
Reasons for Issuing a Waiver Notice

1. Introduction

On 21 August 2015 Ofwat granted a [Project Licence](#) to Bazalgette Tunnel Limited (trading as Tideway) to deliver the Thames Tideway Tunnel project (the Project). Tideway must carry out all activities described in the [Project Specification Notice](#) issued by the Secretary of State in respect of the Thames Tideway Tunnel, apart from those activities that Thames Water Utilities Limited (Thames Water) is to carry out under the [Preparatory Works Notice](#), also issued by the Secretary of State.

The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 ([the SIP Regulations](#)) apply a procurement regime to the Project which the incumbent water or sewerage undertaker (in this case Thames Water) or the designated licensed infrastructure provider (IP) (in this case Tideway), must follow in circumstances where the Utilities Contracts Regulations 2016 (the UCR) or the Public Contracts Regulations 2015 (the PCR) do not impose a requirement to conduct a competitive tender process. However, regulation 6(8) of the SIP Regulations permits Ofwat to issue a notice to dis-apply this regime (or aspects of the regime) in relation to the licensed IP. The procurement regime that applies to the Project under the SIP Regulations is a modified form of the procurement regime in the UCR (the modified procurement regime).

At the same time that we issued a project licence to Tideway, we also issued a [notice](#) under regulation 6(8) of the SIP Regulations dis-applying to a limited extent Tideway's obligation to apply the procurement provisions set out in the SIP Regulations (referred to below as a 'Waiver Notice'). In particular, this Waiver Notice provided that Tideway should benefit from some of the exemptions that apply to all utilities under the UCR. It also provided that Tideway did not have to follow the modified procurement regime for contracts with a monetary value under a specified threshold. This threshold is the same threshold that applies to all utilities under the UCR (the UCR financial threshold).[1]

On 28 January 2016 we granted a further [waiver](#) in respect of certain professional services related to its financing arrangements and specific legal services contracts.

On 25 November 2016 we granted a further [waiver](#) in respect of two software contracts. That waiver came into effect on 1 December 2016.

[1] The current thresholds are £328,352 for a supply or a services contract, and £4,104,394 for a works contract

In September 2017 Tideway applied for a fourth waiver in respect of two software contracts. We agreed to grant a further [waiver](#) in respect of one element of that application. This was granted on 18 October 2017, coming into effect on 19 October 2017 (**Thames Tideway Tunnel Project: Regulation 6(8) Notice No. 1 of 2017**). With regard to the second element of the application, we have decided, in principle, to grant a further waiver but, for reasons set out below, the formal waiver notice will only be issued once Tideway has appointed the supplier.

In accordance with section 195A of the Water Industry Act 1991 (as applied by the SIP Regulations), this document sets out the reasons for granting a fourth Waiver Notice.

2. Reasons for issue of fourth Waiver Notice

Tideway's application for a further waiver related to the following contracts for services:

1. Treasury Management System software and associated professional and support services provided to Tideway by FIS AvantGard LLC (FIS); and
2. Licensing and support services for the NetSuite purchase to pay and finance software.

a) Waiver in respect of Treasury Management System software

Having considered Tideway's request for a waiver of its procurement obligations in respect of the Treasury Management System software to be used by Tideway, we agreed to grant a waiver. Tideway is currently using FIS for software licensing, support services and professional services in relation to its "Integrity" software. Tideway now wish to undertake a further project using this software which will provide additional benefits including reducing manual processes, reducing script maintenance and errors, and providing a fully automated audit trail for its payment and investment processes (the TMS phase 3 project).

Tideway has made significant investment to date to implement and customise the "Integrity" system. The system is fully embedded and we accept Tideway's argument that pursuing a replacement would not represent value for money. Further, the additional cost associated with the new project is necessary to ensure Tideway has a

robust Treasury Management System commensurate with its level of payment and investment activity.

Tideway has confirmed that:

- the prices it received from FIS are consistent with FIS AvantGard LLC's list prices and UK standard rates; and
- the TMS phase 3 project (and related contracts and cost) was unforeseen at the time of contract award.

In the circumstances, we were satisfied that granting a waiver was appropriate and represented value for money for customers.

a) Waiver in respect of the NetSuite software

Tideway has utilised the NetSuite purchase to pay (P2P) and finance software for all its back office payment systems. The current contractual arrangement for this was established in 2014 via a software reseller Accenture (UK) Limited. This followed an Invitation to Tender process conducted by Thames Water under a Thames Water Framework Agreement.

This initial contract covered implementation services as well as licensing and support for the period January 2015 to January 2017. In early 2017, Tideway renewed its agreement for licensing and support for NetSuite with Accenture. It says that it is commonplace within IT procurement for renewals to be dealt with on a 12 monthly basis due to the nature of licensing models within the software market and that a further annual renewal of the software and support on the same terms would result in Tideway exceeding the current UCR financial threshold.

Although Tideway approached NetSuite to purchase the licencing and support directly, we understand that NetSuite declined to give a quote on the basis that anything they supplied would not represent value for money in comparison with Accenture's offering as a platinum partner. Tideway is considering either undertaking a mini-competition or entering into direct negotiations with NetSuite platinum partner resellers, particularly in relation to the support element.

Again we consider that Tideway has made a satisfactory case for a waiver of its procurement obligations in respect of the NetSuite software. We consider that running an OJEU competition is unlikely to provide additional value for money as Tideway would need to mandate NetSuite as the required software solution which would in effect restrict the competition to existing NetSuite platinum partners. Running a meaningful OJEU competition would also involve Tideway releasing details of its NetSuite configuration, introducing vulnerability to its system.

Accordingly, we have issued Tideway with a letter confirming that in principle we support its application for a waiver of its procurement obligations in respect of the NetSuite software. However we will only grant the waiver once it has concluded a further mini-competition or direct negotiations with NetSuite platinum partner resellers and has satisfied us that the approach adopted and the final contract price represent value for money.

Why we did not consult prior to issuing this waiver notice

We did not consult prior to issuing the third waiver notice (for two software contracts) as we considered that there was a very clear case for the waivers and the issue of the waiver notice was unlikely to be contentious. We consulted before issuing the first two waiver notices and only received one response to the first consultation and no response to the second consultation. Those waivers were more complex than the third waiver and in the case of the first two waivers we considered it appropriate that we consulted prior to issuing the waivers. We consider this fourth waiver to be very similar to the third waiver and we therefore considered it was not necessary to consult prior to granting the fourth waiver. If Tideway applies for further waivers, we will consult if we consider that the application raises issues that are likely to be complex or contentious.