



## ORDER

ORDER NO: SER/0603

DATE OF ORDER: 3 May 2016

*(to be quoted on all documents relating to this Order)*

<b>FROM: (Client)</b>  Water Services Regulation Authority Centre City Tower 7 Hill Street Birmingham B5 4UA  Client Representative: Mandy Taylor  Telephone No: 0121 644 7527 Email Address: mandy.taylor@ofwat.gsi.gov.uk	<b>TO: (Service Provider)</b>  Norton Rose Fulbright LLP 3 More London Riverside London SE1 2AQ  Service Provider Representative:   Telephone No: 020 7444 2710 Email Address: 
<b>SERVICES TO BE RENDERED AT</b>  Where applicable  Centre City Tower , Birmingham, B5 4UA; or  Bloomsbury House, 21 Bloomsbury Street, London, WC1B 3HF	<b>INVOICE ADDRESS</b>  <a href="mailto:finance@ofwat.gsi.gov.uk">finance@ofwat.gsi.gov.uk</a> , or  Finance Team Water Services Regulation Authority Centre City Tower 7 Hill Street Birmingham B5 4UA  Tel: 0121 644 7500
<p>Any Contract arising from this Order shall be governed by the Water Services Regulation Authority's Conditions of Contract relating to the provision of Legal Services (attached at Appendix A); the Client's Specification (attached at Appendix B) (including any Special Terms); and any enhancements and provisions expressly listed herein.</p> <p><b>Description of Services:</b> Call-off arrangement for the provision of legal advice relating to the Thames Tideway Tunnel project.</p> <p><b>Term:</b> The Contract will commence on 3 May 2016 and will expire on 2 February 2017.</p> <p><b>Call off of Services:</b></p>	

## OFFICIAL: COMMERCIAL - SENSITIVE

This Order seeks to aggregate expenditure under a single order reference. Services hereunder may be engaged by members of the Client's staff contacting the Service Provider and quoting the order number (SER/0603) instructions may be given by letter, by email, by telephone or face to face. On receipt of an instruction from the Client the Service Provider will complete a "Confirmation of Instructions" and will forward this to the Client.

The Confirmation of Instructions shall be in a form and manner to be agreed by the Client and the Service Provider (see the sample pro-forma set out in Appendix C to this Order). The Service Provider shall include in the Confirmation of Instructions at least the following information:

- Scope and deliverables;
- Timetable;
- The Service Provider's team, contact numbers and fee rates; and
- Capped Fee estimate.

The Confirmation of Instructions and this Order, together with the Legal Services Conditions of Contract will form the contractual basis on which the Services will be provided in relation to each instruction.

### **Deliverables:**

Due to the ad-hoc nature of the Services to be performed hereunder it is not possible to specify the Deliverables in this Order. Deliverables shall be as specified in the relevant Confirmation of Instructions.

### **Charges:**

The table below provides the Charges rates per hour/day for each grade of Staff involved in the performance of the Services.

Grade of Personnel	Hourly Rate £	*Daily Rate £
Partner		
Senior Associate		
Associate		
Junior Associate		
Trainee		

\*Based on a 7 hour working day excluding lunch breaks

All Charges shall be fixed for the Term.

Any travel and subsistence required in connection with the provision of the services will be reimbursed at the Client's prevailing travel and subsistence rates (attached at Appendix D). Such travel and accommodation expenses will be reimbursed on acceptance of receipts and where appropriate a mileage log.

The hourly and daily Charge rates are all inclusive with the sole exceptions of:

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- Disbursement for travel and subsistence expenses (see above);
- Bulk photocopying and any other disbursements which the Client's Representative has authorised in advance;
- Courier costs, where the Client's Representative has authorised in advance the use of a courier, on an 'at cost' basis (with evidence of such costs being presented with the appropriate Service Provider's invoice(s)); and
- Value Added Tax.

