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**HOGG TENDERING ADVISORY COMMITTEE**  
**for**  
**LONDON INTER BANK OFFERED RATE ADMINISTRATOR**

**Invitation to Tender**

**17 APRIL 2013**

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## **A. Introduction**

### **1. Purpose**

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- 1.1 This document is the Hogg Tendering Advisory Committee for LIBOR's (HTACL or the Committee) Invitation to Tender (ITT). Your organisation submitted a Pre-Tender Questionnaire (PTQ) to the HTACL by 22 March 2013 that has been evaluated and qualified for the ITT stage (Stage 2).
- 1.2 This ITT sets out the necessary information for Tenderers to submit a tender response to the HTACL.
- 1.3 The Tender process is a private exercise and on the terms and basis decided by the HTACL.

### **2. Objective**

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- 2.1 The HTACL will recommend a Tenderer to the British Bankers' Association (BBA) to be the new LIBOR administrator in summer 2013.

### **3. Background**

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- 3.1 Following the announcement of findings against Barclays in late June 2012, the Government asked Martin Wheatley to establish an independent review into a number of aspects of the setting and usage of LIBOR. This ITT delivers a key recommendation in the Review:

“The BBA should transfer responsibility for LIBOR to a new administrator, who will be responsible for compiling and distributing the rate, as well as providing credible internal governance and oversight. This should be achieved through a tender process to be run by an independent committee convened by the regulatory authorities”. (Chapter 3, Wheatley Review Final Report, September 2012).

- 3.2 The Wheatley Review is available at:

[http://www.hm-treasury.gov.uk/wheatley\\_review.htm](http://www.hm-treasury.gov.uk/wheatley_review.htm)

- 3.3 The Government accepted the recommendations from the Wheatley Review

of LIBOR in full.

- 3.4 Baroness Hogg has been appointed to chair the HTACL and recommend a new administrator for LIBOR and the BBA has delegated to the Committee the task of running the tender exercise for transferring the operation of LIBOR to a new administrator. Full details of the Committee and its members were announced on 26 February 2013:

[http://www.hm-treasury.gov.uk/libor\\_tender.htm](http://www.hm-treasury.gov.uk/libor_tender.htm)

- 3.5 The Committee will recommend an organisation that demonstrates an ability to administer LIBOR so that credibility is restored to LIBOR. Its role is to oversee an open and competitive tendering process and recommend a new administrator of BBA LIBOR to the BBA in summer 2013. Although the BBA is not obliged to accept the HTACL's recommendation, the BBA has given its support to the Wheatley Review, including the recommendation to transfer LIBOR to a new administrator selected by an independent committee.
- 3.6 The HTACL's members are acting in a personal capacity and solely with the intent of giving effect to what they, in their own judgement, consider most likely to achieve the objective (as stated in 2.1 above) to recommend a new LIBOR administrator. Accordingly, the HTACL and its members have no legal liability in connection with the tender process. Tender responses are submitted on this basis.
- 3.7 The BBA and BBA LIBOR Limited (BBAL) will have no legal liability in connection with the tender process save for any liability explicitly accepted under the terms and subject to the conditions of the Legal Documents. (These Legal Documents comprise the Business Purchase Agreement (see Section G), the Trademark Licence (see Section H) and the Bidder Commitment to pay Transfer Costs (Annex B)). Tender responses are also submitted on this basis.
- 3.8 LIBOR is one of the most important benchmarks globally and its continuity is vital for a wide range of financial markets. Acknowledging its importance, the Wheatley Review outlined a clear path for the reform of the benchmark. The Government has legislated to bring the administration of LIBOR, and submissions to it, into regulation. A further key milestone of reform will be the appointment of a new administrator, which the HTACL will recommend.
- 3.9 The Wheatley Review also encouraged a debate about the long term future of

LIBOR, including identifying the most appropriate reference rates for different markets and products, and establishing a smooth transition path where necessary. This debate and the implementation of the solutions developed will take time. The new administrator will be able to play a key role in this debate, including through focusing on further steps which could be taken to strengthen LIBOR.

- 3.10 The Financial Conduct Authority (FCA) is committed to ensuring the continuity of LIBOR during this important period covering the tender process, the handover to the new administrator and the implementation of the new regime which will strengthen LIBOR and help ensure its long-term sustainability. If necessary, the FCA will consider using its powers to require organisations to contribute to LIBOR.
- 3.11 The successful Tenderer will be expected to continue to act as the administrator for as long as they retain regulatory approval to do so. Should they wish to transfer the responsibility to someone else, they would be required to give at least two years' notice to the FCA, and could not serve such notice until the end of the first five years of their administration of LIBOR. They would be under an obligation to seek a successor likely to command the approval of the FCA. (See signed statement required as part of the Tenderer's response in 15.1 V below.)

## B. The Tender

### 4 Instructions to Tenderers

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- 4.1 In addition to the Wheatley Review you may care to read:
- MAR 8 *Financial Conduct Authority Requirements for benchmark administrators and submitters*; and
  - Financial Markets Law Committee, *Benchmark Transition: Observations on proposals for benchmark reform*, December 2012.
- 4.2 All documents issued in connection with the ITT remain the property of the HTACL and are to be used solely by the Tenderer for the purpose of tendering. All tender responses will, after the conclusion of the tendering exercise, and as authorised by the HTACL, be held securely and confidentially.
- 4.3 The HTACL will make public this ITT document subject to necessary redactions.
- 4.4 Whilst every endeavour has been made to give the Tenderer an accurate description of the requirements of this tendering exercise, Tenderers should form and rely on their own conclusions about the methods and resources needed to meet those requirements.
- 4.5 This ITT is not an offer to contract. The acknowledgement of receipt of any submitted tender response does not constitute any actual or implied agreement between the HTACL (or any other person) and the Tenderer.
- 4.6 The HTACL has the right to require any Tenderer to substantiate, to its satisfaction, any statement made by the Tenderer to the HTACL in connection with its tender response.
- 4.9 Tenderers are invited to apply for access to the virtual Data Room established by and controlled by the BBAL. Tenderers should submit the names, email addresses and roles of individuals requiring access to the data room to [advisorycommitteeforLIBOR@hmtreasury.gsi.gov.uk](mailto:advisorycommitteeforLIBOR@hmtreasury.gsi.gov.uk). Applications for more than 10 individuals from a Tenderer to have access to the Data Room must be supported with an individual specific justification. BBAL has committed to process applications for access to the Data Room within 2 working days.

