

Invitation to Tender (ITT):

Convener & Tribunal Secretary of the FRC Tribunal and Appeal Panel

Reference	FRC2023-0113 Convener & Tribunal Secretary of the FRC Tribunal and Appeal Panel
Date	19 th January 2024

1. Summary

The FRC wishes to appoint a new Convener & Tribunal Secretary of the Tribunal Panel, a role formally provided for under the FRC's enforcement procedures.

The FRC is looking to appoint a law or other professional services firm, which can provide a continuity of service and draw on its established administrative, and IT support and facilities. However, the FRC is also open to considering alternative proposals, if the requirements outlined in this ITT are met.

2. Background and context

The FRC's enforcement role

The purpose of the Financial Reporting Council (FRC) is to serve the public interest by setting high standards in corporate governance and stewardship, corporate reporting, auditing and actuarial work, assessing the effectiveness of the application of those standards and enforcing those standards proportionately where it is in the public interest.

Our Enforcement Division, led by our Executive Counsel, is responsible for conducting investigations under our main enforcement procedures. Decisions to open investigations and to refer them to the Enforcement Division, are made by the FRC's Conduct Committee where it considers there may have been misconduct or a breach of the relevant professional standards.

As the UK's competent authority for statutory audit and the independent disciplinary body for accountants and actuaries in public interest cases, the FRC is committed to delivering robust, fair and transparent regulatory outcomes on a timely basis.

In the financial year ending 31 March 2023, the FRC's Enforcement Division resolved 19 cases and imposed financial sanctions of £40.5m, including a sanction of £20m.¹ The Division also promotes improvements and innovation by communicating clear and impactful messages through its enforcement cases and publications, and through the setting and monitoring of effective non-financial sanctions.

Many investigations are concluded through settlement. In such cases, a member of the Tribunal Panel will be appointed to consider and approve the settlement agreement.

However, a small number of cases will be referred on to the Tribunal stage, where an independent public Tribunal is convened to consider the matters brought to it. Tribunals will be convened from three or five members of the Tribunal Panel and will include at least a legal chair, a member of the relevant profession and a lay member.

¹ See the [FRC's Annual Enforcement Review 2023](#).

Members of the Tribunal Panel are appointed by an independent Appointments Committee.

The Tribunal

Tribunal hearings are similar to hearings in court but less formal and the Tribunal will not be subject to the same restrictions as a court might be in accepting evidence. The individual and/or firm against whom the complaint has been brought is entitled to attend and be legally represented at all hearings and will have the opportunity to defend any allegations made against them, to present evidence and to challenge evidence against them. The Tribunal will hear witnesses, consider evidence and submissions, determine liability and provide the parties with its decision.

Investigations may take over a year, or possibly more, before they reach the Tribunal stage and the number of investigations reaching the Tribunal stage varies each year, but in recent years have been one or two a year.

Tribunal hearings vary in length and complexity, but typically last a few weeks. The legal chair usually holds a Directions meeting in advance to discuss legal and procedural aspects. In addition, a pre-trial review may be held before the hearing to consider the reading lists, the hearing timetable and skeleton arguments. These meetings are supported by the Tribunal Secretary.

Tribunal cases in recent years have included a number of high-profile cases under the Accountancy Scheme, such as the 2021 'Autonomy' case involving a failure to act in accordance with Professional Competence and Due Care, lack of integrity and a loss of objectivity;² the 2021 'Silentnight' case involving breaches of the fundamental principles of Objectivity and Integrity;³ and the 2022 KPMG case involving the provision of false and misleading information and documents to the FRC.⁴

Further information on the FRC's Enforcement work, the enforcement procedures and investigation outcomes please see our [Annual Enforcement Review](#) and the FRC [website](#).

