



Contractual terms and conditions in offshore wind

A report for the Scottish Offshore Wind Energy Council

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- Most of our work is advising private clients investing in manufacturing, technology and renewable energy projects.
- We've also published many landmark reports on the future of the industry, cost of energy and supply chain.

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1. Executive summary

The Scottish Offshore Wind Energy Council (SOWEC) commissioned BVG Associates (BVGA) to investigate the issues related to contractual terms and conditions experienced by developers and suppliers in the Scottish offshore wind industry. This workstream was tasked with identifying potential solutions that can increase efficiency when negotiating contract terms and create a fairer landscape for all tiers of the supply chain.

Several forms of contract are used in the industry today. Embedded terms are often heavily modified and pass inequitable levels of risk to lower tiers. These lower tiers also experience difficulties in resource and familiarity when dealing with these contracts, which can deter new entrants from the industry. The industry is open to find more collaborative solutions and we have identified several processes that could be adopted in Scotland.

Key findings

- There is no standard contract for main package activities in offshore wind
- Offshore wind farms are large and complex projects with inherent technical risks. Offshore wind financing passes liability for technical risks to suppliers.
- The highly competitive nature of the supply chain leads to these liabilities being passed down the tiers of the supply-chain to businesses that are not able to absorb them.
- Higher tier suppliers indicate that transparent and open dialogue is not promoted by the contracts used in the industry.
- The industry is seeking to attract new businesses into the supply chain. These businesses are often unfamiliar with the technical risks and contractual structures and lack the experience to mitigate risks.
- The industry is seeking to involve businesses that are local to the wind farms. These are often smaller businesses that do not have the resources to engage in lengthy or complex contractual negotiations.

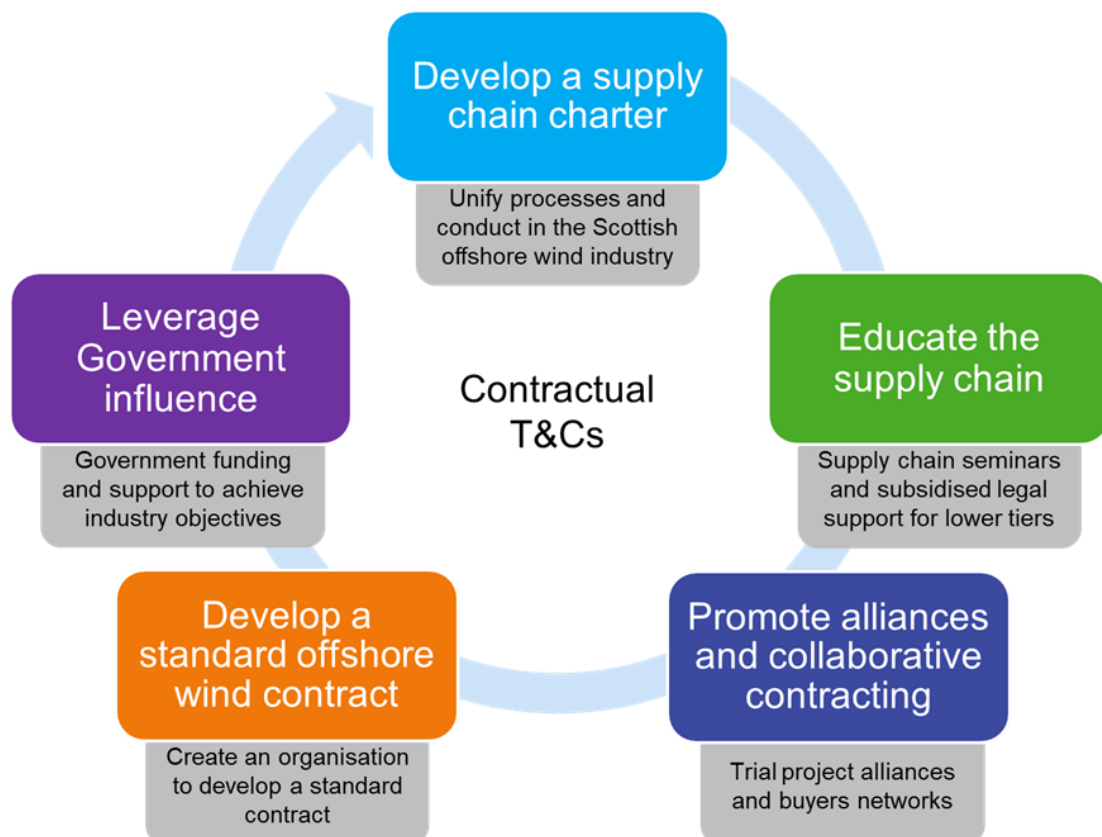


Figure 1: Key recommendations to SOWEC

2. Introduction

Established in 2019, SOWEC is a partnership between the Scottish public sector and the offshore wind industry to co-ordinate a Scotland-wide response to the UK Offshore Wind Sector Deal. The partnership aims to lead and support the industry, boost the local content of projects and increase jobs in line with the Sector Deal.

The council has five goals which are to:

- Deliver at least 8GW of offshore wind in Scottish waters by 2030.
- Develop a plan for offshore wind's contribution to achieving Scotland's climate change ambition of net-zero greenhouse gas emissions by 2045.
- Create a competitive, commercially attractive offshore wind sector in Scotland which can deliver both domestically and in the global offshore wind market, with a focus on project development, deeper water capability and innovative technology solutions.
- Work to increase local content in line with the ambitions set out in the UK Sector Deal, developing a sustainable, world-class supply chain in Scotland.
- Boost the number of offshore wind jobs in Scotland to more than 6,000; an increase of 75% on 2019 figures.

