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Offshore Construction Contracts: Key Points to Consider

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According to the *Global Energy Review* published by the International Energy Agency in March 2025, the world's appetite for energy rose at an above-average pace in 2024, resulting in higher demand for all energy sources.

With onshore reserves declining or getting harder to exploit, and with more than 80% of the ocean remaining unexplored, offshore construction is becoming more attractive as it unlocks untouched natural resources, such as hydrocarbon deposits, and supports decarbonization initiatives, such as offshore wind farms.

The statistics and forecasts also demonstrate that offshore construction is gaining strong momentum. According to industry publications, offshore oil and gas-related engineering, procurement and construction (EPC) contract awards in 2025 are expected to total $54 billion and there is currently 45 GW of offshore wind projects under construction.

Yet offshore construction projects are among the most complex, challenging and risky ventures in the global energy and infrastructure industry. Due to their nature, offshore construction projects usually involve harsh and unpredictable weather and environmental conditions, multiple stakeholders with often conflicting priorities, substantial capital expenditures, multijurisdictional legal frameworks, high risk of death, injury and/or damage to personnel, property and environment, as well as an array of unique technical and logistical difficulties.

Contracts governing construction of offshore projects therefore ought to account for a wide range of risks and challenges that are often more critical and sensitive than those in onshore projects. Below, we look at some of the key considerations relevant to offshore construction contracts.

Seabed Conditions

One of the key uncertainties inherent to offshore construction stems from seabed conditions. The offshore environment is rarely homogeneous — seabed composition and marine habitats can vary significantly even within a small area, making it notoriously difficult to predict the conditions of the seabed area intended to be used for the project execution.

Seabed conditions are typically assessed through comprehensive investigations and surveys that can be inherently more complex, costly and challenging than surveys performed onshore. In addition, as the marine environment undergoes constant changes, the seabed conditions will likely be changing during project execution.

Therefore, contractors will typically only accept those risks that they can reasonably "foresee" based on seabed surveys and seabed data provided by the employer, and where actual conditions materially differ from such seabed data negatively impacting the works, the contractor would typically be entitled to relief from the employer in the form of additional costs and extension of time to completion. For instance, Clause 6 of the LOGIC General Conditions of Contract for Marine Construction, Edition 3 (LOGIC Contract) provides for time and cost relief if "during the execution of the work the contractor encounters seabed and/or subsoil conditions, which conditions could not reasonably have been foreseen by a contractor experienced in the types of work to be carried out under the contract …"

The foregoing differs from the approach taken in many onshore projects in which the contractor is either expected to conduct its own ground condition surveys or to verify ground data provided by the employer, in each case without entitlement for schedule and/or cost relief.

Sea and Weather Conditions

Due to the nature of the offshore construction industry, adverse sea and weather conditions can significantly disrupt the implementation of a construction project.

Offshore transportation, construction, installation, commissioning and testing must typically be performed during periods of suitable sea and weather conditions, which often restricts the activities to limited "weather windows" mostly concentrated in specific months of the year. Failure to complete critical activities within those windows can substantially delay a project, with such delay having an exponential effect if vessels and other specialized equipment are hired for only a limited time. Not only do such delays jeopardize the ability to complete the project on time (which, in turn, affects the projected revenues, employers' obligations under offtake agreements and debt service undertakings under credit facilities), but they also result in capital expenditure increases.

Seasonal planning, weather forecasting, flexible scheduling and prefabrication (or any other way to shift as many operations onshore as possible) can, to some extent, mitigate risks relating to adverse sea and weather conditions. That said, the unpredictability of the marine environment and the potential for massive disruption to the project if risks of adverse sea and weather conditions were to materialize dictate the approach that employers and contractors usually take when allocating such risks.

Though the exact risk allocation between the employer and the contractor heavily depends on the specifics of a particular project and bargaining power of the parties, it is recognized in the offshore industry that contractors would not typically be willing to assume the risks of adverse sea and weather conditions in full and/or without factoring such risks in their price and schedule proposals, resulting in bloated costs and timelines. A more balanced approach may be to base price and schedule on sea and weather conditions that are "foreseeable" during the relevant periods of project execution based on meteorological records and other climatic data. In the event of "unforeseeable" sea and/or weather conditions affecting the works, the contractor may then be entitled to cost and/or time relief in accordance with the relevant contractual provisions (including by way of paying the contractors waiting on weather stand-by rates).

Although the LOGIC Contract (Clauses 6.1 and 14.2(d)) generally allocates a risk of adverse sea and weather condition to the contractor by expressly excluding weather conditions, regardless of severity, from force majeure events, it still provides a degree of comfort to the contractor entitling them to time relief if they suffer delay as a direct result of the number of "waiting on weather days" exceeding the number of such days specified in the contract (Clause 35.3).

The foregoing provides a stark contrast to typical onshore risk allocation in which the contractor is not entitled to relief for weather conditions (unless certain extreme weather conditions qualify as force majeure events, in which case such events are likely to not allow for any cost relief).