² <https://www.frc.org.uk/news-and-events/news/2021/01/frc-publishes-the-report-of-the-disciplinary-tribunal-following-the-sanctions-against-deloitte-and-former-partners-for-audits-of-autonomy/>

³ <https://www.frc.org.uk/news-and-events/news/2021/10/publication-of-the-report-of-the-disciplinary-tribunal-following-sanctions-against-kpmg-llp-and-a-former-partner-in-relation-to-silentnight/>

⁴ <https://www.frc.org.uk/news-and-events/news/2022/07/sanctions-against-kpmg-and-others-in-connection-with-regenersis-carillion-audits/>

3. Responsibilities of Convener & Tribunal Secretary

The role of the Convener & Tribunal Secretary includes:

- 3.1. Appointing the Chair of the Tribunal from the Panel and, with the support of the Chair, appointing a Tribunal or Appeal Tribunal from members of the Tribunal Panel, with due regard for availability, experience, expertise and potential conflicts of interest of the Tribunal Panel members.
- 3.2. Appointing replacement members to an ongoing Tribunal, Joint Tribunal or Appeal Tribunal, should this be required.
- 3.3. Appointing legal chair members of the Tribunal Panel to consider Proposed Settlement Agreements under the Schemes and Proposed Decision Notices or Proposed Settlement Decision Notices under the AEP.
- 3.4. Appointing legal chair members to consider applications for the interim orders or leave to appeal.
- 3.5. Appointing an Independent Sanctions Tribunal from members of the Tribunal Panel under the Auditor Regulatory Sanctions Procedure and Crown Dependency Recognised Auditor Sanctions Procedure.
- 3.6. Managing hearings by acting as the Tribunal Clerk/Administrative Officer.
- 3.7. Ensuring the timely dissemination of notifications and information to the members of a Tribunal, Joint Tribunal or Appeal Tribunal members, and effective communications between the members and the represented parties.
- 3.8. Arranging material to be provided to members of a Tribunal, Joint Tribunal or Appeal Tribunal in an agreed format (normally electronic bundles) and within an agreed timeframe.
- 3.9. Providing high-quality administrative support and advice to a Tribunal, Joint Tribunal or Appeal Tribunal, particularly to the appointed legal chair. Including possible press management.
- 3.10. Assisting in the organisation of training for members of the Tribunal Panel.
- 3.11. The Convener and Tribunal Secretary is not required to record the proceedings of the Tribunal or Appeal Tribunal.

4. Eligibility criteria

- 4.1. The FRC observes the highest standards of impartiality, integrity and objectivity in relation to the regulatory activities undertaken by, and the management of, the FRC and its independent tribunals and committees.
- 4.2. It is a requirement that those individuals with a legal or administrative background applying for the role have not been an employee of, or provided services to, an audit firm, accountancy or actuarial professional body or the FRC or its subsidiaries within the last three years.
- 4.3. It is a requirement that firms applying for the role have not provided services to, an audit firm, accountancy or actuarial professional body or the FRC or its subsidiaries within the last three years.

5. Expected Time Commitment

- 5.1. The Convener & Tribunal Secretary will need to be prepared to devote sufficient time and resources to the role. The anticipated workload will be approximately 5-10 days per annum. However, the work of the Convener & Tribunal Secretary can be unpredictable and the running of a Tribunal, where required, will require full ongoing support over several weeks.

6. Fees & Expenses

- 6.1. The Convener & Tribunal Secretary will be paid the agreed hourly rate for all work billed. In addition, reasonable expenses incurred in performing the duties of the Convener & Tribunal Secretary will be reimbursed.

7. Length of Appointment Terms

- 7.1. The initial term of appointment will be for three (3) years. Subject to continuing availability and suitability, the Convener & Tribunal Secretary may be considered for appointment for a further three-year period. The Convener & Tribunal Secretary may be removed by the Conduct Committee if it considers that the behaviours, actions or conflicts of interest of the Convener & Tribunal Secretary warrant the removal.

8. Your tender response

- 8.1. Firms should submit one proposal (using the provided Tender response document) addressing how it meets / proposes to meet the FRC's seven Requirements listed below.

Mandatory		
	Our Requirement	Tenderer Response
1	Eligibility	We certify that our employees who would be involved in the relevant work have not been an employee of, or provided services to, an audit firm, an accountancy or actuarial professional body or the FRC or its subsidiaries within the last three years. Therefore, we certify that there are no restricting conflicts of interest that would impact our ability to participate in this tender.
2	Relevant experience and transferrable skills in fulfilling this role.	We confirm we have past experience (and transferrable skills) with regard to this role.
NB. Tenderers that do not respond as above are likely to fail and not progress further.		