2.1. Supply chain work packages

SOWEC have commissioned BVG Associates to deliver a package of five workstreams related to the SOWEC goal of increasing local content and developing a world-class supply chain.

The purpose of this terms and conditions (T&Cs) workstream is to identify potential routes to decreasing the administrative burden on suppliers and purchasers negotiating T&Cs of contracts and to seek ways to distribute risk more rationally in the supply chain to better enable smaller companies to participate.

The objective of this work is to assess how to improve the commercial perspective for players within the offshore wind supply chain, including examining the opportunity for standardised contractual terms and conditions and associated enabling initiatives. This exercise will simplify negotiations for supply-chain businesses and remove barriers to participation.

A range of different contract types are used by developers and T1 suppliers. This report reviews the most common contract types, the characteristics of each and explores the issues regularly encountered by suppliers, particularly those in the lower tiers of the supply chain.

Engagement was focused on all tiers of the Scottish offshore wind supply chain and identified a common set of themes informing key recommendations to enable a fairer commercial landscape.

3. Methodology

This work package was conducted through three main activities described in the following subsections.

3.1. Form of contract review

Research has revealed that there is no standard form of contract used in offshore wind. Offshore wind farm developers and tier 1 (T1) contractors use their own set of general T&Cs across various contract types, often in the form of FIDIC, LOGIC, NEC and BIMCO contracts. These forms of contract are summarised in Section 4.

These contracts are often heavily modified by developers and T1 contractors, setting out varying principles and conditions that can demand significant resources for smaller tier players to review.

Contracts are regularly constructed in ways that mean inequitable levels of risk are transferred down the supply chain. This can prevent smaller businesses accepting contracts or deter new, highly capable entrants into the supply chain.

We set out an understanding of these contract types, summarising their usage, specific features and pitfalls. Using this understanding, entities distributed across all tiers of the supply chain were consulted to capture the issues they encounter.

3.2. Stakeholder engagement

Industry procurement professionals were consulted and constructively challenged through engagement to capture the key issues relating to contractual T&Cs. We anticipated that broad insight could only be unlocked through dialogue beyond the traditional purchaser or supplier community.

SOWEC members

We held an initial workshop listening to SOWEC members to record the common issues encountered with contractual T&Cs and used this to formulate subsequent engagements.

With this initial high-level understanding, we then embarked on a three-pronged engagement activity to capture the perspectives of different stakeholders located at various tiers of the offshore wind supply chain in Scotland.

Law firms

We engaged with law firms to understand their position regarding different contract forms and the issues faced by project developers and suppliers. Through discussion we explored their views on methods to harmonise contracts at higher tiers and ways to simplify at lower tiers. The commercial and legal issues relating to collaborative bidding and procurement were also explored.

Higher-tier suppliers, contractors and developers

Higher-tier actors such as engineer, procure, construct and install (EPCI) contractors, wind turbine original equipment manufacturers (OEMs) and project developers were consulted to understand the range of contract forms that they use, and why. This exercise again sought to capture their perspectives on the assignment of risk through the supply chain, how it can be distributed equitably and their view on the impact current approaches have on lower tier players.

Lower-tier Scottish suppliers and contractors

We consulted lower-tier Scottish players to capture the main contract types they are exposed to, the common issues encountered, and conditions preventing contract acceptance or entry into the offshore wind market altogether. In these discussions we explored ideas to change the allocation of risk across the supply chain.

A summary of the findings of the engagement exercise is presented in Section 5.

3.3. Findings and recommendations

We collated the outcome of the engagement process, aggregating responses to draw out the predominant themes and issues that were shared.

These are summarised in Section 6, highlighting the elements of contractual terms of conditions that present the greatest opportunity for standardisation and where risk could be more fairly distributed across to lower tiers of the supply chain.

For common issues that presented no clear standardisation pathway, we explored other ways to encourage growth in the Scottish offshore wind supply chain, while maintaining competitiveness in the industry.

In Section 7 we present the recommendations of the study. These recommendations are complemented with suggested solutions. Solutions include standardisation of contracting options, improved familiarity for contracting parties and how enablement bodies can influence good practice for all players in the Scottish offshore wind space.

Finally, we present summarised recommendations for further work that can be considered by SOWEC, CES the Scottish Government and other enablement bodies.

4. Forms of Contracts

This section summarises the most widely applied contract types in offshore wind, their use, pitfalls and key differences. The contracts used between a client and contractor in offshore wind are knock-for-knock agreements. More widely known as knock-for-knock indemnities, this requires one party to indemnify against

another party for claims such as death or personal injury, and loss or damage to property.

FIDIC yellow book (design and build) contracts are the most common for offshore wind projects, driven by the familiarity throughout the international supply chain.

LOGIC contracts originate from the oil and gas industry and are sometimes used for the construction of offshore wind projects where there are clear similarities in offshore operations.

NEC contracts are often perceived as a more collaborative, although uptake has been mainly in the UK.

BIMCO contracts are used for the charter of service and support vessels. BIMCO WINDTIME was the first standardised contract for the offshore wind industry and was developed to address to key differences between other sectors such as oil and gas.

4.1. FIDIC

Fédération Internationale Des Ingénieurs-Conseils (FIDIC) contracts are published by the International Federation of Consulting Engineers. These contracts originate from land-based construction and engineering contracts and are widely recognised across the globe.