## 5 Amendments to Tender Documents

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- 5.1 At any time prior to the deadline for receipt of tender responses, the HTACL may amend the ITT documents, reissue documents or parts of documents to Tenderers or change the tender procedure.
- 5.2 Any such amendments which apply to all Tenderers will be notified in writing to all prospective Tenderers.
- 5.3 The HTACL may extend the deadline for tender responses to allow for significant amendments to be fully assessed and taken into account.
- 5.4 Any alterations, mark ups or additions to any of the tender documents must be clearly identified by the Tenderer, such as by the use of alternative colour or format of text.

## 6 Submission of Tenders

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- 6.1 Indicative Timetable:

Tender issued: **17 April 2013**

Deadline for tender responses: **1700 BST 20 May 2013**

Tenderer Clarifications: **17 April – 1700 13 May 2013**

Presentations by short listed Tenderers: **20 June 2013**

Announcement of Recommended Bidder: **Summer 2013.**

Tenderer Clarifications

- 6.2 Requests for any clarifications in relation to this ITT by Tenderers must be made in writing to the Secretariat (see below) within the period specified above. [advisorycommitteeforLIBOR@hmtreasury.gsi.gov.uk](mailto:advisorycommitteeforLIBOR@hmtreasury.gsi.gov.uk)

Tender Response Deadline

- 6.3 Any tender responses received late (i.e. after **1700 BST 20 May 2013**) **will** be rejected unless there are circumstances considered to be extenuating by the HTACL. If you wish to submit a tender response and believe that you may be unable to meet the deadline, you must contact the HTACL Secretariat as soon as possible before the deadline to notify them at:  
[advisorycommitteeforLIBOR@hmtreasury.gsi.gov.uk](mailto:advisorycommitteeforLIBOR@hmtreasury.gsi.gov.uk)



- 6.4 Tenderers are to submit their tender responses electronically to the HTACL Secretariat email address:  
[advisorycommitteeforLIBOR@hmtreasury.gsi.gov.uk](mailto:advisorycommitteeforLIBOR@hmtreasury.gsi.gov.uk)
- 6.5 Tenderers are required to include details in their tender responses of any change to the information provided in their Pre-Tender Questionnaire.
- 6.6 Tenderers must ensure there is consistency in their tender response when covering the same matter in multiple parts/sections of their tender response.

## **7 Modification and Withdrawal of Tenders**

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- 7.1 The Tenderer may modify their tender response prior to the deadline by notifying the HTACL Secretariat at:  
[advisorycommitteeforLIBOR@hmtreasury.gsi.gov.uk](mailto:advisorycommitteeforLIBOR@hmtreasury.gsi.gov.uk)
- 7.2 Tender responses cannot be modified after the deadline.

## **8 Costs and Expenses**

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- 8.1 Tenderers will not be entitled to claim from the HTACL any costs or expenses which may be incurred in preparing the tender, including those associated with site visits and demonstrations, whether or not the Tenderer is successful.
- 8.2 The successful Tenderer must cover the costs of the HTACL, its Secretariat, HM Treasury (HMT) and the FCA/FSA and the external costs of the BBA, in connection with the LIBOR tendering exercise, up to, in aggregate, [REDACTED] plus VAT (Transfer Costs). Transfer Costs may be invoiced up to one year after completion of the acquisition of the LIBOR administration by the successful Tenderer, subject to the aggregate cap of [REDACTED] plus VAT. Tenderers must submit a signed Costs Letter (in the form set out in Annex B) with their tender response. (See 15.1 V)

## **9 Evaluation of Tenders**

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- 9.1 The HTACL will run an open and competitive tendering process.
- 9.2 When evaluating tenders the HTACL may include and take account of any of the following which may alter the assessment of the Tenderer's response:
- a) references offered or provided by the Tenderer and followed up by the Committee;

- b) any presentation of the proposal requested and arranged by the HTACL.

Evaluation of tender responses will be in accordance with the evaluation criteria as detailed in 'Tender Evaluation' (see Section C below).

- 9.3 Following receipt, the HTACL will evaluate the tender responses and plans to invite three to five Tenderers to present to the HTACL. The HTACL reserves the right to change the number of Tenderers invited to present to them. The Tenderer will be requested to bring to that presentation senior individuals responsible for the proposed LIBOR administration including those proposed to be responsible for Information & Communications Technology (ICT) and governance.
- 9.4 Tenderers that are unsuccessful in being shortlisted for the presentation to the Committee referred to in 9.3 above will be notified at that point that they are no longer being considered in relation to the tender.
- 9.5 The HTACL will reassess the overall score for those Tenderers invited to give a presentation against the evaluation criteria listed in section 12. Any reassessed score will be based on information gained from the tender response and the presentation to generate a final score. The reassessment of the overall score will be based on cumulative knowledge and will be objective and evidence-based in relation to the evaluation criteria.

## **10 Notification of Successful Tenderer**

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- 10.1 The HTACL, at its sole discretion, reserves the right to recommend or reject any of the tender responses received.
- 10.2 The HTACL will notify the BBA of the Committee's recommendation, which will consist of the identity of the recommended transferee of the business and the key terms of the Legal Documentation.
- 10.3 The HTACL will notify the recommended Tenderer of its recommendation to the BBA as soon as is reasonably practicable.
- 10.4 The HTACL will also notify the unsuccessful Tenderers as soon as is reasonably practicable.

