
Reasons for waiving Tideway's procurement obligations in respect of the extension of a contract to engage a Metropolitan Police Service (MPS) Liaison Officer

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 a Metropolitan Police Service (MPS) Liaison Officer who is and will be embedded in the Tideway Team.

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.¹

Since granting this first waiver, we have issued nine 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).

On 26th February 2021, we received an application from Tideway for a specific waiver in respect of the procurement of the services of a MPS Liaison Officer.

We granted the waiver requested on the 10 March 2021, and it came into effective on 11 March 2021.

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

In 2016 the Tideway project enlisted the services of a MPS Liaison Officer to be embedded in the Tideway Team. The MPS Liaison Officer has been an integral part of the Health, Safety & Welfare team, has been the main point of contact with the MPS, and has assisted with liaison with Transport for London (TFL). The MPS Liaison Officer is not under the control or direction of Tideway and acts on the basis of their professional judgement and their own initiative in accordance with their statutory and common law powers and the standards and requirements of the MPS. The officer was sourced from the MPS Safe Transport Command in accordance with the level of experience, knowledge and liaison required for this critical role.

The MPS Liaison Officer is required to act as the main representative and advisor for policing issues within the Tideway programme, ensuring that input and influence is

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

brought to bear on all relevant operational activity in both the design phase and during the construction project

The services were originally instructed in 2016 for an initial period of 4 years. Following this initial appointment, the service requirement is reviewed on an annual basis. It has been considered the role and function may continue until financial year 23/24. This would bring total potential spend with the provider above the procurement threshold for services under the modified UCRs and accordingly Tideway considered that a waiver from its procurement obligations was required.

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.

Tideway considered that it would not be feasible to go to the market and invite expressions of interest for these services for the reasons set out below.

- The Metropolitan Police maintain a specific and unique statutory role in UK law enforcement. No other party could provide this level of knowledge and application of the applicable issues.
- The Metropolitan Police have specific knowledge and a network of contacts in various related or statutory organisations as well as knowledge of the governance processes within those organisations. This knowledge is critical to the successful delivery of the services and provides risk mitigation on the project.
- The services simply cannot be delivered by a commercial business with any level of confidence or assured liability, for the reasons stated above.

Having considered Tideway’s application we are satisfied that Tideway has justified its request for a waiver on the basis that the contract can only be provided by a particular economic operator.

5. Conclusion

For the reasons set out above, Ofwat issued a Waiver Notice to Tideway for extension of the original contract between Tideway and the Mayor’s Office for Policing and Crime.

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 we did not think that a public consultation was necessary.