The FIDIC Yellow Book “Design and Build” form is the most popular contract used in the construction of offshore wind projects. Its focuses on projects with heavy engineering elements in mechanical and electrical disciplines. It has seen four iterations since inception in 1963, the most recent of which was released in 2017.

FIDIC contracts usually come in two parts. The first contains the general terms of contract including issue rights and party obligations. The second part centres on the conditions of the application, introducing specific project clauses such as the choice of law, named engineers and the employer’s representative.

The FIDIC yellow is largely applied in offshore wind as it would be for onshore work but two elements require adjustment to be suitable for offshore works.

Weather

Under the standard FIDIC approach, contractors are only able to claim for an extension of time if it is caused by extraordinary weather conditions. Offshore operations are dependent on favourable weather to allow the vessel and equipment spread to operate safely. When a delay to construction means work is pushed into the periods of poorer weather, standard FIDIC provisions will not provide the required relief to contractors. To solve this, contracts must be changed to allow adjustment of the standard programme of operations, acknowledging how weather conditions can impact progress. Bespoke provisions can

also be included to allow for resequencing of work when unfavourable weather is encountered.

Marine Warranty Surveyor

Insurance providers normally insist on the use of a marine warranty surveyor (MWS) to approve coverage for offshore work and assets. A challenge arises in the standard FIDIC conditions over which party should bear the risk of complying with the MWS requirements. Contract managers must therefore ensure this is clearly allocated at the drafting stage. The allocation can differ depending on the number of parties involved. If one contractor is responsible for the design and build, it is often deemed appropriate for this party to bear the risk. Where more than one contractor is working on a particular phase, the developer or T1 contractor may be better suited to carry this risk.

As FIDIC is traditionally a contract based on English Law principles and when used offshore, care is needed to ensure the provisions of particular clauses are enforceable under the other legal systems. For example, when contractors claim for an extension of time or additional costs, the FIDIC contract defines that the contractor must inform the employer's engineer no later than 28 days from when they are first aware of the issue. In different jurisdictions, utmost good faith provisions are implemented into the contract. In cases where the employer causes a delay due to a design change, contractors can be caught out by not submitting a claim assuming utmost good faith, working to the employer's advantage at a loss to the contractor.

4.2. LOGIC

Leading Oil and Gas Industry Competitiveness (LOGIC) contracts originate from the oil and gas industry and was developed under CRINE (Cost Reduction in the New Era) initiative. This initiative was developed to improve the efficiency of UK offshore oil and gas industry, while ensuring the North Sea remained attractive to investors.

LOGIC was created in 1999 by the UK Government's Oil and Gas Industry task force and sits as a non-profit organisation in Oil and Gas UK. A Standard Contract Committee worked with LOGIC to develop a suite of nine standard contracts. These are available for oil and gas companies to use with their contractors across disciplines such as design, services and marine construction. The primary goal was to achieve technical and commercial standardisation, which included the development of model service contracts. LOGIC manages and oversees the mutual hold harmless deed (IMHH) and standard contracts for the sector. LOGIC contracts have achieved

considerable cost savings in the oil and gas industry and are still widely used.

LOGIC was developed by PILOT which aimed to deliver quicker, smarter and sustainable energy solutions to secure the long-term future of the UK Continental Shelf (UKCS)¹. PILOT has been since replaced by the Maximising Economic Recovery (MER) UK Forum. Under PILOT several approaches were developed such as a Supply Chain Code of Practice (SCCoP), which is now superseded by a set of supply chain principles managed by Oil and Gas UK. The originating code of practice and updated principles aimed to increase efficiencies, improve performance, remove unnecessary costs and add value to boost competitiveness². The potential for a similar set of principles for the Scottish offshore wind sector is included in Section 7.6.

LOGIC contracts are not often used in the offshore wind industry. They are only applied when there are clear similarities in scope of work with the oil and gas sector, such as the installation of offshore substation topsides. The most relevant contract types are the construction and marine construction editions that were last updated in 2003 and 2004 respectively.

LOGIC has performed well for the oil and gas sector as it is well suited to offshore work but is deemed less effective for complex engineering projects. As offshore wind projects are developed under various phases and scopes, LOGIC contracts have some limitations, although the spirit of various approaches supported by the LOGIC organisation such as supply chain principles, could provide helpful inspiration to the offshore wind sector.

4.3. NEC

The first New Engineering contract (NEC) was published in 1993 by the Institution of Civil Engineers and presented a shift from traditional building contracts, adopting plain language and encouraging good management practice. The contract suite has seen several iterations, with the most recent NEC4 launched in 2017.

The NEC suite of contracts is centred on project management and seeks to empower all parties involved in major infrastructure projects to deliver on time and on budget while maintaining the highest standards. The contracts are flexible and applicable to all sectors and can offer a better certainty of outcome. This is because NEC seeks to benefit all involved parties by allocating equitable levels of risk, rewarding collaboration, and ensuring prompt and fair payment.

¹ UK Government, <https://www.gov.uk/government/groups/pilot>

² Oil and Gas UK, <https://oilandgasuk.co.uk/supplychainprinciples/>

The recent NEC4 iteration presents new features such as alliance contracts (ACs) which are multi-party contracts³. Under ACs an alliance board sets the strategy, appoints an alliance manager, and resolves disputes. Members of the alliance and the client have a representative on the board. The alliance manager is responsible for the management of contracts and several project management functions. The alliance delivery team is made up of the client and individual partners who deliver the work.