## **11 The Tender Response**

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- 11.1 All documents and correspondence relating to the tender response must be

written legibly and in English.

- 11.2 Tenderers must provide a response to this ITT by submitting a proposal in the specified format and containing separately headed sections for each of the eleven criteria in the order the criteria are listed in section 12.
- 11.3 The Tenderer's tender response with respect to evaluation criteria IV – XI, covering the Tenderer's explanations of the extent to which the Tenderer's proposals meet each of these evaluation criteria must be no more than 50 pages, in Arial font size 12 (excluding any annexes, CVs, references, technical documents, and contracts). Although there is no limit on Tenderers' ITT response with respect to criteria I – III, Tenderers are encouraged to be as succinct as possible, whilst fully demonstrating how their proposals meet the evaluation criteria.
- 11.4 In addition, the tender response must contain an Executive Summary that must be no more than 15 pages.
- 11.5 The tender response may include annexes. Such annexes may contain product or company brochures only where the Tenderer considers these to be necessary and relevant to LIBOR administration.
- 11.6 Tenderers must submit complete bids for the role of LIBOR administrator.
- 11.7 Tender responses must contain sufficient detail to allow for full evaluation. An answer stating: '*the Tenderer complies with this criterion*' (or similar) is not acceptable.
- 11.8 The HTACL invites responses of the highest quality, featuring:
  - clear answers, that focus only on the specific criterion being addressed;
  - a sufficiently detailed level of information to demonstrate how the proposal will be delivered;
  - a well-structured response that is easy for evaluators to navigate with accurate references to information provided in additional sections or included as annexes;
  - clear indications of experience, supported by references with respect to the provision of comparable services to those necessary in the administration of LIBOR; and

- in relation to the Legal Documentation, specific drafting amendments and appropriate explanations of the amendments with no attempt to disguise material issues through seemingly general comments.

11.9 Where a tender response on the part of a consortium or joint venture of any kind is contemplated:

- once the tender response to the ITT is submitted, it will not be possible to add or substitute consortium members;
- the tender response should be drafted by reference to the entity that is to become the new administrator of LIBOR and should explain how the consortium or joint venture structure supports the proposed administration of LIBOR; and
- a parent company guarantee will be required for any consortium or joint venture bidding through a special purpose vehicle.

11.10 The HTACL strongly encourages Tenderers to offer to pay consideration and to specify the amount they are willing to pay. Tenderers must submit offers for this amount in a clearly marked separately sealed envelope (and not by way of mark up of the Legal Documents) but as a constituent part of their tender response for the Committee to open if necessary after the scoring referenced in 9.5 above has been completed (see 12.12 and 12.13).

## C. Tender Evaluation

### 12 Evaluation Criteria

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- 12.1 The tender response will be assessed to determine the best Tenderer to deliver LIBOR administration.
- 12.2 A preliminary check of tender responses will be undertaken and those that fail to meet the following basic requirements will be non-compliant and may be rejected. A checklist is attached at Annex C for Tenderers to ensure tender responses contain all that is required by the Committee to undertake its evaluation.
- 12.3 Form of Tender Part I (Annex A): failure to provide this is a major non-compliance issue. The HTACL must have confirmation that this is a bona fide tender and that the Tenderer is making a firm offer open to acceptance within the stipulated period, i.e. six months from the date the Tenderer submits the tender. The acceptance period can be extended but if shortened it renders the bid non-compliant.
- 12.4 A response to the ITT must be provided, in accordance with the instructions on how to complete the response as set out in sections 4 and 11 of this ITT, the 'Instructions to Tenderers' and 'The Tender Response'. Failure to complete and submit a response in accordance with the 'Instructions to Tenderers' and 'The Tender Response' may result in the HTACL rejecting a tender for evaluation.
- 12.5 Tenderers' proposals will be evaluated according to eleven criteria in total.

	<b>CRITERION</b>	<b>WEIGHTING</b>
I	Fit and proper organisation	Acceptable / Not Acceptable
II	Financial capacity	Acceptable / Not Acceptable
III	Acceptance of the draft Legal Documentation	Acceptable / Not Acceptable
IV	Systems and infrastructure	12%
V	Business model	12%
VI	Institutional and managerial capacity	16%
VII	Methodology, governance and oversight of conduct and operations	16%
VIII	Code of Conduct for persons involved in LIBOR	8%

IX	Management of transition	8%
X	Business continuity arrangements	8%
XI	Overall assessment of Tenderer's ability to restore credibility to the administration of LIBOR	20%

- 12.6 A tender response which omits to respond on any one of these criteria, or contains a response on any one of these criteria which the Committee deems to fall below an acceptable minimum standard (regardless of the strength of the responses on other criteria) will be rejected for evaluation. Minimum standards include, but may not be limited to, the standards equivalent to those defined to the FCA requirements for benchmark administrators that are relevant to a given criterion. This is subject to the qualifications in paragraph 12.11.
- 12.7 The table below in Section 15 elaborates upon each of these criteria.
- 12.8 Tenderers are required to complete the FCA forms provided in Section D of this ITT as draft authorisation forms. The completed draft authorisation forms will be assessed by the HTACL and inform the evaluation of the tender response. The successful Tenderer will be required to submit final authorisation forms to the FCA.
- 12.9 The HTACL may refer to/consult with/exchange information with the FCA throughout the tendering exercise.
- 12.10 Tenderers must provide information to the Committee with the same degree of care and accuracy as if it were being provided direct to the FCA for its regulatory processes and authorisation.
- 12.11 FCA approval is a completely separate process. The FCA therefore reserves the right to take a different view on aspects of tender responses that are relevant to its regulatory responsibilities to the view taken by the HTACL.
- 12.12 Any consideration that a Tenderer may be prepared to pay for the transfer of the operation of LIBOR will only be evaluated in order to choose between two or more Tenderers whose overall tender responses achieve equal or near-equal scores.
- 12.13 The successful Tenderer will be required to pay the amount specified by it in the sealed envelope provided under paragraph 11.10.

