

## **Invitation to Tender (ITT):**

### **Expert Reviewer – Transfer pricing elements of Operational Separation**

Reference	FRC2022-054 Expert Reviewer Transfer pricing elements of Operational Separation
Date	July 2022

## 1 Background

The purpose of the Financial Reporting Council (FRC) is to serve the public interest by setting high standards of corporate governance, reporting and audit and by holding to account those responsible for delivering them.

Delivering on our purpose will bring a variety of benefits. Improved outcomes, created by each of our regulatory activities are shown in the circle; each of which can positively reinforce others in the circle and contribute to overall benefits for a wide range of stakeholders such as greater transparency, increased trust in UK markets and a lower cost of capital for companies. Our direct stakeholders include companies, institutional investors, auditors, actuaries, accountants and their respective professional bodies. Our indirect stakeholders include retail shareholders, suppliers, employees, customers, communities, pensioners and savers, and financial institutions, all of whom have an interest in the health of companies and other organisations within our existing and future regulatory scope and in the success of the UK corporate sector as a whole.



The FRC is a public body, and a partner body of BEIS. Although funded by member and levy contributions, not by the taxpayer, the FRC is subject to public sector requirements and engages closely with other regulators and public bodies.

To support the FRC's plan and act in the public interest the FRC's core objectives are to:

- Set high standards in corporate governance and stewardship, corporate reporting, auditing and actuarial work, and assess the effectiveness of the application of those standards, enforcing them proportionately where it is in the public interest.
- Promote improvements and innovation in the areas for which we are responsible, exploring good practice with a wide range of stakeholders.
- Influence international standards and share best practice through membership of a range of global and regional bodies and incorporate appropriate standards into the UK regulatory framework
- Promote a more resilient audit market through greater competition and choice.
- Transform the organisation into a new robust, independent, and high-performing regulator, acting in the public interest.

In February 2021, the FRC published the revised Operational Separation Objectives, Outcomes and Principles<sup>1</sup> (the 'Principles'). Through Operational Separation, we intend to:

- i) Improve audit quality by ensuring that people in the audit practice are focused above all on delivery of high-quality audits in the public interest.
- ii) Improve audit market resilience by ensuring that no material, structural cross-subsidy persists between the audit practice and the rest of the firm.

In pursuing these objectives, we will seek to ensure that audit remains an attractive and reputable profession and increase deserved confidence in audit.

The Principles are being voluntarily adopted by the largest four audit firms ahead of the legislation coming into effect. At present the audit firms are in a transitional phase, which ends in 2024.

## **2 Project Requirements**

### **2.1 Purpose & Background**

In February 2021, the FRC published the revised principles for operational separation of the audit practices, which have voluntarily been adopted by the largest four audit firms in the UK. The objective of operational separation is to ensure that audit practices are focused above all on delivery of high-quality audits in the public interest, and to improve audit market resilience by ensuring that there is no subsidy between the audit practice and the other service lines.

The audit practices of the four largest firms will be ring-fenced from the other service lines. The Principles define the governance, scope of services, financial, and transparency requirements of the audit practice.

Through the principles the FRC limits the scope of service that can be delivered by firms' audit practices mainly to undertaking statutory audits and related work. However, to deliver on a statutory audit especially for large and complex audited entities, the audit practice will need expertise which may not necessarily be located within the audit practice but may have to be borrowed from the other service lines in the firm for example: actuaries, valuers, IT specialists etc. In accordance with the Principles, we would expect the firms to charge these expert resources at arms' length prices (similarly if auditors work on engagements/ projects in other service lines then they would also need to be charged at an arm's length price). This will ensure that there is no subsidy between the audit practice and the other parts of the firm, and thus that audits are priced to reflect the economic reality.

The aim of this project is to engage an expert reviewer on transfer pricing, who will review the four largest audit firm's transfer pricing methodologies and policies for operational separation.

The transfer pricing expert should undertake a design effectiveness review of the transfer pricing methodology and policies used by the four largest audit firms in implementing the

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<sup>1</sup> [https://www.frc.org.uk/getattachment/281a7d7e-74fe-43f7-854a-e52158bc6ae2/Operational-separation-principles-published-February-2021-\(005\).pdf](https://www.frc.org.uk/getattachment/281a7d7e-74fe-43f7-854a-e52158bc6ae2/Operational-separation-principles-published-February-2021-(005).pdf)

Operational Separation Principle on arm's length pricing - Principle 12. The report should detail:

1. For each firm, the appropriateness of and the risks and issues arising from the firms' methodologies and policies for transfer pricing.
2. A comparison between the firms' arm's length pricing methodologies and policies to form a view as to whether, overall, there is a level playing field, given the firms' differences in approach.
3. An opinion on whether there is any potential for improvement, and related recommendations.