The spirit of the alliance is that all parties share the risk of the project and that no claims are made against any member unless a significant breach of contract occurs. NEC4 defines key responsibilities for members such as collaboration to achieve the objectives of the alliance and of each partner. The NEC4 alliance contract structure is illustrated in Figure 2. The contracts instruct a 'best for project' work ethic, the use of common systems or processes and transparent communication. The alliance contract defines the mutuality that is expected by the members when working towards a common goal. It is vital that the alliance objectives and implementation plan are well defined at the beginning of the project. The implementation plan defines the roles, responsibilities, and management structure of the alliance.

NEC contracts have not been widely used for offshore wind projects, although NEC3 has been used more recently on a

few Round 3 offshore wind projects which may lead to greater uptake in time.

From consultation, one offshore wind developer explained that it prefers NEC contracts. It mentioned that NEC was mostly used during the development phase for the appointment of professional services such as project managers, designers, consultants, or suppliers. FIDIC however, remained its most common contract for the main packages, due to international recognition and widespread familiarity. The developer's view was that NEC contracts are well suited for contracting local supply chain businesses as it encourages a more collaborative approach for all parties.

The main drawbacks of NEC contracts are its limited use in offshore wind projects and lack of international recognition. Most international suppliers are familiar with FIDIC. In the Scottish context there could be an opportunity for NEC contracting in the local supply chain.

NEC3 contracts, the predecessor to NEC4, are often regarded as more difficult to interpret than traditional FIDIC or LOGIC contracts. NEC3 has also been criticised for the lack of design warranties, tests after completion and vague intellectual property rights. The recent NEC4 has overcome some of these issues and where necessary, Z clauses can be inserted into NEC contracts to add specific conditions or to amend wording.

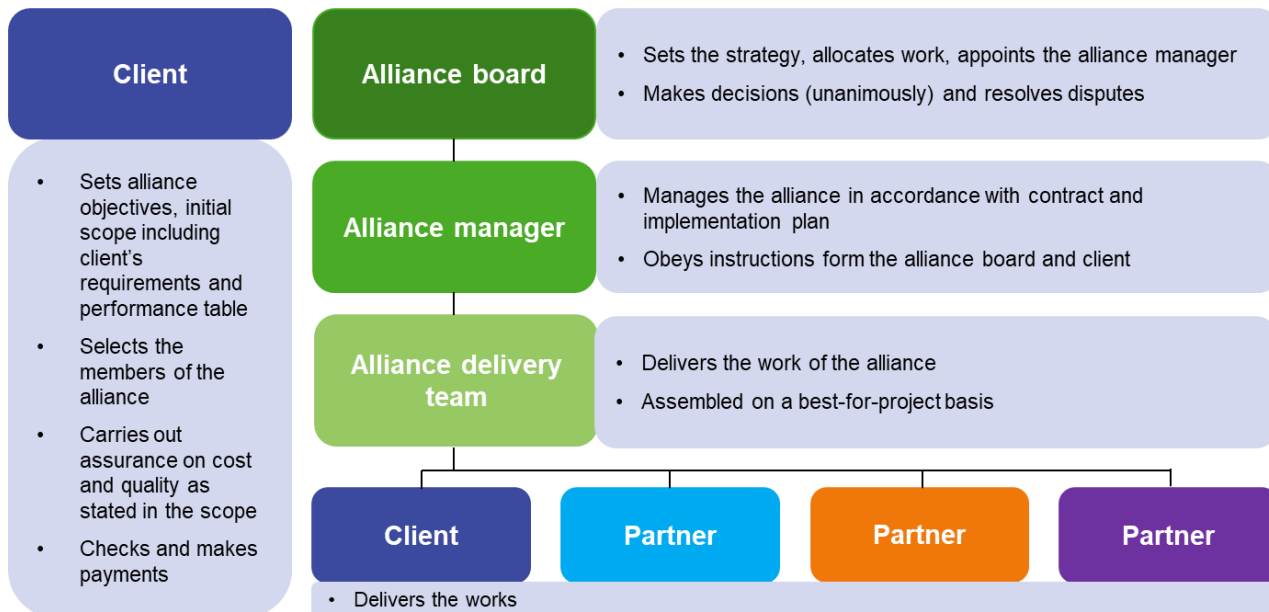


Figure 2: NEC4 alliance contract structure⁴

³ Khalid Ramzan, Pinsent Masons, 2018, available online at: <https://www.pinsentmasons.com/out-law/guides/nec4-alliance-contract-the-basics#:~:text=The%20Alliance%20Contract%20is%20a%20multi-party%20contract%2C%20under,of%20the%20success%20or%20failure%20of%20the%20project>

⁴ NEC, 2021, available online at: <https://www.neccontract.com/About-NEC/News-and-Media/Introducing-the-new-NEC4-Alliance-Contract>

The adaptive approach of NEC provides less price certainty than conventional contracts, although a collaborative and unified approach will probably drive down costs. Sponsors or funders are principally concerned with return on their investment and their buy-in will be the main driver for widespread adoption.

4.4. BIMCO

Baltic and International Maritime Council (BIMCO) contracts are used for time charter of supply vessels that transfer equipment and personnel during the installation and maintenance phase of offshore wind farms. BIMCO 'SUPPLYTIME' was first published in 1970 to provide a standard set of terms to govern the use of offshore supply vessels in the oil and gas sector. Similar services for the offshore wind farms were contracted under SUPPLYTIME until 2013 when BIMCO released a wind industry standard 'WINDTIME'.

