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# Reasons for issuing a Waiver Notice in respect of a contract between Tideway and Advanced 365 Limited

## 1. Introduction

This document sets out our reasons for granting a waiver to Bazalgette Tunnel Limited (trading as Tideway) of its procurement obligations in respect of a contract for certain Information Technology (IT) services. The waiver notice can be found [here](#).

## 2. Background

On 21 August 2015 Ofwat granted a [Project Licence](#) to 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

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specified threshold. This threshold is the same threshold that applies to all utilities under the UCR (the UCR financial threshold).<sup>1</sup>

Since granting this first waiver, we have issued six further waiver notices to Tideway. Some of these have been general waivers (ie they apply to all contracts that meet the criteria set out in the waiver) and some have been specific (they apply to named contracts).

On 28th June 2019 Tideway applied for a specific waiver in respect of services provided to Tideway by Advanced 365 Limited in respect of desktop services and service desk support. We agreed to grant the [waiver](#) requested on 6 August 2019, effective from 7 August 2019.

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.

### **3. Reasons for issue of Waiver Notice**

Tideway's application for a further waiver related to a contract Tideway intends entering into with Advanced 365 Limited (Advanced) for desktop services and service desk support.

Following a procurement process, Thames Water initially entered into a contract with Advanced in 2015 and that contract was novated to Tideway. That contract is still in existence and is for a full range of managed IT services. In line with trends in the whole IT industry, Tideway is now moving to fully cloud based services which, among other things, will enable Tideway to disaggregate its IT services into specific packages. It intends to tender the specific packages, other than for desktop services and service desk support. In respect of these services, it will enter into a new contract with Advanced.

Ofwat has agreed to waive Tideway's obligation to put these services out to tender for the following reasons:

1. Advanced is familiar with Tideway's IT systems and people and continuity in desktop services and service desk support is seen as being essential in managing the transition to cloud based services. The need for stability in these services was confirmed by a market engagement exercise undertaken by Tideway and involving four providers of IT services.

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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

2. People are the core component of desktop services and service desk support and if the current Advanced team were transferred to any new supplier, the opportunity to provide a significantly different or better service would be relatively limited. With the timescales remaining on the project (construction is due to be completed in 2022), Tideway is unlikely to be able to justify investment in a radical transformation of the service, such as by introducing high levels of service automation. The costs and effort associated with terminating the Advanced contract and implementing a new service with an alternative supplier is unlikely to be offset by a radically different or more efficient service.
3. We consider that Tideway has made a value for money case for the waiver. Entering into a new contract with Advanced will be more cost efficient than extending its existing contract with Advanced. In addition, the fact that Tideway's needs for these services will decrease over the next few years as the construction nears completion in 2022 impacts the value for money case for putting these services out to tender.

Tideway carried out a benchmarking exercise with a third-party provider covering the commercial and performance aspects of the Advanced contract and this indicated that Tideway's current contract with Advanced is competitively priced, when compared to industry peers.

## **4. Conclusion**

Ofwat considered that Tideway had made a good case for the waiver. The initial contract with Advanced was subject to an OJEU process (carried out by Thames Water in 2014/2015) and the other elements of the service now provided by Advanced will be put out to tender. Tideway has made a case that people are central to desktop services and it would be optimal for the business to retain the people provided by the current provider, particularly as the company goes through a major IT transition. Tideway has taken steps to market test this conclusion and has taken steps to benchmark the prices and service levels of Advanced.

For all the reasons set out above, Ofwat granted Tideway a waiver of its obligations to competitively procure these particular services.