### **13 Clarification Requests Issued to Tenderers by the Committee**

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- 13.1 The HTACL may ask some or all Tenderers to provide further information, clarification, site visits and so forth to aid its assessment of tender responses.
- 13.2 The HTACL may seek written clarification on any matter relevant to the Tenderer's response. The response to the clarification request will form part of the final tender response.
- 13.3 The HTACL reserves the right to substantiate to its satisfaction any statement made by the Tenderer to the HTACL in connection with its tender.

### **14 Clarification Requests from Tenderers to the Committee**

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- 14.1 Tenderers may submit clarification requests in relation to the tendering process and the content of this ITT via email to the Committee Secretariat ([advisorycommitteeofLIBOR@hmtreasury.gsi.gov.uk](mailto:advisorycommitteeofLIBOR@hmtreasury.gsi.gov.uk)).
- 14.2 Responses to requests for clarification (including the clarification request) may, at the discretion of the Committee Secretariat, be shared with all Tenderers.

### **15 Evaluation Criteria: Further Information**

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- 15.1 The table below lists each of the eleven criteria the HTACL will use to review tender responses with some additional guidance on information which must be included in tender responses. The information listed in this table is not exhaustive and Tenderers are encouraged to respond with elements, features and detail for each of the criteria as they judge best.

	<b>Criterion (and guidance)</b>	<b>Weighting</b>	<b>Minimum information which must be included in tender response for this criterion</b>
<b>I</b>	<p><b>Tenderer must demonstrate it is a <u>fit and proper organisation</u> to administer LIBOR.</b></p> <p><i>References:</i> MAR 8 FCA Requirements for benchmark administrators paragraphs 8.3.1 to 8.3.16(G)</p> <p>COND 2.1 and 2.2.</p>	<p>Acceptable / Not Acceptable</p>	
<b>II</b>	<p><b>Tenderer has credible plans to source the <u>financial capacity</u> to administer LIBOR.</b></p> <p><i>References:</i> MAR 8 FCA Requirements for benchmark administrators paragraphs 8.3.13 to 8.3.16</p>	<p>Acceptable / Not Acceptable</p>	
<b>III</b>	<p><b>Tenderer's <u>acceptance of the draft Legal Documentation</u></b></p> <p><i>References:</i> LIBOR ITT Annex G and Annex H.</p> <p>Amendments to the Legal Documentation are discouraged.</p> <p>Whether amendments are deemed acceptable or not will depend on the precise amendments proposed. Where amendments are proposed, these should be accompanied by an explanation for the amendment (and the acceptability* of such explanation will also be considered by the</p>	<p>Acceptable*/ Not Acceptable</p>	<p>A signed statement attaching the Legal Documents the Tenderer agrees to sign if required to do so by the BBA.</p> <p>A statement committing to enter into bilateral confidentiality undertakings with panel banks in relation to their submissions.</p>



	<b>Criterion (and guidance)</b>	<b>Weighting</b>	<b>Minimum information which must be included in tender response for this criterion</b>
	<p>HTACL). Prior to completing its evaluation the HTACL will have the right to request Tenderers to provide clarification / further explanation of / changes to any amendments and that clarification, further explanation or change may also be taken into account by the HTACL for its evaluation.                      Note (*): acceptability in this context means for the purposes of the Committee's recommendation (see sections 2 and 3 above).</p>		
<b>IV</b>	<p><b>Tenderer's <u>systems and infrastructure</u> for administrating LIBOR (including Business Continuity Plans).</b></p> <p><i>References:</i>                      MAR 8 FCA Requirements for benchmark administrators paragraphs 8.3.4 to 8.3.7 and 8.3.11 to 8.3.12</p> <p>FCA ICT requirements for benchmark administrators summarised in section D.</p> <p>Note: BBA will not transfer any existing ICT infrastructure to a new administrator.</p>	<b>12%</b>	<p>A statement outlining existing, or proposed, ICT software and general infrastructure that is proposed to be used to undertake the role of LIBOR administrator (including calculation and publication). This should cover how the operating model, system &amp; process architecture to deliver the administration of LIBOR, that are necessary according to the business and technical (functional and non-functional) requirements that underpin your overall proposed solution to administering LIBOR, would be implemented. Distinguish between what processes and technology already exists and what requires implementation.</p> <p>(Section D requires more detailed information on ICT and systems.)</p>
<b>V</b>	<b>Tenderer's <u>business model</u> for LIBOR.</b>		A statement explaining your approach to implementing a

	<b>Criterion (and guidance)</b>	<b>Weighting</b>	<b>Minimum information which must be included in tender response for this criterion</b>
	<p><i>References:</i></p> <p>LIBOR ITT: Section D for FCA requirements.                      MAR 8 FCA Requirements for benchmark administrators paragraphs 8.3.1 and 8.3.2, and 8.3.13 through to 8.3.16.</p>	<p><b>12%</b></p>	<p>sustainable, efficient and equitable business model for LIBOR. Include how your proposal will result in fair and open access to LIBOR.</p> <p>A statement explaining your approach to keeping LIBOR Panel submitting banks on the Panel and to expanding the Panel of submitting banks.</p> <p>A statement setting out the proposed revenue model, including a breakdown of the price schedule of any licensing system that will be implemented.</p> <p>A forecast and categorisation of the costs and revenue forecasts for the LIBOR administration business, for the first seven years of the proposal. Any forecast licensing income should be broken down by the size and type of organisation receipts are expected to originate from.</p> <p>Tangible evidence of agreements with any third party organisations providing critical components of the business proposal.</p> <p>A signed statement agreeing with HTACL to administer LIBOR for a minimum period of 7 years with a 2 year minimum notice period applying after 5 years. (Refer to paragraph 3.11 above.)</p> <p>A commitment as part of your tender to pay the Transfer Costs, i.e. completion of Annex B.</p>
<p><b>VI</b></p>	<p><b>Tenderer's institutional and</b></p>		<p>A statement summarising your relevant credentials and</p>

