

THE WATER INDUSTRY (SPECIFIED INFRASTRUCTURE PROJECTS) (ENGLISH UNDERTAKERS) REGULATIONS 2013

Thames Tideway Tunnel Project: Regulation 6(8) Notice No. 2 of 2016

25 November 2016

In exercise of the powers conferred by regulation 6(8) of the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (SI 2013/1582) (the "SIP Regulations"), the Water Services Regulation Authority (the "Authority") issues this Notice to dis-apply, to the extent set out in this Notice, the obligation imposed by virtue of regulation 6 of the SIP Regulations for the Licensed Infrastructure Provider to apply certain provisions of the Utilities Contracts Regulations 2016 (the "2016 Regulations"), as modified by the SIP Regulations, in relation to the Thames Tideway Tunnel Project or any part of it.

This Notice does not affect the dis-application of regulation 6 of the SIP Regulations in respect of certain procurement activity as set out in the Thames Tideway Tunnel Project Regulation 6(8) Notice 2015 and in the Thames Tideway Tunnel Project Regulation 6(8) Notice No. 1 of 2016. Nothing in this Notice shall prevent any further exercise by the Authority of its powers under regulation 6(8) of the SIP Regulations at any time on or after the date of this Notice.

Citation, commencement and application

1 This Notice:

- (a) may be cited as the Thames Tideway Tunnel Project Regulation 6(8) Notice No. 2 of 2016;
- (b) takes effect on 1 December 2016; and
- (c) remains in force until withdrawn by the Authority.

Interpretation

2 In this Notice:

"Act" means the Water Industry Act 1991;

"Licensed Infrastructure Provider" means the Infrastructure Provider which is the holder for the time being of the Project Licence granted under section 17FA of the Act in respect of the Thames Tideway Tunnel Project;

"Project Licence" means the *project licence* granted to the Infrastructure Provider for the Thames Tideway Tunnel Project pursuant to the powers under section 17FA of the Act on 21 August 2015, and that came into effect on 24 August;

"Thames Tideway Tunnel Project" means the *specified infrastructure project* described in schedule 1 to the Thames Tideway Tunnel Project Specification Notice; and

"Thames Tideway Tunnel Project Specification Notice" means the notice made by the Secretary of State on 4 June 2014, pursuant to regulation 4(1) of the SIP Regulations, specifying the Thames Tideway Tunnel Project as a *specified infrastructure project*.

Except as otherwise provided in this Notice, words and expressions used in the SIP Regulations and the Act (as modified and applied by the SIP Regulations) which are italicised have the same meaning in this Notice as they have in the SIP Regulations and the Act.

Regulation 6 of the SIP Regulations

- 3 Regulation 6(8) of the SIP Regulations provides that in the circumstances set out in regulation 6(2) of the SIP Regulations, the provisions of the 2016 Regulations as set out in the first column of the table in Part 1 of Schedule 2 to the SIP Regulations apply, subject to the modifications set out in the second column of the table in Part 1 of Schedule 2 to the SIP Regulations, in relation to any *licensed infrastructure provider*, unless the Authority otherwise allows by notice.
- 4 Accordingly, pursuant to the powers conferred by regulation 6(8) of the SIP Regulations and having regard to:
- (a) the fact that:
 - (i) the Thames Tideway Tunnel Project is a *specified infrastructure project* for the purposes of regulation 4 of the SIP Regulations;
 - (ii) on 13 August 2015, the Authority designated Bazalgette Tunnel Limited (company number 9553573) as the *infrastructure provider* for the Thames Tideway Tunnel Project by virtue of the notice issued by the Authority pursuant to regulation 8(1) of the SIP Regulations, such notice coming into effect on 14 August 2015;
 - (iii) the Authority granted the Project Licence to the *infrastructure provider*;
 - (iv) the Authority issued a Notice on 21 August 2015 dis-applying regulation 6 of the SIP Regulations in respect of certain of the Licensed Infrastructure Provider's procurement activity; and
 - (v) the Authority issued a further Notice on 29 February 2016 dis-applying regulation 6 of the SIP Regulations in respect of certain professional services and legal services contracts;
 - (b) the underlying aims of the SIP Regulations; and
 - (c) the general duties imposed on the Authority by virtue of section 2 of the Act,

the Authority gives this Notice to dis-apply the applicable modified provisions of the 2016 Regulations in the circumstances listed in paragraph 5.

- 5 In accordance with paragraph 4, the applicable modified provisions of the 2016 Regulations shall be dis-applied in respect of the contracts listed in Schedule 1 to this Notice, provided that the Licensed Infrastructure Provider shall obtain the consent of the Authority to:
- (a) any increase in the costs, fees (including rates) and expenses associated with those contracts unless an objective mechanism governing such increases has been provided for in the contracts initially entered into;
 - (b) any extension of the term of such contracts, unless such an extension:
 - (i) is provided for in the contract initially entered into;
 - (ii) does not otherwise amend the terms of the contract initially entered into; and
 - (iii) does not have the effect of extending the contract beyond four years from date of expiry of the contract initially entered into; and
 - (c) any replacement of such contracts whether from the expiry of their terms or from their termination for any other reason.
- 6 The applicable modified provisions of the 2016 Regulations shall also be dis-applied in respect of any other contracts with the suppliers listed in Schedule 1 which directly support the applications

and software within the scope of the contracts listed in Schedule 1, provided that the Licensed Infrastructure Provider obtains the consent of the Authority prior to entering into such contracts.

- 7 In accordance with section 195A of the Act, a notice stating the reasons for this decision shall be published as soon as reasonably practicable after the making of this Notice.

Signed

Keith Mason

on behalf of The Water Services Regulation Authority

25 November 2016

Schedule 1

The Thames Tideway Tunnel Project Regulation 6(8) Notice No. 2 of 2016 applies to the following contracts with the parties listed below:

Contract	Date	Parties to contract
Bentley SELECT Program Agreement Amendment No. 1 to Bentley SELECT Program Agreement Cloud Services Subscription Order Form ProjectWise CONNECT Edition Cloud Provisioned Proposal Proposal for a Software Subscription (CAD/QA and DCS)	On or about 1 December 2016	(1) Bazalgette Tunnel Limited; and (2) Bentley Systems International Limited
Microsoft Business and Services Agreement Microsoft Enterprise Subscription Agreement Enterprise Subscription Enrolment	27 July 2015	(1) Thames Tideway Tunnel Limited ¹ ; and (2) Microsoft Ireland Operations Limited

¹ It is expected that this contract will be transferred from Thames Tideway Tunnel Limited to Bazalgette Tunnel Limited after grant of this Notice.