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## Reasons for issuing a Waiver Notice in respect of contracts between Tideway and Thames Clippers

### 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 first 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).<sup>1</sup>

In October 2017 Tideway applied for a waiver in respect of services provided to Tideway by Collins River Enterprises Limited (trading as Thames Clippers) in respect of the hire of vessels from its fleet. We agreed to grant a further [waiver](#) on 24 April 2018, coming into effect on 25 April 2018.

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 this further Waiver Notice.

## Reasons for issue of Waiver Notice

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

### **Services provided to Tideway by Collins River Enterprises Limited ('Thames Clippers') in respect of the hire of vessels from the Thames Clippers' fleet.**

Tideway hires vessels from Collins River Enterprises Limited (Thames Clippers) to provide river-based tours of the Project's foreshore construction sites as part of its Project induction and stakeholder programme.

The Project induction tour takes three hours and covers all of Tideway's foreshore sites between the Thames Barrier and Putney. Tour attendees are provided with general information about the Project as well as site specific information. The tour is attended by all Tideway and project manager staff, as well as attendees from the Main Works Contractors. It is a key element of Tideway's internal communications strategy and ensures that key personnel are fully briefed on critical elements of the Project and the Project's vision.

Tideway also hires a smaller vessel from the Thames Clippers fleet, the Orion Clipper, which is used to provide Project tours to key stakeholders (including elected

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<sup>1</sup> The current thresholds are £363,424 for a supply or a services contract, and £4,551,413 for a works contract

representatives) and investors. This vessel can achieve close access to the Project sites and can be hired at different times of the day and week to suit stakeholder availability.

To provide the river based tours, Tideway requires a vessel that can:

- undertake the full tour within 3 hours (to enable two tours per day to be run if necessary);
- access all of the Project's foreshore sites at all states of tide, including being able to comply with under keel clearance at low tide and air draft clearance to bridges at high tide;
- provide capacity of at least 100 places per tour to allow Tideway to induct the high number of people required to work on the project.

The Thames Clippers' fleet provides a high-speed service to all parts of the river at all states of tide. The vessels in the Thames Clippers' fleet have a maximum capacity of 150 passengers.

Tideway says that it is satisfied that there are no other vessels operating on the River Thames capable of fulfilling the requirements for the river-based site tours. While it is aware of at least one other vessel that has sufficient passenger capacity (circa 200 passengers), this vessel is unable to clear all London bridges at all states of the tide and would be unable to complete the tour within 3 hours. The level of demand from Tideway is unlikely to be sufficient to encourage non-London based operators to establish operations on the Thames.

Tideway says that it will continue to monitor the market and will reconsider its use of Thames Clippers should alternative vessels become available. Where requirements enable it, it will also ensure that alternative suppliers for site tours are considered. For example, it has engaged Woods River Cruises on multiple occasions for investor relations activities.

Tideway anticipates that it will reach the UCR financial threshold with this supplier in mid-2018. Tideway has secured significant discounts from Thames Clippers in the past and has secured similar discounts in respect of its current contracts with Thames Clippers. The Waiver Notice provides that Tideway must obtain Ofwat's consent to any renewal of the contracts unless that renewal is on substantially the same terms as the current contracts, including in respect of rates, and any renewal may not extend the contracts beyond four years (ie until October 2022).

## Conclusion

From 20th November 2017 to 4th December 2017, we consulted on our proposal to issue Tideway with this further Waiver Notice. We did not receive any responses to the consultation.

Regulation 50(1)(c) of the UCR provides an exemption “where the works, supplies or services can be supplied only by a particular economic operator.” As a general principle, we have approached previous applications from Tideway for a waiver of its procurement obligations, on the basis that Tideway should be put in an equivalent position to other water and sewerage companies, where this is appropriate. One of the reasons we consulted on this application was to give other operators of river based tours an opportunity to dispute Tideway’s conclusion that there are no other London based operators capable of providing the service it requires. As we received no responses to the consultation, we are satisfied that the requirements of regulation 50(1)(c) of the UCR would have been met had Tideway been a utility regulated by the UCR.

We therefore considered that Tideway has presented a good case that a competitive tender process will not represent value for money in respect of the hire of Thames Clippers’ vessels and for this reason the waiver was granted.