	<b>Criterion (and guidance)</b>	<b>Weighting</b>	<b>Minimum information which must be included in tender response for this criterion</b>
	<p><b><u>managerial capacity to administer LIBOR.</u></b></p> <p><i>References:</i> MAR 8 FCA Requirements for benchmark administrators paragraph 8.3.5.  SUP 10A.7.13 of the FCA Supervision Manual.</p>	<b>16%</b>	<p>experience.</p> <p>Provide CVs for any individual who would apply for a Controlled Function; these should document any technical expertise.</p>
<b>VII</b>	<p><b><u>Tenderer’s methodology, governance and oversight of conduct and operations arrangements for LIBOR.</u></b></p> <p><i>References:</i> MAR 8 FCA Requirements for benchmark administrators paragraphs 8.3.1 to 8.3.4, and 8.3.6 to 8.3.10.</p>	<b>16%</b>	<p>A statement of your proposed methodology, governance and oversight of conduct and operations arrangements for LIBOR. Include in your statement explanations of how you will discourage and detect manipulation and errors in submissions to LIBOR; and will maintain the sustainability of LIBOR through monitoring for and responding appropriately to risks.</p> <p>Provide declarations of business relationships with LIBOR Panel submitting banks and other relationships with organisations with an interest in LIBOR e.g. organisations whose products use LIBOR as components of their instruments. Details of how conflicts will be managed in the event the Tenderer is recommended to administer LIBOR.</p>
<b>VIII</b>	<p><b><u>Tenderer’s proposed approach to and governance of the Code of Conduct for persons involved in LIBOR.</u></b></p>	<b>8%</b>	<p>A statement of your plan to assume, maintain and enhance the code of conduct for persons involved in LIBOR, and evidence how it is capable of implementation by your organisation.</p>
<b>IX</b>	<p><b><u>Tenderer’s programme for the</u></b></p>		<p>A statement setting out your plan for the management of the</p>

	<b>Criterion (and guidance)</b>	<b>Weighting</b>	<b>Minimum information which must be included in tender response for this criterion</b>
	<p><b>management of the <u>transition</u> of LIBOR administration from incumbent organisations, robustly and as quickly as practicable.</b></p> <p><i>References:</i></p> <p>MAR 8 FCA Requirements for benchmark administrators paragraph 8.3.2.</p> <p>Financial Markets Law Committee, Benchmark Transition: Observations on proposals for benchmark reform, December 2012.</p>	<b>8%</b>	transition of LIBOR administration from incumbent organisations.
<b>X</b>	<p><b>Tenderer’s plans for the long term <u>business continuity arrangements</u> for LIBOR.</b></p> <p><i>References:</i></p> <p>MAR 8 FCA Requirements for benchmark administrators paragraphs 8.3.1 to 8.3.2, and 8.3.10 (2) and (3)</p> <p>Financial Markets Law Committee, Benchmark Transition: Observations on proposals for benchmark reform, December 2012.</p>	<b>8%</b>	<p>A statement of your approach to the long-term business continuity arrangements for LIBOR and the long-term benefits to market participants from LIBOR.</p> <p>A statement explaining your organisation’s proposed approach to transitioning from the use of the name BBA LIBOR, including an indicative timetable.</p>
<b>XI</b>	<p><b>Tenderer’s <u>ability to restore credibility to the administration of LIBOR, to</u></b></p>	<b>20%</b>	A statement setting out relevant evidence of your ability to restore credibility to the administration of LIBOR, which has not been

	<b>Criterion (and guidance)</b>	<b>Weighting</b>	<b>Minimum information which must be included in tender response for this criterion</b>
	<p><b><u>inform the Committee's overall assessment.</u></b></p>		<p>covered in response to other criteria, and highlighting specific features of the tender response which are particularly relevant to this criterion.</p> <p>Detail any formal interest the BBA, BBAL or any LIBOR Panel submitting bank has in your organisation and vice versa. If any such interest exists, explain how your proposals would be wholly compatible with this criterion.</p> <p>A statement detailing whether your organisation, or anyone currently working within your organisation, has in the last ten years undertaken a role in the governance of LIBOR.</p>

## **D. Financial Conduct Authority (FCA) Authorisation Requirements**

In line with the Wheatley Review recommendations, the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 has introduced a regulated activity for firms administering a specified benchmark. Currently, the only specified benchmark is LIBOR with BBAL and Thomson Reuters being the Benchmark Administrators. The new administrator for LIBOR must be authorised to do so by the FCA before it can begin its activities.

The HTACL does not consider it necessary to require all Tenderers to begin the process of applying to the FCA to be authorised to carry out the activity of administering LIBOR during the completion of the ITT phase. The successful Tenderer(s) will be requested to submit a formal application to the Prudential Regulatory Authority (PRA) or FCA at a later stage in the process.

However, in order for the Committee to have a reasonable degree of confidence that the successful Tenderer organisation(s) will be able to hold effective discussions with the FCA in relation to authorisation, all Tenderer(s) will be required to complete a full set of FCA authorisation application forms as part of their tender response. Tenderers must note that submission of the forms does *not* constitute an application for authorisation to the PRA or FCA.

Upon recommendation by the Committee, the successful Tenderer(s) will then be required to submit a full application for authorisation to the FCA. The list below sets out which forms will be necessary. It should be noted that not every question will be relevant to the Tenderer organisation(s) and these may be answered as “not applicable.”

