

June 28, 2016

Dear Chairs of the CCWG-Accountability Chartering Organizations,

Proposed Cost Control Mechanisms for Transition and Accountability Work in FY17

Further to the note of June 23, 2016 on the cost of the Transition and Accountability work from the CCWG-Accountability Co-Chairs, the Board Finance Committee (BFC) wishes to propose for your consideration new cost control mechanisms for the Transition and Accountability work in FY17.

Two-Step Approach

Given the large sums of money involved, the Chairs of the CCWG-Accountability Chartering Organizations agreed that it would be good practice to produce reliable estimates for the costs of the Transition and Accountability work and to manage costs going forward. A two-step approach was adopted in order to get the gradual buy-in of the community. Step 1 entailed developing reliable estimates, and Step 2 entails deciding how best to manage cost. The Two-Step Approach is described in a note dated March 1, 2016 (added at the end of this email).

Step 1 - Reliable Estimates (completed)

Step 1 is complete. The work was undertaken by a small dedicated Project Cost Support Team (PCST) supporting the CCWG-Accountability Co-Chairs. In summary, the cumulative cost in FY15 and FY16 for the Transition and Accountability work amounts

to **US\$ 28.3m**, and the budget for FY17 is **US\$ 8.8m**. The Board has approved this budget of **US\$ 8.8m**, subject to receiving confirmation from the Chairs of the CCWG-Accountability Chartering Organizations that they also approve, and that new cost control mechanisms will be in place at the beginning of the new fiscal year. The Board has also approved the funding of this budget from the ICANN Reserve Fund as a temporary measure, until a more permanent solution is found through a community consultation.

Step 2 - Cost Control Mechanisms (need to be agreed)

Now that reliable estimates are available, we need to agree a way forward for establishing new cost control mechanisms to ensure that the FY17 budget of **US\$ 8.8m** is not exceeded. The BFC recommends for your considerations the following five mechanisms:

1. Community Budget Owners for Work Streams 1&2

The FY17 Budget of US\$8.8m for the Transition and Accountability work consists of four streams of work:

Stream 1: CCWG - IRP Phase 2 (Budget Owner?)

Stream 2: CCWG - Accountability WS2 (Budget Owner?)

Stream 3: Transition Implementation (Budget Owner: ICANN Executive)

Stream 4: General Project Activities (Budget Owner: ICANN Executive)

ICANN has appointed Budget Owners for streams 3&4, but no Budget Owners have yet been identified for streams 1&2. Historically, it has not been part of the ICANN's multi-

stakeholder model to assign the authority to make decisions on cost to an individual or a group, which are not part of the ICANN Organization. However, given the unique circumstances surrounding this work, we recommend that it would be sound practice for the Chairs of the CCWG-Accountability Chartering Organizations to assign Budget Ownership for these two streams of work to community members.

2. Scope of Responsibility for Budget Owners

The budget for each of the four streams of work is broken down into the following five cost categories: staff support, travel and meetings, telecom & language services, external legal services, and other professional services.

Staff support (including their travel costs) and telecom & language services will be managed by the ICANN Organization.

The BFC therefore recommends that the scope of responsibility of Budget Owners is limited to managing the cost of travel (excluding staff travel costs) and meetings, external legal services and other professional services with respect to each individual work stream. Within this scope, each Budget Owner should have some latitude in making trade-offs with respect to the categories of costs under their control as long their work streams remain within budget.

The FY17 Budget for each stream of work should be considered a firm amount, not to be exceeded. If, however, under exceptional circumstances where categories of cost may

need to be exceeded, Budget Owners will also be responsible for anticipating possible overruns and for obtaining the required approvals before new costs are incurred. The BFC recommends the following approval process for costs above the approved FY17 Budget:

- for streams 1&2: requests from Budget Owners should be authorized by the CCWG-Accountability Chartering Organizations before they are submitted for Board approval.
- for streams 3&4: requests from Budget Owners should be authorized by the ICANN CEO before they are submitted for Board approval.

3. Budget for use of Legal Advisors for CCWG - Accountability WS2 (stream 2)

The total budget for stream 2 is US\$ 2.988m. The external legal services cost category within that budget is US\$ 1.4m. This amount covers the use of external legal services by both the ICANN Organization and the CCWG-Accountability WS2 for both the Proposal Development phase as well as the bylaws drafting phase. The CCWG-Accountability WS2 has requested not to be bound to only use ICANN's external legal counsel. Similarly, the ICANN Organization must be free to use its external legal counsel as needed for this work. The BFC recommends therefore that the PCST undertakes further analysis to split this cost category into two parts: one part to be managed by the CCWG-Accountability WS2 and the other part to be managed by the ICANN Organization.