The Client will not pay for:

- Any items which it regards as part of the Service Provider's overheads (for example; routine non-bulk photocopying and reprographics, routine postage, charges for internet access, word-processing, secretarial and librarian time, cost of faxes, and telephone charges);
- Any disbursements not authorised in advance by the Client's Representative;
- Any mark-up on disbursements; and
- Travelling time unless the Client's Representative has authorised in advance the payment of travelling time.

### **Invoice Procedure and Payment Profile:**

Invoices for payment will be rendered monthly in arrears, subject to the provision of the Deliverables and/or Services to the standard and quality specified in the Contract or otherwise conveyed to the Service Provider in connection with the Contract.

### **Quotation:**

The agreed quotation for each Confirmation of Instructions will be the capped price payable by the Client for the Services under that Confirmation of Instructions and will only be exceeded by agreement between the Parties. Such agreement will only be given by the Client where cost overruns have arisen as a result of the work involved being over and above that reasonably anticipated prior to the Client's approval to commence work under the relevant Confirmation of Instructions. Where the resource costs incurred by the Service Provider performing the Services falls below the quotation for each call-off, the Service Provider shall invoice the Client for the actual value of the Services according to the charging structure and hourly/daily charge rates described above.

### **Key Individuals:**

The key individuals for the provision of the Services hereunder shall be:

Peter Hall – Partner

Thomas Lindley – Associate

Suncica Miletic – Senior Associate

### **Client's Project Manager:**

The Client's Project Manager shall be:

Mandy Taylor

Telephone: 0121 644 7817

Email: [mandy.taylor@ofwat.gsi.gov.uk](mailto:mandy.taylor@ofwat.gsi.gov.uk)

**Service Provider's Assignment Manager:**

The Service Provider's Assignment Manager shall be:



**Security Plan**

Unless otherwise agreed, in accordance with Clause 48 of the Conditions of Contract relating to the provision of Legal Services, within twenty (20) Working Days of the commencement of the Contract, the Service Provider will prepare and deliver to the Customer for approval the full and final Security Plan.

**Signed for and on behalf of the CUSTOMER**

By:

Ofwat

Name:

Mandy Taylor

Title:

Principal Legal Adviser

Date:

13 July 2016

**Signed for and on behalf of the SERVICE PROVIDER**

By:

Name:

Title:

Partner

Date:

14 July 2016

**Conditions of Contract relating to the provision of Legal Services applicable to this  
Contract**

Attached as a separate document

## Terms of Reference

### Background

#### Ofwat

Ofwat is the economic regulator of the water and wastewater sectors in England and Wales. For further information see <http://www.ofwat.gov.uk/>.

### Background to the Requirement

London has a combined sewerage system, substantially built during the Victorian era to carry both rainfall and sewerage. Overflow points were constructed along the river banks as part of the system to prevent flooding during heavy rainfall by directing sewage into the River Thames and its tributaries.

In July 2006, the Minister asked Thames Water (TW) to lead a review of potential options with the Environment Agency (EA) and others and report in December 2006 on the preferred scheme which would meet the requirements of the Urban Waste Water Treatment Directive (UWWTD) and river water quality objectives. The report looked at a range of options and their relative cost benefits and impact on customer's bills. The [Thames Tideway Tunnel website](#) enables access to all the key study and relevant documents in recent history.

In March 2007, the Government approved plans for the Thames Tideway Scheme, which will reduce sewer discharges entering the River Thames during heavy rainfall. The drivers for the project are compliance with UWWTD, which requires a specific standard of collecting system to be in place for conglomeration of a certain size by set dates and river water quality improvements.

The Thames Tideway scheme comprises of 3 components: -

1. Lee tunnel
2. Beckton sewage treatment works extension
3. Thames Tideway Tunnel

### Thames Tideway Tunnel

The Thames Tideway Tunnel will capture the flows of storm sewage from 34 sewer overflow points (of which 22 will require direct interception) along the River Thames. The tunnel will run approximately 25 kilometers through the heart of London, and up to 70 meters beneath the River Thames, broadly following the path of the river. Whilst the diameter of the tunnel is the same as the Lee tunnel, the length is three to four times greater and in total, including a few very large shafts for construction a total of about 25 shafts will have to be constructed and working areas created to construct the shafts and tunnels.