The list below is based on the assumptions that (i) the Tenderer organisation(s) will be a type of entity solely regulated by the FCA and (ii) that the legal vehicle(s) being proposed by the Tenderers do not hold any form of current FCA authorisation. If either of these assumptions is not the case in respect of a Tenderer’s bid or a Tenderer requires help with queries in relation to the completion of this Section D, please contact the Secretariat for advice via eMail: [advisorycommitteeforLIBOR@hmtreasury.gsi.gov.uk](mailto:advisorycommitteeforLIBOR@hmtreasury.gsi.gov.uk).

Tenderers must not contact the FCA directly.

FCA authorisation application forms:

1. [Core Details](#);
2. [Supplement for complex securities and futures firms](#);  
(See guidance on page 26 below)
3. Form A – Long form;
4. [Disclosure of significant events Appendix](#) – relevant if the entity has previously traded;
5. [Owners and Influencers Appendix](#);

6. [Checklist and Declaration](#); and
7. Controller form – either ‘Standard Notification Form’ or ‘Corporate controllers form’, depending on the type of firm (Note IT forms do not need to be completed):  
<http://www.fca.org.uk/firms/about-authorisation/getting-authorized/additional-forms>

All forms for new authorisation applications can be found at:

<http://www.fca.org.uk/firms/about-authorisation/authorising-soloregulated-firms/form-wholesale-investment-firms>

The list below sets out questions relating to ICT and operations. Please answer all of the sections below. For the purpose of the tender, these questions replace any ICT related FCA forms, which do not need to be completed at this stage.

### **A) Solution Architecture**

Please provide a description of the benchmark administration system(s) to be implemented covering the following areas:

- Non-functional specification (including performance, capacity, resilience, recovery);
- Architectural design diagram, including interfaces (internal and external) and data flow;
- Development (package / bespoke);
- System environment (including infrastructure, network, operating system, database and application overview);
- Validation of:
  - Benchmark submissions;
  - Independent data sources;
- Published LIBOR rates to licensees / market;
- Reporting / Analytics;
- Core submission data store;
- Types of audit trails (including override capabilities);
- Supporting business processes; and
- Dependencies on third parties.

### **B) Delivery**

#### **B.1 Proposed governance / reporting model for LIBOR administration and project management and systems development lifecycle**

The proposed delivery management methodology and proposed governance / reporting model. Please include:

- Controls to prevent and detect rate changes or overrides;
- An overview of the scale and scope of change in order to implement the relevant systems and processes from those existing in the Tenderer's

organisation at the time of the bid, including a high level delivery plan and associated resource model;

- A description of the project development / management methodologies; and
- A description of how you intend to report progress / escalate issues to interested parties.

#### **B.2 Testing**

Please provide an overview of technology change control policies, standards and procedures to be implemented.

#### **B.3 Penetration Testing**

Please provide an overview of your penetration testing and attack assessment policies, standards and procedures to be implemented, including:

- Provider details (including whether they are an independent third party);
- Scale and scope of penetration testing;
- Frequency of testing; and
- Monitoring of issue remediation.

#### **B.4 Business partners and outsourcing**

With respect to the delivery of your proposed solution:

- Please describe the relationship management process including:
  - New relationships (due diligence);
  - On-going relationships / service provision and performance;
  - SLA arrangements;
  - Monitoring; and
  - Support.
- Please describe the level of oversight of outsourcing providers including:
  - Security and confidentiality of information;
  - Rights to access and/or audit the service provider;
  - Contingency plan for disaster recovery and periodic testing of backup facilities; and
  - Termination arrangement for outsourcing including fall back plans in the event of an exit from the relationship.

### **C) Operations**

#### **C.1 Standard operating environment**

Please provide a description of your approach to operational management, including your methodology and where the solution will be supported from and any associated data management implications.

#### **C.2 User administration and security policies**

Please provide an overview of the administrative process for creating, deleting and amending user access rights and profiles (for general and privileged



access) for both benchmark submission, administration and repository for supporting data to be implemented.

Please provide details on the security policies, standards and procedures you will implement.

### C.3 IT operational performance

Please provide an overview of IT operational performance policies, standards and procedures to be implemented, including:

- Incident and problem management including diagnostic capability and proposed escalation paths;
- Operational performance reporting;
- Alignment to accreditation and recognised industry standards (for example ITIL);
- Performance and capacity management and monitoring; and
- System support staff availability.

Please provide a description of the back-up policies, standards and procedures to be implemented, including:

- Tools utilised;
- Level of automation;
- Type and frequency of backups; and
- Testing.

### C.4 Encryption standards

Please provide an overview of your encryption and authentication policies, standards and procedures to be implemented, including:

- Data transmission over networks;
- Protection of data;
- Controls over portable devices or removable media (such as laptops, memory sticks and DVDs) including monitoring and enforcement of breaches.

### C.5 Business partners and outsourcing

With respect to your operational management of the solution:

- Please provide a description of your key relevant business partners and services and what controls are in place;
- Please describe the level of oversight of outsourcing providers including:
  - Security and confidentiality of information;
  - Rights to access and/or audit the service provider;
  - Contingency plan for disaster recovery and periodic testing of backup facilities; and
  - Termination arrangement for outsourcing including fall back plans in the event of an exit from the relationship.

### C.6 Risk management

Please provide a description of your technology risk management policies, standards and procedures including:

- The methodology for identifying, managing monitoring, remediating and reporting technology risk; and
- The independent assessment by the internal audit function.

### C.7 Business Continuity

#### C.7.1 Corporate BCP which covers frequency of testing and coverage

Please provide a description of the business continuity and disaster recovery policies, standards and procedures to be implemented, considering the following scenarios:

- Failure of individual hardware, network or software component;
- Unavailability of primary data centre or business unit; and
- Unavailability of IT solution i.e. software corruption effecting both the primary and secondary data centre or a DDOS attack resulting in the switch-off of external communications.

Please provide details of Testing (scale, scope and frequency).