## 2.2 Scope

The scope should cover:

1. The review of each of the four firms' methodologies for transfer pricing of specialists from the firm's other services lines into the Audit Practice and from the Audit Practice into other service lines. The review should cover:
  - The reasonableness and appropriateness of methodology that is proposed.
  - The appropriateness of the approach used in deriving the value of the different variables used in the method that the firm has proposed. This should include the market price for the specialist, direct and indirect costs, the mark-up and the level of, and reason for, any discounts applied etc.
  - the expert's view on the risks and issues that arise for each firm in the methodology that the firm has proposed to use.
2. The review of transfer pricing policy for each firm. The review of the policy should consider the appropriateness of the process and controls defined in the policy.

A comparison of the policy and methodologies proposed to be used by the four firms, including the level of variance between the firms and whether a level playing field is being maintained.

We expect that the reviews will be based on each audit firm's financial year end (FYE): from the date of the FYE the firm has four months to provide us with their financial information. Deloitte's FYE is 31<sup>st</sup> May, EY's and PwC's are 30<sup>th</sup> June, and KPMG's is 30<sup>th</sup> September. Hence the review will span between October 2022 and January 2023 and we expect the finalised opinion to be provided by 30<sup>th</sup> January 2023.

## 2.3 Supplier Suitability

The successful Supplier must be able to: -

- Observe the highest standards of impartiality, integrity and objectivity in relation to work and decision making.
- Ensure that the activities of the FRC are undertaken in the most economical, efficient and effective way, within available resources;
- Operate in accordance with the with Regulators' Code.
- Align with the FRC's values, delivering work that is Fair, Proportionate, Independent and Influential

- Satisfy the FRC's criteria on Conflict of Interest (in the areas of Financial Interests, Personal Relationships, Previous Employment and Directorships). There should be specific reference to any actual or perceived conflicts of interest with the four largest firms.

## 2.4 Liaison arrangements

The successful Supplier will liaise with the Audit Market Supervision Project Director.

## 2.5 Cost

The tenderer should provide a fixed fee for the delivery of the Services required.

## 2.6 Your tender response

You should submit one proposal (using the provided Tender response document) addressing how you meet / propose to meet the FRC's Requirements.

## Stage A

	FRC's requirement	Criteria / Evaluation
1.	<p>We need certainty that the Expert Reviewer minimises / mitigates any conflict of interest.</p> <p><i>We categorise real, potential or perceived conflict of interest: _</i></p> <p><b>1. Financial Interests:</b></p> <p>Shares, investments, pensions, remuneration arrangements or any other financial relationship that could reasonable be considered a potential conflict.</p> <p><b>2. Personal Relationships:</b></p> <p>Any work which has the potential to impact (positively or negatively) on someone you have a personal relationship which may be considered to challenge your impartiality. The most obvious personal relationships are with a spouse or partner, sibling, parent, children or other dependent family member, but also extends to close friends, close former colleagues or business associates.</p> <p><b>3. Previous Employment</b></p> <p>Past roles should not cloud any future judgements. Please disclose any affiliation with firms/companies who may be impacted by your work.</p>	<p>Your proposal must address whether a conflict of interest exists and how this will be monitored and managed.</p>

	<b>4. External roles / directorships during employment or appointment</b>  External appointments / directorships / trusteeships which could give rise to a conflict of interest or reputational damage to the FRC, perceived or real.	
2	You should discharge your responsibilities in the public interest and with integrity, objectivity and independence. You should not be the subject of a disciplinary sanction by any professional or other body or tribunal.	Your proposal must confirm you can meet this requirement.

**You must pass Stage A to progress to Stage B.**

### Stage B

	<b>FRC's requirement</b>	<b>Criteria / Evaluation</b>
1	You must be able to demonstrate the depth and breadth of experience / expertise (relating to our requirement for transfer pricing methodology / expert reviewer.)	Your proposal must demonstrate <ul style="list-style-type: none"> <li>how you meet this FRC requirement, including experience, knowledge and key transferrable skills.</li> </ul>
2	You must be able to deliver the requirement to a high standard.	Your proposal must demonstrate <ul style="list-style-type: none"> <li>how you will work with the FRC to deliver this requirement</li> <li>what you will do to achieve this requirement (i.e. your approach / methodology).</li> </ul>
3	Effective time management to deliver the requirements (within the deadline).	Your proposal must detail <ul style="list-style-type: none"> <li>a high-level timeline / key activity (if applicable - the responsible activity owners).</li> </ul>
4	Key Resource(s)	Your proposal must <ul style="list-style-type: none"> <li>outline how / whom the resources will be and the merits of this / these resources.</li> <li>If applicable, outline a risk management strategy for unavailable team members</li> </ul>
5.	Cost	You should provide a cost proposal that reflects value for money and a breakdown with sufficient detail to understand how the quote total has been reached.

