Your name: Christa Taylor

Section: Auctions: Mechanisms of Last Resort & Private Resolution of Contention Sets (Including Private Auction)

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| **Issue** | **Applicable text (please quote directly)** | **Number and name of applicable report section** | **Cannot live with rationale** | **Proposed changes (taking into account whether others would be able to live with them)** |
|  | All contention sets resolved through private resolution shall adhere to the transparency requirements set forth in the Transparency Section in the relevant recommendation | Recommendation xx (Rationale 2): | Update reference | All contention sets resolved through private resolution shall adhere to the transparency requirements set forth in the **Content Resolution Transparency Requirements** in the relevant recommendation |
|  | Applicants must affirmatively attest to a bona fide use clause for any and all applications that they submit | Recommendation xx (Rationale 2): | All covers everything | Applicants must affirmatively attest to a bona fide use clause for **all applications they** submit |
|  | If an Applicant applies for five or more strings that are within contention sets and participates in private auctions for more than fifty percent (50%) of those strings for which the losing bidder (s) receive the proceeds from the successful bidder, and the applicant loses each of the private auctions, this may be a factor considered by ICANN in determining non-good faith intent for each of those applications. | Recommendation xx (Rationale 2): | Very complex and confusing. Are we saying, losing 50% of 5 contention sets? Or 50% of strings in a contention set and 100% are lost in private auction?  Five or more strings with more than 50%. ‘More than’ indicates that 50% does not meet the limit. I think the intent is 50% or greater. Also, use a more relevant example i.e. 50% of six applications.  Unclear if five is an example, if not best to hard code the number for ease of understanding. If not, add in ‘for example’  As mentioned previously, cash inflows vs. outflows should be considered. Applicants may have a favorite TLD and spend a large portion of their budget on acquiring it and not captured in the volume of applications won/lost.  Additionally, applicants don’t have a way of changing their bid, other than withdrawing their application, and may accidently win contention sets they didn’t expect which could lead to non payment issues. Withdrawing an application in a small contention set is unlikely due to the possibility of the other applicants withdrawing. | If an Applicant participates in six or more private auctions and fifty percent (50%) or greater of its contention strings produce a financial windfall from losing.  Alternatively:  If an Applicant receives financial proceeds from losing greater than 49% of its total number of contention set applications that are resolved through private auctions.  Bulleted option:  If an applicant:   1. Has six or more applications in contention sets; and 2. 50% or more of the contention sets are resolved in private auctions; and 3. 50% or more of the private auctions produce a financial windfall to the applicant |
|  | The non-exhaustive list of “Factors” may include, but are not limited to: | Recommendation xx (Rationale 2): | This section is being referenced by the above section and duplicates the language in the bullets and the paragraph underneath. | ‘**The non-exhaustive list of “Factors” that ICANN may consider in determining a non-good faith intent for an applicant may, but are not limited to:**’ |
|  | However, in the event of a partial resolution of a contention set through the formation of a business combination or joint venture and the corresponding withdrawal of one or more Applications, the remaining Application AND each of the other existing applications in the contention set will be allowed, but are not required, to submit a new Last Resort Sealed Bid |  | Confusing. If applicants enter into a JV or business combination before the TLD is acquired, all parties will be able to submit a new bid provided that one applicant has withdrawn their application?  This is difficult to do without first acquiring the asset..perhaps reference an LOI which can be provided to ICANN as evidence? | If applicants **provide an Letter Of Intent (LOI)** to form a … |
|  | All applications shall be evaluated and are subject to other application procedures (e.g., Initial Evaluation, Extended Evaluation, Objections, GAC Early Warning/Advice, Community Priority Evaluation). | Recommendation xx (Rationale 3): | How are the needs of Applicant Support applicants being considered? i.e. date of the auction, deposit, education, etc.? These references in the process should be included. |  |
|  | to ICANN within 72 hours of resolution and ICANN must, in turn, publish the same within 72 hours of receipt. | Contention Resolution Transparency Requirements | 72 hours does not provide the applicant with sufficient time to meet all of the settlement terms & conditions, legal agreements, funding requirements, share registrars, etc. No reference to working days. | In the case of a private auction or an ICANN auction of last resort, all parties in interest[[1]](#footnote-1) to any agreements relating to participation of the applicant in the private auction or ICANN Auction of Last Resort must be disclosed to ICANN within five (5) business days of resolution and ICANN must, in turn, publish the same within three (3) business days upon receipt. |
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1. A party in Interest is a person or entity who will benefit from the transaction even if the one participating in the transaction is someone else. This includes, but is not limited to any person or entity that has more than a *de minimus* ownership interest in an Applicant, or who will be in a position to actually or potentially control the operation of an Applicant. [↑](#footnote-ref-1)