#### C.7.2 Proposed resilience and recovery solution for the proposed architecture

Please provide details of:

- Organisation;
- Recovery Time Objective (RTO) and Recovery Point Objectives (RPO);
- Back up sites / contractual arrangements;
- Communications;
- Location of plans; and
- Invocation process.

#### C.7.3 identification of points of failure

Please detail any unique points of failure, including both your proposed solution and any systems, internal to your domain, that it is dependent upon, over:

- Hardware;
- Communications; and
- Software (systems).

**Guidance on completion of FCA form 'Supplement for complex securities and futures firms' (FCA form #2 on page 21)**

Not all of the questions in the form 'Supplement for complex securities and futures firms' are relevant to the proposed business. It is acceptable for some questions to be answered as "not applicable".

In section 1, questions 1.1-1.7 we request a background to the business and a description of the business, the other questions may not be relevant and do not need to be answered.

Questions 1.8-1.11 may not be relevant, however, if the business is likely to grow, please describe plans to expand.

Questions 1.12 – 1.13 – we will require an explanation of how the firm will derive any income.

Question 1.14 – we will expect a full answer on how potential risks will be managed.

Question 1.15 may not be relevant.

Question 1.16 – 1.18 – please answer.

Question 1.19 may not be relevant.

Section 2 is not applicable.

Section 3 – not all of the section is relevant, however, we will need to know how the firm can meet its financial resource requirement and will require supporting evidence including projected profit and loss figures, balance sheet and cash flow. An assessment of any potential risks should identified in question 1.14 should also be assessed in terms of whether the firm has adequate capital in line with the question at 3.2.

Section 4 is relevant to the firm with the addition of the CF50 function which may be added at question 4.2.

Section 5 will be relevant.

Section 6 should be amended to note that there is a supervisory fee requirement and that the FCA will be collecting an ongoing supervisory fee.

## **E. Background: British Bankers' Association LIBOR Assets for Transfer and current rate calculation process**

LIBOR, the London Inter Bank Offered Rate, is a measure of unsecured interbank funding costs and is used as a reference rate for lending, deposits and derivatives transactions across a range of contracts, as well as a policy rate in Switzerland, with continued demand from users.

LIBOR reflects a combination of interest rates and bank credit and liquidity premia and is produced daily for a number of currencies and maturities. These are the subject of a current reduction such that by 1 June 2013, there will be 5 currencies and 37 maturities: these may be further reduced as a consequence of market forces. Further reductions are under close evaluation based on participant feedback.

BBA LIBOR the trade mark is owned by the British Bankers' Association (**BBA**), an unincorporated association, which has in turn licensed all rights in and to exploit the index to its subsidiary, BBA LIBOR Limited (BBAL). BBAL owns the business of administrating BBA LIBOR (the benchmark index), the 'Designated Distributor' role is currently undertaken by Thomson Reuters (TR) and is regulated by FCA as a Benchmark Administrator. Both BBAL and TR distribute LIBOR information. TR and BBAL operate under the scrutiny of the FCA and the LIBOR Oversight Committee. BBA LIBOR is a revenue-generative asset of BBAL.

### **Commercial Overview of BBA LIBOR**

The LIBOR Panel Banks and Users Group advise BBAL on operational matters relating to BBA LIBOR. The data used as the input for the BBA LIBOR calculation is formulated in response to the following question on which every contributor bank is asked to base its daily submissions:

*"At what rate could you borrow funds, were you to do so by asking for and then accepting inter-bank offers in a reasonable market size just prior to 11 am?"*

The 'Contributor Banks' provide rate submissions on a non-contractual, voluntary basis by 11:10am each London Business Day to TR. Technically, they are therefore able to withdraw without notice.

It should also be noted that there are few offers in the market for some currencies / tenors and therefore contributor banks use expert judgement to arrive at the rates submitted. This makes surveillance and scrutiny more challenging for the administrator.

TR calculates BBA LIBOR for each currency and maturity in which BBA LIBOR is quoted using guidelines provided by the LIBOR Oversight Committee via the Code of Conduct for Contributor Banks. TR then distributes BBA LIBOR to particular BBAL licensees, from 11:45 LDN (for those licensees with the right to 'live' data) or 'delayed' from 17:00 LDN (for those

licensees with the right to ‘delayed’ data) each London Business Day. For more detail on this please refer to the information available at [www.bbalibor.com](http://www.bbalibor.com) – note this website contains historical information which may be useful to the bidder but BBAL has not updated the information.



Under the Reuters Agreement, TR, as “Designated Distributor”, is appointed by BBAL to receive quotes from the Contributor Banks, compile and distribute the index and distribute it into the market place. Further details of the day to day operation, calculation and distribution of BBA LIBOR constitute proprietary information belonging to TR as to which BBAL has no visibility. From 2 April when LIBOR became regulated under the FCA, TR is also an Interim Benchmark Administrator alongside BBAL.

A series of licence agreements exist between BBAL, licensees and TR. These are separated into various tiers, according to what BBA LIBOR data the licensee is entitled to receive (e.g. ‘live’ or ‘delayed’) and the permitted use of the data.



[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]

The BBA will make a virtual data room, and an index to the documents stored

in the data room available to bidders who have passed the Pre-Tender Questionnaire Stage of the Tendering Exercise. The data room will contain details relating to the corporate structure of BBAL, material contracts (including the licence agreements referred to above), intellectual property arrangements and employees. The administration of LIBOR, and the LIBOR submitters is managed under a new regulatory regime introduced by the Financial Conduct Authority from 2 April 2013.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Standard Licence fees have not been increased since 2002 and BBAL has the contractual right to increase fees on 12 months' prior written notice on almost all contracts though there are exceptions.