WINDTIME includes a few marked differences to the SUPPLYTIME contract. Both include knock-for-knock indemnities but WINDTIME excludes intentional or wilful misconduct and a broader waiver of consequential damages. WINDTIME also recognises a working day, which acknowledges that transfer of equipment and personnel will be mainly carried out in daylight at offshore wind sites and defines number of hours for this provision. An excess hourly or 24-hour rate is agreed to ensure vessel operators are paid for any extension of their services.

Under WINDTIME if the vessel operator delays the delivery of a vessel, the operator is required to inform the charterer when it is reasonably practicable, and the charterer reserves the right to cancel the vessel within three days. Certain liabilities are included such as liquidated damages capped by vessel owners to prevent accrued damages building up for late delivery or where an alternative vessel cannot be provided.

Overall, WINDTIME has been well received by the offshore wind industry and has seen significant uptake.

4.5. Summary of contract forms

Several contract types that are used or have potential application in offshore wind have been explored. FIDIC yellow book has been discussed as the most common form of contract and that LOGIC is used predominantly for specific phases where there are similarities with the oil and gas sector as it is less suited for complex multi-phase construction projects.

The use of standard forms such as FIDIC and LOGIC, have the potential to reduce negotiations and simplify contracting services. In practice these are often rewritten or heavily amended, negating the benefit of adopting standard contracts. This laborious process for contractors to

carefully review the terms adopted by each client or lead contractor demands considerable resource and can deter contractors from bidding on tenders.

NEC contracts present a collaborative approach and promotes improved transparency for contracted participants. Benefits such as fairer distribution of risk, payment terms and rewarding good performance can be implemented under this contracting structure. The opportunity for NEC4 alliance contracting could be good solution for offshore wind developments, although the influence and benefits of the alliance will require consideration on lower tiers of the supply chain as they are unlikely to be included within the primary alliance delivery team.

The LOGIC suite of contracts demonstrates what could be achieved if a dedicated standard contract is produced for the main development packages in offshore wind projects. This would require the formation of a separate body to oversee the development of the contract and close collaboration across all tiers of the supply chain. This would inevitably require time, resource, and funding to implement. Related initiatives such as supply chain principles that were borne from LOGIC could be managed as part of a centralised initiative.

BIMCO has demonstrated the success of a practical standard document for the transfer of personnel or support vessels and presents the first standardised contractual document in the offshore wind industry. The success of WINDTIME could inspire the development of a standard suite of contracts for all phases of wind farm development and operation.

5. Summarised findings from stakeholder engagement

In this section we summarise the high-level perspective of the stakeholder groups that we engaged with:

- Law firms
- Developers
- Higher tier suppliers and contractors
- Lower tier suppliers and contractors

5.1. Law firms

We engaged with law firms who have significant involvement in offshore wind projects and transactions, including direct experience in Scotland.

These firms typically provide a wide range of legal input throughout the life cycle of an offshore wind farm. This study focussed on their role in the development of a suite of contractual documents that are used by the project sponsor to reach financial close. In this context, the law

firms may be acting for the project sponsor, a supply chain business or directly for a lending bank.

Most offshore wind farms are project financed on a non-recourse basis, meaning that the bank has no right to any project assets should there be issues impacting the repayment of the debts.

As a result, the lending banks insist that all project risks have an attached liability, either through insurance or a contracted liability. The insurance landscape has evolved in offshore wind as the industry has matured. Insurers have seen that Contractor's All Risks (CAR) insurance have been overstretched with respect to the technological innovations, such as the prediction of cable faults through monitoring. Insurers are therefore adjusting their coverage with more responsibility passed to the contractors.

This ultimately has a significant influence on the allocation of risk and the subsequent contractual terms that flow through the supply-chain.

Law firms interviewed made the specific point that there are inherent risks in offshore wind projects that, from the perspective of the lending banks, must be adequately accounted for. The most significant inherent risks were highlighted as being:

- Weather delay and vessel stand-by costs
- Ground conditions
- Cable laying

In practice, the bank will insist that the bulk of the liability for key risks lies with the supply-chain and not the project. In the event of a risk coming to pass, the project will not then suffer increased costs beyond a planned contingency, a delay to first generation or a reduction in revenue. This is done to ensure that the repayment schedule, the basis on which the bank makes its credit decision, is not impacted.

The view of the banks is that risks are best allocated throughout the supply chain to those with the relevant technical knowledge and operational experience to identify and mitigate them, and to those with the ability to spread their risk exposure over the portfolio of projects that they are contracted to.

The project will pass the bulk of the risk liability to the T1 contractors. These tend to be large organisations with the financial strength and experience to absorb and manage these risks. The T1s will in turn will seek to minimise their exposure and pass liability through the supply chain to subsequent tiers.

The law firms interviewed observed that it is this financing structure that ultimately leads to risk being passed to the lower tiers of the supply chain.

It was also observed that a lack of operational experience in managing risks can be a barrier to smaller businesses entering the supply chain. Standard due diligence

processes will highlight where a key contractor does not have the relevant experience to avoid and mitigate risks in practise. This combined with a lack of familiarity with how finance is structured and the forms of contracts used, act as a barrier to new supply chain entrants.

5.2. Developers

We engaged with developers who have extensive experience in developing, constructing and operating offshore wind farms, with a specific focus on those with interests in the Scottish offshore wind sector.

