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## Reasons for waiving Tideway’s procurement obligations in respect of a contract to purchase, install and service odour monitoring analysers

### 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 to purchase, install and service odour monitoring analysers for use in the Thames Tideway Tunnel. The contract is with Able Instruments and Controls Limited (“Able”).

### 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

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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>

Since granting this first waiver, we have issued ten 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 7 July 2022, we received an application from Tideway for a specific waiver in respect of the procurement, installation and maintenance of equipment for Tideway's odour monitoring programme.

We granted the waiver requested on the 19 July 2022 and it came into effect on 20 July 2022.

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.

[A list of all Waiver Notices](#) issued by us to Tideway is on our website.

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

Tideway has a requirement to develop a baseline scenario for odour emissions. It intends doing this by recording hydrogen sulphide (H<sub>2</sub>S) concentrations at key Thames Tideway Tunnel sites for a minimum of 12 months prior to storm sewage entering the tunnels after the System Activation Commencement Date which is likely to be in January 2024. Tideway is aiming to implement the baseline monitoring programme by October 2022.

Tideway proposes using Able Instruments and Controls Limited (Able) to provide the necessary services. Able will provide Tideway with four new Jerome J605 Hydrogen

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<sup>1</sup> The current thresholds are £426,955 for a supply or a services contract, and £5,336,937 for a works contract.

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Sulphide analysers and enclosure systems. These four analysers will be used together with 11 Jerome J605 analysers already owned by Tideway or Thames Water. The package provided by Able will include recommissioning works to the 11 existing J605 analysers. During commissioning, Able engineers will take the relevant equipment to each site, assemble the equipment into a monitoring station and will test and commission each monitoring station. During decommissioning, Able engineers will disassemble the monitoring stations and return the analysers to storage.

Able is the exclusive UK provider for sales and support of Jerome J605 analysers.

Tideway's preference to use Jerome J605 analysers is because they have been used consistently on the project since 2011 for odour monitoring purposes and they are also used by Thames Water for odour monitoring. This has the advantage that Tideway only needs to purchase four new analysers, as they already have eleven that they either own themselves or can borrow from Thames Water.

#### **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 is, we then consider if there is a reason why Tideway should not benefit from an equivalent procurement exemption.

In this case we are satisfied that had Tideway been a 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 has set out a clear rationale for why it is likely to be better value for money for customers if it enters into a contract with Able without following a competitive process. In summary the rationale is:

- Given the unique operational relationship between Tideway and Thames Water, Tideway is able to borrow analysers owned by Thames Water. If a competitor to Able is appointed, it may not be able to utilise existing analysers which would require full service, recalibration and sensor

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replacement. This would inevitably increase the package price as existing devices could not be used.

- Going to market would mean either no bidders respond apart from Able, or bidders respond proposing the use of alternative analysers from the Jerome J605 (as Able is the exclusive provider of the Jerome J605 analysers). This would require a technical review and trial of the alternative, to assure Tideway and Thames Water that the proposed solution is feasible and technically equivalent. The additional research and trial activities will put the programme date of 5 October 2022 at risk without any guarantee that this would yield a positive outcome.
- The Jerome analyser is a leading device for odour monitoring purposes and has been used consistently on the project for H<sub>2</sub>S monitoring since 2011. It is also used by Thames Water for odour control purposes. Using the same devices will ensure consistency of monitoring results.

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 the contract between Tideway and Able Instruments and Controls Limited.

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 specific waivers we have not consulted. Given the specialist nature of this contract we did not think that a public consultation was necessary.