## 2.9 Tender evaluation

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

Score	Criteria for awarding score
0	<b>Unacceptable</b> Failed to provide confidence that the proposal will meet the requirements. An unacceptable response with serious reservations.
25	<b>Poor</b> A poor response with reservations. The response lacks convincing detail with risk that the proposal will not be successful in meeting all the requirements.
50	<b>Fair</b> Meets the requirements – the response generally meets the requirements but lacks sufficient detail to warrant a higher mark.
75	<b>Good</b> A good response that meets the requirements with good supporting evidence. Demonstrates good understanding.
100	<b>Excellent</b> An excellent (well detailed) response that fully meets the requirements and business needs. Provided a clear & comprehensive response and evidence of expertise, experience and/or capabilities to the benefit of the FRC resulting in a high level of confidence.

## Questions & Clarifications

2.1.1. Tenderers may raise questions or seek clarification regarding any aspect of this further competition at any time prior to the tender clarification deadline.

2.1.2. Tenderers may raise questions or seek clarification within the timeframe by sending questions to [procurement@frc.org.uk](mailto:procurement@frc.org.uk) in the following format.

Nature of query / clarification	Query / Clarification

2.1.3. FRC will not enter into exclusive discussions regarding the requirements of this ITT with tenderers.

2.1.4. 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.

2.1.5. Responses will be published in a questions and answers document to all Tenderers who have indicated that they wish to participate.



### 3. Tender process timeline

DATE/TIME	ACTIVITY
<b>12/07/2022</b>	Publication of the Invitation to Tender
<b>18/07/2022 by 12noon</b>	Deadline to submit clarification questions
<b>22/07/2022 by close of play</b>	Deadline for publication of responses to clarification questions FRC will endeavour to meet this deadline
<b>04/08/2022 by 12noon</b>	Deadline for supplier submission of tender to the FRC.
<b>18/08/2022</b>	Shortlisted suppliers advised
<b>w/c 22/08/2022</b>	Tender clarification / supplier presentations to take place
<b>31/08/2022</b>	Tender Outcome
<b>30/09/2022</b>	Contract Start Date
<b>30/09/2023</b>	Contract End Date (the contract can be considered for renewal for the following year)

### 4. Conduct

- 4.1.1. 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.
- 4.1.2. 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.
- 4.1.3. The tenderer must not make any arrangements with any other person about whether or not they should tender, or about their tender price.
- 4.1.4. 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.
- 4.1.5. 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.
- 4.1.6. The tenderer represents and warrants that a conflicts of interest check has been carried out, and that check revealed no conflicts of interest.



4.1.7. 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.

4.1.8. 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.

## **5. Due Diligence**

5.1.1. 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.

5.1.2. Neither FRC, nor its representatives, employees, agents or advisers:

- makes any representation or warranty, express or implied, as to the accuracy,
- reasonableness or completeness of the ITT and supporting documents; or
- 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.

5.1.3. 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.

5.1.4. 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.

## **6. Submitting a Tender**

- 6.1.1. Tenderers must submit their tender response within the deadline to [procurement@frc.org.uk](mailto:procurement@frc.org.uk).
- 6.1.2. Where a Tender Response Template is provided, potential providers must align their tender response with that format.
- 6.1.3. A Tender must remain valid and capable of acceptance by the Authority for a period of 90 days following the Tender Submission Deadline. A Tender with a shorter validity period may be rejected.

## **7. Evaluation**

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

## **8. Acceptance of Tender & Notification of Award**

- 8.1.1. FRC reserves the right to amend, add to or withdraw all or any part of this ITT at any time during the procurement.
- 8.1.2. 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.
- 8.1.3. The tenderer will be notified of the outcome of the tender submission at the earliest possible time.
- 8.1.4. 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.
- 8.1.5. 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.

## **9. Additional Information**

- Tenderers must not undertake any publicity activity regarding the procurement within any section of the media.

- The FRC reserves the right to take up references. You will be required to provide references in the Tender Response Document. References must be relevant to the FRC requirement and in the last five years
- Please use the attached Tender Response Document for your reply.
- The Terms and Conditions that will apply to this proposed Agreement are attached. Suppliers should accept the T&C's with no material changes.