The developers, or their wind farm specific special project vehicles (SPVs) will typically contract directly with the higher tiers of the supply chain, either through an EPCI style contract, a multi-contract approach or a hybrid of the two.

Regardless of the contractual structure, their direct contracts will be with large organisation with the financial strength and operational experience to manage key risks.

The developers interviewed observed that they did not contract directly with the lower tiers of the supply chain on large offshore wind construction projects, and do not seek to influence the T&Cs that their direct T1 contractors pass on.

They stated that the way in which risk is allocated through the supply chain is driven ultimately by the project financing and the requirements of the banks, which are rigid in their requirements for the project to carry as little risk as possible.

It was reported that developers were aware that smaller business further down the supply can struggle to find the operational capacity to deal with more complex contract negotiations, and to absorb risks.

The developers also observed that risks are best managed by those with the skills and experience to manage them, therefore simply passing risks down the chain as far as possible is not in the best interests of their projects.

5.3. Higher tier suppliers and contractors

We engaged with higher tier suppliers and contractors that have strong experience with marine construction and major component supply that are either located in Scotland or intend to bid for tenders on forthcoming Scottish offshore wind projects.

The larger tier suppliers are familiar with the various contract types and confirmed that FIDIC yellow book was the most common form presented by developers. Their perspective was that these contracts are heavily modified with considerable variation across the developers. It was noted that these contracts can include irrelevant and disproportionate risks, which inevitably feeds down to lower

tier suppliers. Most of the suppliers interviewed believed they were fair with their sub-suppliers with reference to the contract agreed, indicating that the issue could lie with the master contract for the main packages and inherent finance structure of the project, rather than the behaviours of T1s.

The most prominent issues highlighted was payment terms. Even for larger suppliers, it was indicated that these negotiations can take considerable resource to reach an agreement. Some suppliers insist on milestone payments which can be a cause of extensive negotiations.

Some suppliers indicated that they run the risk of losing a contract by negotiating too hard. In these instances, developers may opt for an alternative supplier that will not challenge conditions, which can be counterintuitive in terms of price and risk to the project.

One supplier indicated that contracts used in offshore wind do not incentivise effective and transparent communication. This is because as soon as a delay or issue is raised by the client or the contractor, the opposing party will submit a claim. The impending delay is often obvious to all those involved but is not officially communicated to prevent claims being logged. This can often lead to a breakdown in trust between developers and contractors.

5.4. Lower tier suppliers and contractors

We engaged with suppliers and contractors with experience in the offshore wind supply chain. These were generally smaller businesses that would typically contract with T1 or Tier 2 (T2) contractors. Only rarely would they contract directly with the developer or project SPV.

These businesses reported a range of contractual issues that caused them difficulty, including:

- An unacceptable allocation of risks
- Requirement for bonds and guarantees
- Long payment and retention terms
- Lack of familiarity with forms of offshore wind contracts leading to demands on resources of time poor suppliers.
- Requirement for extensive company accreditations, that vary between projects and clients, and
- Risk of losing contracts when negotiating hard on T&Cs.

These issues are explored in more detail in section 6 below.

6. Main contractual issues

6.1. Risk allocation

Supply chain businesses observe that the allocation of risks, such as weather delay risks, can be a barrier to their participation in projects. In many cases this is because they do not have the financial strength to absorb the liabilities. This is particularly true for businesses that do not also have the operational experience to manage and mitigate the risks. They are left in a position of having to consider a liability that they can neither cover financially nor mitigate operationally.

Some weather delays and ground condition risks exist on all offshore wind projects. Developers are usually required by banks to pass these risks onto the supply chain as the financing structure does not allow them to remain with the project.

Developers will therefore pass most of the risks to T1 contractors, and the T1 contractors will naturally seek to pass on as much of the risk as they can to the lower tiers of the supply chain.

6.2. PCGs/bonds

Suppliers are regularly required to provide parent company guarantees (PCGs) or bonds to cover the financial liabilities that they are being asked to take on. This requirement can exclude smaller businesses that do not have the balance sheet or credit facilities to offer such coverage.

Through engagement we heard that smaller businesses may be able to offer limited coverage on one or two projects, but it then becomes a limiting factor in taking on any further work even though they have the resources and capability to deliver.

We heard frustrations expressed that the requirement for bonds or PCGs can often come up late in the tendering process, after significant business development and tendering effort has been spent. If the requirement had been made clear earlier, the bidder can consider whether they should participate in the tender.

Suppliers in the lower tiers reported that they feel that there is an imbalance of power in negotiations with T1s, and that they are fearful of negotiating too hard on the issue of bonds, for fear of being excluded.

6.3. Payment terms

We heard from suppliers that they were often asked by T1 contractors to agree to payment terms of 90 or 120 days.

This is a barrier to lower tiers in the supply chain as it causes significant cashflow issues, especially for smaller contractors and for those who are required to purchase materials.

The practice of implementing long payment terms is seen as being unfair by those in the lower tiers particularly as the higher tier suppliers may not be on the same terms with the developer. This leaves the impression that terms are being imposed as a cashflow management measure by the higher tier suppliers. There is a perceived imbalance of power in negotiations with T1s on this issue.

6.4. Familiarity

A frequently observed challenge is potential suppliers not being familiar with the sector's technical risks, commercial and financial structures, and the forms of contracts.

This is particularly true of new suppliers to the sector and leads to a situation where suppliers are being asked to consider commercial or operational risks without knowledge of them or the reasons why they exist in the first place.