Liability Regime and Indemnities

As offshore construction works are performed in high-risk environments, there is a general acceptance in the industry that contractor balance sheets may be unable to cope with potential liability in case of a high-risk event. From a commercial perspective, contractors are typically unwilling to assume a level of risk that is significantly disproportionate to their remuneration. A "knock-for-knock" indemnity regime is one way of addressing these issues.

A knock-for-knock regime contractually allocates risk based on the identity of the claimant or owner of property, rather than the party that is at fault, and provides an alternative to the typical fault-based regime that is prevalent in onshore contracts. In a knock-for-knock regime, each party to a contract agrees to bear responsibility for and indemnify the other in respect of loss or damage to their and their group's (which would include their contractors and subcontractors) property, and injury to or death of their and their group's personnel, as well as any other specified losses, such as consequential loss or environmental liability, regardless of fault.

The knock-for-knock regime is widely used in offshore construction (including in the LOGIC Contract), as well as in onshore oil and gas projects, and has the following key advantages:

- It clearly demarcates risks at the outset, providing each party with certainty in relation to their potential exposure.
- It reduces the scope for delay, disruption and additional expenditures following an incident by removing the need for detailed and costly investigation and by reducing the scope for dispute and arbitration/litigation between the parties.
- It avoids the need for overlapping insurance coverage (as each party insures its own property and personnel), thus enabling the insurance industry to provide higher levels of coverage as economically as possible.

However, it also presents certain drawbacks:

- The fact that a party faces no consequences for its egregious conduct may be considered objectionable and counterintuitive in its nature, resulting in potentially prolonged negotiations on the indemnities point.
- Given the disassociation of liability from fault, knock-for-knock indemnities may raise enforceability concerns in some legal jurisdictions (and therefore knock-for-knock indemnity regime is typically subject to carve-outs for fraud, gross negligence and wilful misconduct.

Disaggregated Procurement and Interface Risks

Although there is no standard, industry-wide contracting and procurement strategy for offshore construction projects, many employers favor disaggregated procurement and award multiple packages to different specialist manufacturers, suppliers, service providers and contractors for offshore projects. While multipackage procurement is not unique to offshore construction and is commonly used on complex high-value onshore projects, the main drivers behind opting for disaggregated procurement in offshore construction are:

- Given the size and complexity of offshore projects, it is difficult for a single contractor to assume all offshore risks, and even where this is possible, it will generally result in a significant risk premium.
- Supply chain constraints significantly limit the pool of technically capable manufacturers and contractors, as well as suitable vessels and other specialized equipment.
- There is a shortage of critical components, such as monopiles, transformers and submarine cables.

However, disaggregated procurement introduces serious challenges and interface risks that ought to be considered when developing an offshore project.

Knock-On Effect

Poor performance by one contractor (or supplier, manufacturer, service provider) can affect the other contractors if the packages are interdependent ("package-on-package" risk or "knock-on" effect). For instance, if a civil works contractor fails to timely complete erection of the foundations for wind turbine generators, the turbines manufacturer will not be able to proceed with the installation in time, which might result in delays on the part of the turbine manufacturer. The turbine manufacturer will also incur additional costs (e.g., stand-by costs, vessel hire charges, storage expenses, etc.).

A contract signed between an employer and a contractor would usually provide that the employer is, to some extent, responsible for poor performance of any "other contractor" engaged by the employer. Thus, in the context of the above example, the turbine supply contract would provide that if, as a result of poor performance by the civil works contractor, the turbine manufacturer's performance has been disrupted (works delayed or additional costs incurred), the turbine manufacturer would be entitled to claim the relevant relief from the employer (extension of time to completion and/or additional costs).

Strong interface management, robust cooperation and coordination provisions, as well as early warning mechanisms can, to some extent, mitigate package-on-package risks.

Liability Gaps

As disaggregated procurement envisages no single point of responsibility, the employer might face difficulties in attributing defects in the facility, especially if such defects occur at the interfaces between the packages. For instance, if a cable protection system fails because of a mismatch between foundation tolerances and the cable design, both the foundation contractor and the cable installer may disclaim responsibility.

This risk can be mitigated by clearly defining the battery limits of each package and each contractor's coordination obligations.

Project Management

A multipackage solution requires substantial administrative resources from the employer to manage all the contractors and interfaces. Depending on the developer's experience and resources, it might be worth engaging a third-party project management consultant that will assist the employer in managing the contractors and interfaces. In either scenario, the employer will have to budget for project management activities.

Conclusion

Given all the complexities inherent in offshore construction projects, it is essential to consider a number of issues relevant to such projects, including allocation of risks for seabed, sea and weather conditions; indemnity regime (including the use of knock-for-knock indemnities); and mitigation of interface risks.

With some limited exceptions (such as the LOGIC Contract), there are not many standard forms of offshore construction contract that are prevalent across the industry. This has prompted the industry to initiate work on developing suitable forms. For instance, in 2023, a task group set up by FIDIC started work on developing a FIDIC contract specifically designed for offshore wind farm projects that "will address their special features and challenges." The anticipated delivery date for the new contract is yet to be confirmed, but is expected to be towards the end of 2025. Such industry standard forms may provide a useful benchmark for determining risk allocation in offshore projects.

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