## Planning

Thames Water originally owned little or no suitable land, but has now procured suitable sites by acquisition, lease, or other means. Some procurement is on-going.

In autumn 2008, Thames Water consulted the 14 London Boroughs affected by the tunnel construction and other pan-London stakeholders such as the EA and Greater London Authority (GLA) to develop a stakeholder and community engagement strategy. Since then Thames Water has carried out several detailed planning consultations with residents and businesses potentially affected by the tunnel's construction. The consultations greatly increased the public's awareness of the scheme and allowed Thames to identify suitable sites for construction.

As the Thames Tideway Tunnel was identified as a nationally significant infrastructure project in the Waste Water National Policy Statement (March 2012) Thames Water was able to apply directly to the Planning Inspectorate for a Development Consent Order (DCO) for the project. Thames Water submitted its application in February 2013 and the DCO was granted in September 2014.

## Financing and delivery

Since privatisation, investment in the water and sewerage sectors has been undertaken by the water companies and paid for by customers. This has been the case even for large projects. However, the Project is of a scale that is significantly different from previous infrastructure projects in the sector; it has a complex risk profile very different from past investment; and has a time scale much longer than for other projects.

Section 35 of the Flood and Water Management Act 2010 (FWMA) amended the Water Industry Act 1991 (WIA) to make provision for large infrastructure projects to be delivered by third party infrastructure providers (IPs), where the size or complexity of a project threatens, or is likely to threaten, the undertaker's ability to provide services for its customers. In 2013, Government issued the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (SIP Regulations) to give effect to the FWMA and allow Government (and Ofwat) to specify projects to be put out to tender and allow Ofwat to licence and regulate a special purpose vehicle delivering a specified project.

The Project was specified as a specified infrastructure project by a Specification Notice issued by the Secretary of State in June 2014 under the SIP Regulations. The Specification Notice sets out the scope of the Project and required that the specified project be put out to tender to be delivered by an IP. At the same time, the Secretary of State issued a TTT Project Preparatory Work Notice which sets out those elements of the scope that are preparatory in nature and that **must** be undertaken by Thames Water and those elements of the scope that are preparatory in nature and that **may** be undertaken by Thames Water. The rest of the specified project must be undertaken by the IP.

Accordingly, Thames Water procured the financing and the construction of the Project and in August 2015 Ofwat issued Bazalgette Tunnel Ltd (the successful bidder in the IP procurement) a Project Licence. Bazalgette Tunnel Ltd is owned by a consortium comprising Allianz Infrastructure Luxembourg I S.a.r.l., Bazalgette (Investments) Limited, IPP (Bazalgette) Limited, Dalmore Capital 14 GP Limited (in its capacity as general partner of Dalmore Infrastructure Investments LP) and DIF Bid Co Limited.

### **Current priorities**

Since the grant of the Project Licence, Ofwat's primary role in respect of the Project is to monitor the progress of the Project; regulate Bazalgette Tunnel Ltd and Thames Water; and play various regulatory roles required of us by the legislation and the licences of the IP and Thames Water.

Key current work includes attending quarterly meetings of the Liaison Committee (made up of representatives of key stakeholders); agreeing changes to the incentive arrangements in the Alliance Agreement; attending regular working meetings with stakeholders; and keeping members of the Ofwat board committee (the TTT Committee) adequately briefed on the Project's progress. We also must deal with ongoing communications from particular stakeholders who oppose the Project, approve annual estimates of IP's revenue, and finalise a rule book which explains how the key mechanisms in the IP Licence will work in practice.

Further background information can be found on the Project's website:  
<http://www.thamestidewaytunnel.co.uk/>

### **Objective(s)**

Ofwat's overall objective is to continue ensuring that the Thames Tideway Tunnel is delivered at best value for Thames Water's customers. To do this Ofwat will need ad-hoc expert legal advisory services in relation to the Thames Tideway Tunnel to support effective and informed decision making.