## **F. Overview of BBA LIBOR rate-setting process currently undertaken by Thomson Reuters (incumbent calculation and publication agent)**

Every day the Thomson Reuters calculation engine will determine whether the current day is valid for processing each of the LIBOR currencies:

- If it is determined to be a non-working day (Saturday or Sunday), the calculation engine will not process.
- If it is a UK and TARGET\* holiday, the calculation engine will not process.
- Previously, if it was a UK holiday but a business day within Europe (i.e. not a TARGET holiday), only the Euro rates would be published.  
\* Please note that due to instruction from the BBA, Euro rates will no longer publish on a UK holiday. This will be effective from Monday 6 May 2013.
- If it is a business day in the UK, but either a TARGET holiday or a local holiday in the US or Canada, all currencies will be published with the exception of the overnight rate for EUR, USD and CAD.
- 09:05 LDN, all panel banks previous day's input records are cleared down on the system.
  - The clear down function deletes the banks previous day's submission so that a bank must contribute new rates. This ensures that old data cannot be included in the calculation.
  - Thomson Reuters does not provide banks with any "suggested" submissions. A panel bank must input their own level.
- Panel banks should submit their new rates by 11:10 LDN
- There are no contributor agreements in place between Thomson Reuters and the panel banks, nor between BBAL and the panel banks.
- Panel banks contribute using proprietary Thomson Reuters tools.
- 11:11 LDN, Thomson Reuters will contact any bank that has not yet submitted new rates.
- If a Bank is not contactable or still fails to submit, Thomson Reuters will immediately escalate to BBAL.
- The calculation methodology requires all panel banks to contribute prior to calculation and publication.
- In extreme circumstances BBAL can invoke a contingency plan to publish with an in-complete panel.

- Once all panel bank submissions have been received then a series of sanity checks are run on the data.
- These checks will flag any likely errors.
- An analyst may call a bank to confirm a “flagged” rate.
- A daily diary is maintained to record any confirmations that have been requested by Thomson Reuters from a panel bank and if the panel bank decides to change their submission.
- The diary also records late submissions.
- Diary details are sent to BBAL at the end of each day.
- Thomson Reuters also has a weekly call with BBAL.
- The calculation engine performs the calculation as per the stated BBA methodology for each currency. Details can be found on <http://www.bbalibor.com/bbalibor-explained/the-basics>
- All currencies should be published before midday.

## **REFIX**

If a bank wishes to change their submissions after publication, a re-fix can only be sanctioned by BBAL. This is rarely, if ever, permitted.

In the event that a wrong publication was due to an issue with the Thomson Reuters calculation process then a re-fix would be approved.

## **No Publication**

Thomson Reuters is not aware of any days when LIBOR failed to publish.

## **Historical Rates**

Under Thomson Reuters’ agreement with the BBA, the BBA retains all intellectual property rights in both the source data (the submissions from banks) along with the published LIBOR rate data. Thomson Reuters have certain rights to distribute the live calculated data, which will terminate upon termination of Thomson Reuters’ agreement with the BBA. BBAL owns the historical data, and Thomson Reuters do not currently have express rights to make this historical data available to anyone in the future. Such information would only be available through BBAL.

\***TARGET** stands for Trans-European Automated Real-time Gross settlement Express Transfer system. TARGET holidays are set by The European Central Bank.

<http://www.ecb.int/home/html/holidays.en.html>



**G. Draft Business Purchase Agreement between BBA and the  
New Administrator**



## H. Draft Trademark Licence



## **Annex A: Form of Tender – Part 1**

### **THE AGREEMENT and DECLARATION**

Dear [BBA & HTACL]

#### **Provision of London Inter Bank Offered Rate Administration**

Having examined the proposed Business Purchase Agreement and Trade Mark Licence Agreement (Legal Documents) we offer, and confirm that such offer will be binding on us for the period referred to below, to enter into them with the other parties to them on the terms and conditions set out in the forms of them accompanying the ITT, as adjusted by any specific amendments submitted by us as part of our tender response (assuming such amendments are acceptable).

We undertake to keep our tender and commitment to enter into the Legal Documents on the basis stated above open for acceptance by the BBA for a period of six (6) months from the tender deadline date.

We declare that this is a bona fide tender, intended to be competitive, and that we have not fixed or adjusted the contents of the tender by or under or in accordance with any agreement or arrangement with any other person [other than members of our consortium]. We further declare that we have not done and we undertake that we will not do any of the following acts prior to finalisation of this tender and entry into the Legal Documents:

- (a) communicate to a person, other than the HTACL, the terms of the proposed tender and Legal Documents (other than to our professional advisers for the purpose of advising us on them);
- (b) enter into any agreement or arrangement with any other person or entity that they refrain from tendering or as to the terms of any tender to be submitted.

Signed

Position:

Name:

Date:

Duly authorised to sign tenders for and on behalf of:

**Company:**

## **Annex B: Letter to Bidder Commitment to pay Transfer Costs**



## **Annex C: Tenderer Response Checklist**

- All pages forming the tender response are numbered.
- Tender response typed in Arial font size 12.
- Executive summary (no more than 15 pages).
- Clearly separate sections for each of the eleven criteria, incorporating the 'Minimum information which must be included in tender response for this criterion' listed in the table in section 15.1 (Note tender response in respect of Criteria IV to XI to be no more than 50 pages in total.)
- Section D FCA forms relevant to your organisation/s proposal to act as the FCA regulated administrator of LIBOR included in tender response.
- References for all previous work undertaken by Tenderer organisation(s), and its key staff identified as relevant to your proposal to administer LIBOR (see 9.2(a)).
- Signed statement agreeing to administer LIBOR for a minimum period of 7 years with a 2 year minimum notice period applying after 5 years. (see 3.11 and 15.1 V)
- Signed statement attaching the Legal Documents the Tenderer agrees to sign if required to do so by the BBA. (see 15.1 III).
- Signed statement (in the Agreed Form in the BPA) committing to enter into bilateral confidentiality undertakings with panel banks in relation to their submissions.
- Completed and signed Costs Letter (Annex B).
- Sealed envelope with offer of consideration (see 11.12).