncite article, *ICANN hasn't implemented a policy since 2016*. However, in response to a recent Registry Stakeholder Group communication sent to the ICANN Board raising concerns about these very delays, the Chair of the ICANN Board instead choose to spend a portion of the letter deflecting any direct blame on the ICANN Board or staff.

What should be a concern to the ICANN Board and the boarder ICANN community is the fact that a growing number of long-term participants, both individuals and institutions, are leaving or spending less time in the ICANN multi-stakeholder model process. Instead, they are turning their focus to national

governments to address problems that have languished in various ICANN policy working groups or implementation stages over the past decade. When the European Union can make significant strides in legislative initiatives and studies in 12-18 months while ICANN moves forward at a glacial pace, it becomes a no brainer for where individuals and organizations should focus their time and attention. This growing reality should be a wake-up call to the entire community.

In response to the recently published SSAD ODA, there was widespread community skepticism regarding some of the financial projections concerning the design of the SSAD system. Initial projections by ICANN in the 9-million-dollar range tripled to a 27-million-dollar top end projection. Therefore, ICANN potentially awarding multiple no bid \$500,000 IT contracts with no references to previous RFPs is not only inconsistent with ICANN bylaws and Procurement Guidelines but creates a growing trust deficient between the organization and the community. This is a real and material non-financial harm with adverse impact considerations that this Reconsideration Request seeks to address.

As previously stated InfoNetworks was a Respondent to the ICANN SSAD RFI, and it may have a future financial interest to bid in a potential SSAD RFP. Therefore, InfoNetworks has potential material financial interest to make sure that ICANN follows its bylaws and Procurement Guidelines when it comes to openness and transparency guidelines.

Requestor is requesting redaction of the following paragraph given that certain statements were made during a Registry Stakeholder Group meeting, and that Zoom recording is not publicly available.

[BEGIN REDACTION]

Requestor has a heightened concern about the openness, transparency and fairness regarding ICANN procurement given certain statements made by ICANN former SVP Kurt Pritz. Specifically, during a Registry Stakeholder Group call Kurt Pritz stated that Deloitte “took a bath” in connection with the Trademark Clearinghouse Contract. When ICANN awards large dollar no bid contract the Community should have some insight into the services and the parties providing these services to ensure that ICANN is not improperly compensating a Party that previously “took a bath.”

[END REDACTION]

The relief requested above (correlating the IT Services contracts to previous issued RFPs and confirming the dollar range of these IT Services, e.g. in excess of \$500,000) will directly reverse the harm which the Requestor and the rest of the ICANN Community has suffered by being able to objectively determine if the requirements for a non-bid contract under Section 3.3. of the ICANN Procurement Guidelines were met. Again, for the avoidance of any doubt,

Requestor is NOT asking for the specific dollar amount of the IT services contract.

11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

Yes

No

11a. If yes, is the causal connection between the circumstances of the Reconsideration Request and the harm substantially the same for all of the Requestors? Explain.

12. Are you bringing this Reconsideration Request on an urgent basis pursuant to Article 4, Section 4.2(s) of the Bylaws?

Yes

No

12a. If yes, please explain why the matter is urgent for reconsideration.

13. Do you have any documents you want to provide to ICANN?

No

Terms and Conditions for Submission of Reconsideration Requests

Reconsideration Requests from different Requestors may be considered in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the Requestors are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is substantially the same for all of the Requestors. Every Requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.

The BAMC shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The BAMC may summarily dismiss a Reconsideration Request if: (i) the Requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) it is frivolous. The BAMC's summary

dismissal of a Reconsideration Request shall be documented and promptly posted on the Reconsideration Website at <https://www.icann.org/resources/pages/accountability/reconsideration-en>.

Hearings are not required in the Reconsideration Process; however, Requestors may ask for the opportunity to be heard. The BAMC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing. The BAMC's decision on any such request is final.

For all Reconsideration Requests that are not summarily dismissed, except where the Ombudsman is required to recuse himself or herself and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request. The BAMC shall make a final recommendation to the Board with respect to a Reconsideration Request following its receipt of the Ombudsman's evaluation (or following receipt of the Reconsideration Request involving those matters for which the Ombudsman recuses himself or herself or the receipt of the Community Reconsideration Request, if applicable).

The final recommendation of the BAMC shall be documented and promptly (i.e., as soon as practicable) posted on the Reconsideration Website at <https://www.icann.org/resources/pages/accountability/reconsideration-en> and shall address each of the arguments raised in the Reconsideration Request. The Requestor may file a 10-page (double-spaced, 12-point font) document, not including exhibits, in rebuttal to the BAMC's recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the ICANN Reconsideration Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the BAMC's final recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.

The ICANN Board shall not be bound to follow the recommendations of the BAMC. The ICANN Board's decision on the BAMC's recommendation is final and not subject to a Reconsideration Request.

By submitting my personal data, I agree that my personal data will be processed in accordance with the ICANN [Privacy Policy](#), and agree to abide by the website [Terms of Service](#).

Signature

Date

Michael D. Palage
Print Name