	Requirement	You should demonstrate
3	Judicial experience	You have transferrable experience and understanding of judicial work and proceedings, particularly within a regulatory or disciplinary environment, with a strong legal background to perform the Services required.
4	Strong administrative skills	How your highly competent legal administrative skills, including a proficiency in coordinating groups of people adeptly and efficiently would provide benefit under this proposed agreement.
5	Capability & capacity	<p>Your ability to provide sufficient resources and personnel to deliver services within the procedural timescales and to a high quality.</p> <p><i>Your response should include the merit of this/these resources and how you will ensure there is no single point of failure (such as capacity weaknesses / gaps).</i></p>

6	Relationship management	You should outline how you will manage the relationship to ensure efficient and effective outcome.
7	Cost	A clear breakdown of costs.

Requirements weightings

- 8.2. The evaluation panel will apply the following weightings when assessing the requirements above.
- i. Judicial experience 20%
 - ii. Administrative experience 20%
 - iii. Capability & Capacity 20%
 - iv. Relationship Management 5%
 - v. Cost 35%
- 8.3. Tenderers must submit their tender response by 12:00noon on n14 February 2024 to procurement@frc.org.uk.
- 8.4. A Tender Response Template has been provided and we ask that all potential providers align their tender response with that format.
- 8.5. A Tender must remain valid and capable of acceptance by the FRC for a period of 90 days following the Tender Submission Deadline. A Tender with a shorter validity period may be rejected.

9. Tender evaluation

9.1. Bids will be scored on your ability to meet our requirements using the scoring approach: -

Score	Criteria for awarding score
0	Unacceptable Does not satisfy any part of the requirement. Does not comply with and/or insufficient information provided to demonstrate that the bidder has the ability, understanding, experience, skills, resource and quality measures required to provide the services, with little or no evidence to support the response.
25	Poor Satisfies only minor aspects of the requirement. Or can carry out some or all of the required services but not to a sufficient standard. Strong concerns over relevant ability, understanding, experience, skills, resource, and quality measures required to provide the services.
50	Fair Satisfies part of the requirement only, not the full requirement. Or can carry out all required services but not to a sufficient standard. Minor Concerns over relevant ability, understanding, experience, skills, resource, and quality measures required to provide the services.
75	Good Satisfies the requirement, with minor additional benefits. Supplier has the relevant ability, understanding, experience, skills, resource and quality measures required to provide the services, but the supplier has also provided relevant innovative methodology, or relevant added value services which will directly enhance the service required, giving minor additional benefit to FRC.
100	Excellent Satisfies the requirement, with major additional benefits. Supplier has the relevant ability, understanding, experience, skills, resource and quality measures required to provide the services, but the supplier has also provided relevant innovative methodology, or relevant added value services which will directly enhance the service required, giving major additional benefit to FRC.

9.2. The FRC will have a suitably qualified evaluation panel. This panel will shortlist the top applicants, we anticipate this to be no more than three (unless there are multiple suppliers with the same score). If required, the shortlisted suppliers will progress to tender clarification /presentation with the FRC's Executive Director of Corporate Services & General Counsel, the Director of Legal Services and the Chair of the Appointment Committee.

9.3. FRC will award the contract on the basis of the tender which best meets the evaluation criteria aligned to the requirements.

9.4. We anticipate the following timescales for awarding this tender:

Date/Time	Activity
19/01/2024	Publication of Invitation to Tender
31/01/2024 by close of play	Deadline to submit clarification questions
06/02/2024 by close of play	Deadline for publication of responses to clarification questions (if any)
14/02/2024 by 12.00noon	Deadline for supplier submission of tender to the FRC
22/02/2024	Deadline for the FRC to determine shortlist of suppliers
23/02/2024	Deadline for the FRC to update shortlisted suppliers invited to present to the FRC.
If required tender clarifications w/c 04/03/ 2024 (anticipated to be 08/03/2024 between 2.30 – 5.pm)	Tender clarification / presentations (with FRC's Executive Director of Corporate Services & General Counsel, the Director of Legal Services and the Chair of the Appointment Committee)
On/ Around 11/03/2024.	Tender Outcome
By end of March 2024	Contract execution
On/around 02/09/2024.	Contract commences

10. Questions & Clarifications

- 10.1. Tenderers may raise questions or seek clarification regarding any aspect of this further competition at any time prior to the tender clarification deadline.
- 10.2. Tenderers may raise questions or seek clarification within the timeframe by sending questions to procurement@frc.org.uk in the following format.