Businesses looking to enter the offshore wind supply chain will often have limited managerial, business development and legal resources to build a more detailed and nuanced understanding.

Whilst the issues may be relatively easy to resolve, for time-poor smaller businesses it can be an intimidating prospect and leads to opportunities being ignored.

6.5. Accreditations

To be eligible to tender for work in offshore wind, suppliers are often required to demonstrate that they hold accreditations to a particular industry body, standards organisation, or procurement system.

This can be an expensive and time-consuming process for businesses, especially lower supply chain tiers. It was observed in the engagement process that buyers may insist on accreditations due to corporate procurement rules, even on small contracts where they are not necessary.

6.6. Root causes of issues

There are several root causes that lie behind many of the contractual issues that arise:

- Offshore wind farms are large and complex projects with inherent technical risks. The way offshore wind is financed leads to the liability for technical risks being passed off down the supply chain
- The highly competitive nature of the supply chain also leads to liabilities being passed down the tiers of the supply-chain to businesses that are not able to absorb them
- The industry is seeking to attract new businesses into the supply chain. These businesses are often unfamiliar with the technical risks and contractual structures, and lack the experience to mitigate risks

- The industry is seeking to involve businesses that are local to the wind farms. These are often smaller businesses that do not have the managerial or commercial resources to engage in lengthy or complex contractual negotiations.

7. Potential solutions

7.1. Standardised contracts and amendments

Standardised contracts

The evolution of the development of a standard suite of contracts as applied in oil and gas under LOGIC could be an approach to standardised contract terms. CES should mandate the development of a standard contract and assign a dedicated legal entity to work with a stakeholder group such as ORE Catapult to facilitate industry engagement. This would also need collaboration with other stakeholders groups such as SOWEC, OWIC, Scottish Renewables, RenewableUK and BEIS. This collaboration would seek to standardise contracts for each phase or activity into a suite of contracts and will require support from all tiers of the supply chain to trial, test and feedback on their suitability. The LOGIC board could be consulted to learn and identify best practices. Investors and insurers should be included in these engagements to ensure terms are viable and acceptable. The development of standardised contracts must also be promoted with clear benefits to all parties, demonstrating a fairer and more cost-effective approach.

Pros

The development of a standard suite of contracts for offshore wind would allow for control and influence from the industry. This could take inspiration from various contract types in use today, drawing specific clauses and elements that would lead to a fairer, transparent, and cost-effective contracting. Including elements from the NEC suite such as alliance contracting within a standard contract would instil collaborative approach in the industry.

The LOGIC standard suite of contracts has been recognised to reduce lead time in negotiations because of fewer interfaces and improved consistency. This has led to cost reductions in oil and gas that can be largely attributed to competitive and leaner pricing from contractors as terms that ensure equitable levels of risk and acceptable payment terms. This could be achieved in offshore wind if a similar initiative is developed for the sector.

Cons

A standardised contract would take time and funding to identify a suitable body to develop the suite of contracts. Developers and higher tier contractors may initially resist the development of a standard form as it will take time for them to familiarise and satisfy lenders or insurers on the

embedded clauses and terms. Engagement with industry at all tiers of the supply chain will be needed to convince them of the benefits, which again will take time to complete.

Several developers and legal firms suggested that it would be challenging to implement a set of standard T&Cs that would be applicable to all contract types used in offshore wind. As the contracts include specific clauses and different mechanisms, certain standardised terms may appear irrelevant or contradictory.

Standardised amendments

A set of standardised amendments would provide flexibility for contract forms. CES could instruct the development of a dedicated set of amendments for each form that are made available to suppliers, defining elements such as standard responsibilities, 30-day payment terms, fairer risk allocation and where PCGs or bonds are applicable. Standardised amendments would require a stakeholder group or dedicated entity to work with a legal team to ensure their adaptability for each contract type.

Pros

Standardised amendments could be applicable for all forms of contracts and could be simpler to develop and implement than a dedicated suite of contracts. These amendments would aim to address the key issues captured within Section 6 and be made available to all suppliers and contractors operating in offshore wind in Scotland.

Cons

If a process of standardised amendments is actioned, it will require uptake and acceptance across all tiers of the supply chain.

7.2. UK Government

Several lower tier suppliers indicated that they struggle to provide PCGs or bonds to cover their financial liabilities when either bidding on multiple projects or simply where their credit facilities are limited.

UK Export Finance (UKEF) can provide support to smaller tier suppliers by providing financial guarantees. UKEF can support businesses that are contracting outside of the UK. This allows for the physical work to be completed in the UK providing that the purchaser of the services or goods is registered in another country. This support can be especially useful when a UK company wins a contract of a higher value than normal or where they are handling more overseas contracts that they are used to.

UKEF's Bond Support Scheme can provide guarantees to banks where a contract requires a bond to cover aspects such as performance guarantees. Similarly, UKEF's Export Working Capital scheme and Export Insurance Policies can provide cover for credit risk or where exporters are unable to fulfil a contract in another country due to issues beyond their control. UKEF could be promoted by CES through

support of the UK Government as an opportunity for smaller tier suppliers to explore nearby or global markets, which could subsequently elevate company profiles and their experience.

Pros

UKEF support is focused on smaller companies and provides a level of financial security that their assets cannot sustain. This can unlock opportunities for Scottish suppliers in other countries, enabling them to compete in new markets, while simultaneously improving their reputation and track history in offshore wind.

