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## Reasons for waiving Tideway's procurement obligations in respect of the development and piloting of an autonomous tunnel investigation system for use on the Thames Tideway Tunnel

### 1. Introduction

This document sets out our reasons for granting Bazalgette Tunnel Limited (trading as **Tideway**), a waiver of its procurement obligations in respect of a contract for developing a pilot study for carrying out tunnel inspections using an autonomous tunnel inspection system (**ATIS**).

### 2. Background

On 21 August 2015 Ofwat granted a [Project Licence](#) to Tideway to deliver the Thames Tideway Tunnel project (the **TTT 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 TTT 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. This procurement regime is a modified form of the procurement regime in the UCR (the **modified procurement regime**). However, regulation 6(8) of the SIP Regulations permits Ofwat to issue a notice to dis-apply the modified procurement regime (or aspects of the regime) in relation to the licensed IP.

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.<sup>1</sup>

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<sup>1</sup> The current thresholds are £378,660 for a supply or a services contract, and £4,733,252 for a works contract.

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

In June 2020, we received a draft application from Tideway for a specific waiver in respect of the procurement of the following services:

- feasibility and cost assessment of implementing 10-year tunnel inspections using an autonomous tunnel inspection system (**ATIS**) through the preparation of a development plan, a pilot plan and a 10-year inspection plan (phase 1 services); and
- developing and running a pilot programme to test ATIS (phase 2 services).

Following various requests for further information from Tideway we received a formal application from Tideway on 29 July 2020 and on 28 August 2020 we agreed to grant the waiver requested, effective from 1 September 2020.

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

### **3. Why Tideway applied for a waiver in respect of these services**

Once the Thames Tideway Tunnel is built, Tideway will have an obligation to carry out 10-year inspections on the tunnel, with the first inspection due in 2025. Tideway has investigated a number of options from manual inspections to the use of different technology-based solutions.

It concluded that manual inspections would be possible but were not a cost effective solution and would require an extensive period of isolation and lock down of the Thames Tideway Tunnel, the Lee Tunnel and the Thames Water sewer network. It also rejected 'off the shelf' technical solutions, such as drone technology. In general, drone technology relies on wi-fi, so is best used for above ground inspections.

Following a field trial, Tideway considered that the optimal solution was ATIS. This employs a remote operational vehicle equipped with software which provides data acquisition; onboard analysis using artificial intelligence; and visualisation and dissemination of the survey data.

Tideway advises that the use of such technology is likely to require less down time of the sewer systems, resulting in less overflow into the River Thames and will considerably reduce the health and safety risks associated with manual inspections. Tideway also considers that ATIS will be more cost effective than manual inspections.

Based on the results seen at the field trial, Tideway now wishes to procure work to more fully understand the feasibility and cost of implementing the 10-year inspection programme using ATIS.

Tideway informed us that prior to the field trial, it approached 14 potential participants but only two were viable test options. Of those two, only one (SCYSIS - now CGI IT UK Ltd (**CGI**)) was

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able to demonstrate that the necessary components worked appropriately for the context. Having tested the market in this way, Tideway's view is that CGI is currently the only viable provider in terms of the software component but it expects to have further information to validate (or otherwise) this view via the outcome from phase 1. It has therefore requested that we waive its procurement obligations for phases 1 and 2 of the project. Depending on the outcome of phase 1, phase 2 could potentially be competitively procured or Tideway could enter into a further contract with CGI for phase 2, with Ofwat's consent. Tideway considers that there may be other solutions that it can procure in the market by the time phase 3 is required. Phase 3 is the first of the 10-year tunnel inspections using ATIS.

#### **4. Reasons for granting this waiver**

In granting Tideway's request for procurement waivers in the past, we have looked at whether there is a relevant exemption in the UCR that would have been available to Tideway had it been a water company. If there was, we then considered if there was a reason why Tideway should not benefit from an equivalent procurement exemption.

In this case we are satisfied that had Tideway been an utility covered by the UCR, Regulation 50(1)(c) of the UCR would have applied. This Regulation provides an exemption in circumstances where only a particular economic operator can provide the services including because competition is absent for technical reasons.

Having considered Tideway's application and its response to various requests for further information, we are satisfied that Tideway has justified its request for a waiver on value for money terms and, having tested the market, on the basis that the contract can only be provided by a particular economic operator. We noted that Tideway approached 14 potential suppliers for a field trial but only one of those had the technical capacity for the task. We also accept Tideway's commercial decision that an autonomous tunnel inspection system is preferable to manual inspections for health and safety and environmental reasons.

#### **5. Conclusion**

For the reasons set out above, Ofwat issued a Waiver Notice to Tideway for the first two phases of the work required to enable Tideway to more fully understand the feasibility and cost of implementing a 10-year inspection programme using ATIS.

We did not consult before making this decision as we did not consider that a consultation would serve any purpose. We consulted on the first two Waiver Notices and only received minimal comment. Since then we have said that we will only consult if the application raises new or contentious issues. We have consulted when we have issued a general waiver but for most special waivers we have not consulted. Given the specialist nature of the relevant contract and the fact that Tideway has already tested the market, we did not think that consultation was necessary.