Nature of query / clarification	Query / Clarification

- 10.3. FRC will not enter into exclusive discussions regarding the requirements of this ITT with tenderers.
- 10.4. To ensure that all tenderers have equal access to information regarding this tender opportunity, FRC will publish all its responses to questions raised by Tenderers on an anonymous basis.
- 10.5. Responses will be published in a questions and answers document to all Tenderers who have indicated that they wish to participate.

11. Conduct and expectations of tenderers

- 11.1. The tenderer must not communicate to any person the tender price, even approximately, before the date of the contract award other than to obtain, in strict confidence, a price for insurance required to submit the tender.
- 11.2. The tenderer must not try to obtain any information about any other person's tender or proposed tender before the date of the contract award.
- 11.3. The tenderer must not make any arrangements with any other person about whether or not they should tender, or about their tender price.
- 11.4. The tenderer must not offer any incentive to any member of FRC's staff for doing or refraining from doing any act in relation to the tender.
- 11.5. If the tenderer engages in any of the activities set out in this paragraph or if FRC considers the tenderer's behaviour is in any way unethical FRC reserves the right to disqualify the tenderer from the procurement.
- 11.6. The tenderer represents and warrants that a conflicts of interest check has been carried out, and that check revealed no conflicts of interest.
- 11.7. Where a conflict of interest exists or arises or may exist or arise during the procurement process or following contract award the tenderer must inform the FRC and submit proposals to avoid such conflicts.
- 11.8. Tenderers must obtain for themselves at their own responsibility and expense all information necessary for the preparation of tenders. The FRC is not liable for any costs incurred by the tenderer as a result of the tendering procedure. Any work undertaken by the tenderer prior to the award of contract is a matter solely for the tenderer's own commercial judgement.

12. Due Diligence

- 12.1. While reasonable care has been taken in preparing the information in this ITT and any supporting documents, the information within the documents does not purport to be exhaustive nor has it been independently verified.
- 12.2. Neither FRC, nor its representatives, employees, agents or advisers:
 - i. makes any representation or warranty, express or implied, as to the accuracy,
 - ii. reasonableness or completeness of the ITT and supporting documents; or
 - iii. Accepts any responsibility for the adequacy, accuracy or completeness of the information contained in the ITT and supporting documents nor shall any of them be

liable for any loss or damage, other than in respect of fraudulent misrepresentation, arising as a result of reliance on such information or any subsequent communication.

- 12.3. It is the tenderer's sole responsibility to undertake such investigations and take such advice, including professional advice, as it considers appropriate in order to make decisions regarding the content of its tenders and in order to verify any information provided to it during the procurement process and to query any ambiguity, whether actual or potential.
- 12.4. It is a requirement that the successful supplier (i) comply with all applicable laws and regulations including, without limitation, the Bribery Act 2010, the Equality Act 2010 and the Modern Slavery Act 2015; and (ii) in addition to any contractual requirement(s), inform the FRC immediately upon becoming aware of any event (including actual or threatened court proceedings) which may impact upon the reputation of the FRC, whether or not connected with the Supplies and/or Services.

13. Acceptance of Tender & Notification of Award

- 13.1. FRC reserves the right to amend, add to or withdraw all or any part of this ITT at any time during the procurement.
- 13.2. FRC shall not be under any obligation to accept the lowest price tender or any tender and reserves the right to accept such portion or portions as it may decide, unless the tenderer includes a formal statement to the contrary in the tender. FRC also reserves the right to award more than one contract to fulfil the requirement.
- 13.3. The tenderer will be notified of the outcome of the tender submission at the earliest possible time.
- 13.4. Where the procurement process is subject to EU public procurement directives, a minimum standstill period of 10 calendar days will apply between communicating the award decision electronically to tenderers and awarding the contract. Note: Standstill period will not be required.
- 13.5. Nothing in the documentation provided by FRC to the tenderer during this procurement or any communication between the tenderer and FRC or FRC's representatives, employees, agents or advisers shall be taken as constituting an offer to contract or a contract. No tender will be deemed to have been formally accepted until the successful tenderer has received a formal contract award letter from FRC.

14. Additional Information

- 14.1. Tenderers must not undertake any publicity activity regarding the procurement within any section of the media.
- 14.2. The FRC reserves the right to take up references. You may be required to provide references in the Tender Response Document / upon request. References must be relevant to the FRC requirement and in the last five years.
- 14.3. Please use the attached Tender Response Document for your reply.
- 14.4. The Terms and Conditions will apply to this proposed Agreement are contained in the Tender Response document and should be accepted with no material changes.