4. CCWG - Accountability WS2 Procurement Process for Independent Legal Counsel

A process for procuring independent legal counsel for the CCWG-Accountability WS2 is currently being discussed within CCWG with the support of the PCST. The Chairs of the CCWG-Accountability Chartering Organizations will be updated as soon as a process is ready for their validation. The BFC recommends that the following guidelines should be considered for incorporation in that procurement process, taking into account the balance between efficiency and rigor:

- *For WS2 Proposal Development* - the PCST recommends that (a) independent legal counsel is engaged only when a legal issue is raised and a specific answer is required to a tight and specific legal question, (b) independent legal counsel will not be authorized to give opinions on policy matters, and (c) independent legal counsel will not be required to attend the meetings of the various WS2 sub-groups nor the plenary face-to-face meetings, unless there are exceptional circumstances when the presence of independent legal counsel is deemed indispensable by the CCWG – Accountability Co-Chairs.
- *For WS2 Bylaws Drafting*: Though we do not know whether any Bylaws amendments will be necessary to implement recommendations from WS2, if they are needed, the PCST recommends that a process be used similar to WS1. The first draft of the changes to the new Bylaws will be produced by the ICANN legal team with the support of ICANN external counsel (if necessary), and then reviewed by the CCWG independent legal counsel.
- *For Procuring Advice from CCWG Independent Legal Counsel*:

- a. Establish a Legal Committee - the PCST recommends that a new Legal Committee is established to filter, analyze and approve requests from the CCWG-Accountability WS2 to use independent legal counsel
- b. Requesting Advice from the Independent Legal Counsel:
 - Once it is determined that an issue is ripe for input from independent legal counsel, a request, precisely and sufficiently drafted, is submitted for an answer to a tight and specific legal issue (not a policy issue).
 - the Legal Committee-reviews the requests which are, upon approval, shared with the independent legal counsel, to obtain estimates. Upon review of the estimates, the Legal Committee may order the legal work, and should monitor the completion of any work ordered.
 - The PCST administers the legal invoices for payment.

5. Tracking and Reporting of Expenditure

The BFC recognizes that Budget Owners who are community members may not have the time to fully manage on their own the costs associated with the work streams. The BFC therefore recommends that the PCST is extended throughout FY17 to provide support and assistance to Budget Owners in managing costs.

The PCST would also provide monthly reports tracking expenditures incurred and estimating cost to completion.

Next Conference Call

The BFC suggests holding a conference call as soon as feasible to gather the input from the Chairs of the CCWG-Accountability Chartering Organizations on the proposed new cost control mechanisms.

Best Regards,

Cherine Chalaby, BFC co-chair

Asha Hemrajani, BFC co-chair

Ron Da Silva, BFC member

Chris Disspain, BFC member

Markus Kummer, BFC member

George Sadowsky, BFC member

Xavier Calvez - CFO

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On 1 Mar 2016, at 17:34, Cherine Chalaby <cherine.chalaby@icann.org> wrote:

Dear CCWG and CWG co-chairs,

Transition and Accountability Cost

Further to our call on 9 February 2016 to discuss the cost of the Transition and Accountability work,

I have had follow-up calls with the leaders of the SO/AC Chartering Organizations, and I am pleased to report to you that we have reached an agreement on a way forward.

Historical Perspective

Historically, it has not been not part of the multi-stakeholder model to have any one person or even a small group given the authority to make decisions, including on costs. Furthermore, the SOs/ACs have not been able to obtain information about detailed costs for their work, meetings, staff time, etc. Nevertheless, given the large sums of money involved: USD 25 millions in FY15 and FY16 and a further potential expenditure of USD 6-9 million in FY17, it would be good practice to produce reliable estimates and to manage costs going forward. This would represent a change of culture for the ICANN community. Therefore, it would be best to adopt a two-step approach in order to get the gradual buy-in of the community. Step1 entails developing reliable estimates, and Step 2 entails deciding how best to manage cost.

Agreement on Step1 - Developing Reliable Estimates (4-6 weeks)

The leaders of the SO/AC Chartering Organizations agreed that it is imperative to get a good handle and clarity on past and future expenditures. First we must undertake an in-depth analysis of past expenditures in FY15 and FY16 (up to Marrakech) and understand where and how money was spent. From what we will learn, we should be in a position to estimate future expenditures for the remainder of FY16 (from Marrakech to end of Financial Year in June), and for all of FY17. We must also identify potential problem areas and develop ways to address them, one-by-one. With such plans, we can then present to the CCWG and CWG co-chairs what is likely possible and what is likely to be problematic in terms of cost control mechanisms.

We agreed that Step1 should be undertaken, on a pilot basis, by a small dedicated Project Cost

Support Team (PCST) and should not last more than 4-6 weeks. The PCST will consist of four members: a project manager, a legal manager, a financial planner and a project administrator. The ICANN CEO will be responsible for selecting these individuals. The desired selection criteria are: competent, respected and trusted by the community, familiarity with ICANN transition and Accountability work and available on a full-time basis for 4-6 weeks. ICANN will pay for the PCST. The leaders of the SO/AC Chartering Organizations as well as the CCWG and CWG co-chairs will be informed of the cost of the PCST.

The PCST is neither a decision making nor a management team. The PCST is a support function to the CCWG and CWG co-chairs. It must therefore coordinate closely with the co-chairs while undertaking Step1.

Given that the Draft FY17 Budget will be posted on 5 March 2016, a place holder of USD 6-9 millions has been included in the draft budget for Transition and Accountability work in FY17. This figure will be adjusted once the PCST completes Step 1. It is therefore desirable to start Step1 as soon as possible.

Next Call

It was agreed that we should set up a call once Step1 is completed (around mid to end April) to review the findings of the PCST and to agree collectively on how best to manage cost going forward (Step 2).

I sincerely hope that you are supportive of the pilot work we agreed to undertake. Please do not hesitate to ask me any questions.

Best regards,
Cherine