### **Scope of work**

The Service Provider will provide advice to Ofwat, in particular prior to TTT Committee meetings and meetings of the Liaison Committee.

In addition, it is anticipated that advice will be required on the scope of work between Thames Water and Bazalgette Tunnel Ltd in respect of Counters Creek; on changes to the Alliance Agreement; and on the incentives on Thames Water to deliver the works it needs to deliver to ensure the successful delivery of the Project.



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Advice will also be required from the Service Provider on finalising the rule book on the Project Licence.

### **Key Outputs and Deliverables**

The outputs and deliverables may vary depending on the advice or support required, and may be verbal or written.

The Client may disclose any advice, separately or as part of a publication to its other advisors and stakeholders, including but not limited to Defra, Infrastructure and Projects Authority (formerly IUK), Treasury, Bazalgette Tunnel Ltd and Thames Water. In addition, the work has the potential to be released publically, for example as appendices to or part of a public consultation.

### **Skills and experience required**

The Client expects that the Service Provider's staff nominated for the Services will have the following skills and experience:

- Advising on public law, procurement law , public-private delivery options; and commercial contractual arrangements;
- Experience advising on the procurement, financing and delivery of major infrastructure projects, including advising on how to avoid situations where the project could run into difficulty and experience supporting the recovery of such projects when they have got into difficulty;
- The ability to work to tight deadlines; and
- An understanding of the operational, financial and regulatory environment of the water and sewerage sectors in England and Wales. In particular, the Service Provider will have an understanding of the current regulatory model under which investment is funded in the water sector including the risk sharing mechanisms underpinning the model.

### **Call off of Services**

Services hereunder may be engaged by members of the Client's staff contacting the Service Provider and quoting the Services Order number. Instructions may be given by letter, by email, by telephone or face to face. On receipt of an instruction from the Client the Service Provider will complete a "Confirmation of Instructions" and will forward this to the Client.

The Confirmation of Instructions shall be in a form and manner to be agreed by the Client and the Service Provider. The Service Provider shall include in the Confirmation of Instructions at least the following information:

- Scope and deliverables/services;

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- Timetable; and
- Time inputs and capped fee estimate/quotation.

The Confirmation of Instructions and this Services Order, together with the Conditions of Contract for Consultancy Services terms will form the contractual basis on which the Services will be provided in relation to each instruction.

The agreed quotation for each Confirmation of Instructions will be the capped price payable by the Client for the Services under that Confirmation of Instructions and will only be exceeded by agreement between the Parties. Such agreement will only be given by the Client where cost overruns have arisen as a result of the work involved being over and above that reasonably anticipated prior to the Client's approval to commence work under the relevant Confirmation of Instructions. Where the resource costs incurred by the Service Provider performing the Services falls below the quotation for each call-off, the Service Provider shall invoice the Client for the actual value of the Services according to the charging structure and hourly/daily charge rates described above.

### **Information and Information Security**

The Service Provider will be required to receive briefings and information from a variety of sources and in different data formats including text documents, narrative, presentations and spreadsheets. The data and information provided and developed will remain strictly confidential and commercially sensitive for the life of the scheme.

The Service Provider will have access to sensitive and confidential information during the course of the Contract. The Service Provider must comply with the Client's security policy and will be required to demonstrate throughout the Contract the security of data handling and the limitation of access of any Confidential Information to members of the Service Provider's Staff who have a need for such access.

The Service Provider must prepare and deliver to the Customer for approval the full and final Security Plan. To help you understand the security requirements and to help you develop your security plan we have provided our 'Information Security Policy for third party suppliers' at Appendix E. A model structure for a security plan has been provided at Annex C (Model Security Plan). As a minimum, your draft security plan must cover all the areas as set out in the model structure. The final security plan to be adopted under the Contract may be subject to refinement and agreement with the Customer.

Any Staff to be given access to Ofwat's assets (defined as premises, systems, information or data) are subject to the Baseline Personnel Security Standard (BPSS) checks i.e. they are subject to the same checking regime as that for government employees.

The Cabinet Office issued version 4.0 of "Guidance on the pre-employment screening of civil servants, members of the armed forces, temporary staff and government

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contractors" in April 2014. This was entitled "HMG Baseline Personnel Security Standard" and describes good practice in recruitment checks to address the problems of identity fraud, illegal working and deception generally.

The Service Provider is required to satisfactorily complete the checks in respect of each Staff before they are permitted access to Ofwat's assets. Ofwat currently holds information classified at OFFICIAL level. The information that will be shared during the course of the Contract will include OFFICIAL and OFFICIAL-SENSITIVE information under the new classification system. Our OFFICIAL-SENSITIVE information includes legally privileged, management and personal information.

### **Project Management Arrangements**

Mandy Taylor, Project Manager will act on behalf of Ofwat for this project and will provide the day-to-day liaison with the Service Provider's project manager for the work. The Project Director for the work is Huw Brooker.

The Service Provider must provide a project manager for the delivery of the project. The Service Provider's project manager will report to Mandy Taylor for the work.

### **8.1 Location and provision of facilities**

It is not envisaged that the Service Provider's Staff will need to be located at Ofwat's Premises during the Call off Agreement.

### **8.2 Project progress reporting and mechanisms**

The Service Provider will be required to produce brief monthly progress reports via email and a monthly financial statement update and be available to discuss any issues face-to-face or on the telephone (as appropriate). The arrangements and formats will be agreed between the Client's project manager and the Service Provider's project manager.

### **Invoicing and Payment**

Unless otherwise agreed by the Ofwat, invoices for payment will be due upon delivery in the case of goods, or acceptance by Ofwat in the case of services.

All invoices must contain a reference to the SER number. Ofwat will not pay invoices without such a reference.

All invoices must be sent to: **finance@ofwat.gsi.gov.uk** or by post to: **Finance Team, Water Services Regulation Authority, Centre City Tower, 7 Hill Street, Birmingham, B4 5UA.**

Ofwat will pay valid invoices, including a Service Order number, within 30 days of receipt. Payment will be made electronically via Banks Automated Clearing Services (BACS).

### **Transparency**

SER/0603 - Call-off arrangement for the provision of legal advice relating to the Thames Tideway Tunnel project

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The Service Provider should note that the Conditions of Contract permit the Client to publish the full text of the Contract after considering (at the Client's sole discretion) any representations made by the tenderer regarding the application of any relevant FoIA or EIR exemptions.

If you considers any part of its tender or any other information it submits (including any attachments or embedded documents) to be confidential or commercially sensitive, the tenderer should:

- a) Clearly identify such information as confidential or commercially sensitive;
- b) Explain the potential implications of disclosure of such information; and
- c) Provide an estimate of the period of time during which it believes that such information will remain confidential or commercially sensitive.

## Confirmation of Instructions

<b>Scope and Deliverables</b>	
<b>Timetable</b>	
<b>Legal Team, contact numbers and fee rates</b>	
<b>Fee Estimate</b>	

.....  
[Legal company]

.....  
Date

.....  
Accepted on behalf of

.....  
Date

SER/0603 - Call-off arrangement for the provision of legal advice relating to the Thames Tideway Tunnel project

Appendix D

**Travel and Subsistence rates**

**Meal Allowance:**

Paid on actual expenditure within the following prescribed ceilings:

Breakfast	£10
Lunch	£8
Dinner	£25

These amounts cover the cost of purchasing meals and beverages.

Receipts must be submitted.

**Accommodation:**

Paid on actual expenditure within the following prescribed ceilings:

London	£165
Elsewhere	£115
Private residence	£25

These rates cover a 24 hour period for accommodation only, inclusive of VAT, receipts must be submitted.

**Mileage Rates:**

25p per mile

**Rail Travel**

The actual cost of public transport (normally rail) may be reimbursed. Economy Class (second class) rail tickets should be purchased.

Appendix E

Information Security Policy for Suppliers