Cons

UKEF support would only benefit Scottish business supplying Scottish offshore wind projects when the buyer is registered overseas. This will limit the opportunity for UKEF support to make a difference.

While there is no minimum level for support to be granted, banks do not tend to engage with businesses if their turnover is less than £6M, which could limit the opportunity of UKEF's support.

7.3. Guidance and education

A common perspective shared by developers and higher tier suppliers, is that lower tier players are often unfamiliar with the form of contracts and accreditations required to ensure eligibility for tenders. Smaller tier suppliers have expressed that considerable resources are needed to review contract terms. Accreditations are also costly for smaller suppliers. They are sometimes uncertain what accreditations they should focus on and invest in to satisfy most of the tenders they will bid for.

An industry led guidance and education drive is a logical solution here. This would improve the awareness and preparedness of smaller tier suppliers when either seeking to enter the offshore wind industry or where existing suppliers have found the contracting and qualification landscape particularly difficult.

Due to the costs associated with legal advice, the resource required to review contracts or to prepare for accreditations, it is suggested that subsidised support is made available to resource and time poor entities. This support could be one-to-one advisory sessions with legal representatives, contract focused seminars or a legal helpline service. Online and on-demand training material could also be made available.

Seminars would be attended by representatives from all tiers to openly share the contractual requirements for upcoming tenders. Subsidised legal support could be provided to suppliers for the first few tenders they hope to bid on and funding could be provided leveraged from Government for these services.

Contract focused seminars could be built into meet the buyer events, which would clearly define requirements in advance, enabling smaller tiers to assess their eligibility and where it may be worth investing in new accreditations. Funders, investors, and insurers should also be included in these sessions to listen to the perspectives of suppliers and consider where the requirement for bonds or PCGs could be removed or alleviated for less risky tenders or activities.

This educational drive should be instigated by CES and seek oversight from a supply chain stakeholder group such as Fit 4 Offshore Renewables or the Offshore Wind Growth Partnership, to increase awareness across the supply chain and ensure developers incorporate open forums in their tendering process. The management of one-to-one support could be coordinated by an entity such as Scottish Enterprise.

Pros

An increase in familiarisation of contracts with lower tier suppliers will benefit all levels of the supply chain. Developers could be confident that Scottish suppliers are prepared in advance to meet their requirements which could streamline contractual negotiations.

Educational seminars would be easy to set up and coordinate. These could be incorporated into meet the buyer events or centralised sessions coordinated by CES or SOWEC after offshore leases have been awarded.

Subsidised legal support would allow smaller contractors and suppliers to obtain low-cost advice on the composition of contracts and where they may need to demonstrate specific competencies without pursuing accreditations that do not add value add or increase the likelihood of award.

Cons

Funding would be needed to provide coverage for the legal support for smaller tier suppliers. This would likely require coordination between CES, Scottish Government and other entities such as Scottish Enterprise.

A centralised body or supply chain stakeholder group would need to be funded and mandated with the responsibility to implement an educational drive. This would require integration and cooperation with developers, particularly if sessions are combined with meet the buyer events.

7.4. Alliance contracts

As presented in Section 4.3, NEC4 Alliance Contracts could provide the flexibility and transparency required to benefit all tiers of the supply chain. The use of a common set of terms for all alliance members is a key enabler to share risk across all parties. The spirit of collaboration with

a 'best for project' work ethic has the potential to improve overall efficiency and reduce the cost of developing offshore wind projects.

The alliance contract is a new addition to the NEC4 suite of contracts, and it is likely that contractors, suppliers, and employers will have to adjust their approach to become fully accustomed to a different work ethic.

Alliance contracts are not unique to NEC4 contracts and have been adopted by various industries in different forms. Figure 3 outlines the main differences between conventional collaborative contracting and alliances. This demonstrates that alliance is more equitable with responsibilities shared across partners. Risks are shared rather than allocated and all partners have an equal say on decisions.

The structure of an alliance contract implies that for offshore wind, an alliance would be composed of a developer and the primary contractors or suppliers for each phase of work. In some cases, lower tier contractors can be included in the alliance, but is less common. Consideration on how the benefits of alliance contracts could cascade down to lower tiers is therefore required.

One solution would be to conditionally appoint T1 contractors into an alliance before any lower tier awards have been made. The lower tier suppliers would then be allowed to bid knowing that the T1 are in a position of strength and will be abiding by the alliance objectives. This would present an increased likelihood of success for lower tiers, compared to T1 and sub-suppliers bidding to the client in predefined consortia, as is often the case in existing projects.

Another approach would be for sub-alliances to be formed by potential T1 contractors. In this structure T1s would be required to bid for project tenders with their respective T2 and T3 contractors held within pre-defined sub-alliance. Each sub-alliance that intends to bid on a tender would be provided with the objectives of the primary alliance in preparation for its bid. Each sub-alliance will need to demonstrate its alignment to these expectations during tender and if successful, for the duration of the project.

CES could promote the benefits of alliance contracts through educational sessions and ORE Catapult or its related subsidiaries could support its implementation with developers.

Pros

An NEC4 alliance contract is formed in a reimbursable structure. This means that contractors are reimbursed for the costs they incur, and further payments made based on their performance against the alliance objectives. This incentivises good performance and rewards are allocated if target dates and quality are achieved. If the performance meets or exceeds expectations, partners are paid a defined amount for that target. If targets are not met, the partners pay for the overrun. The completion date is the main KPI to

Contractual terms and conditions in offshore wind

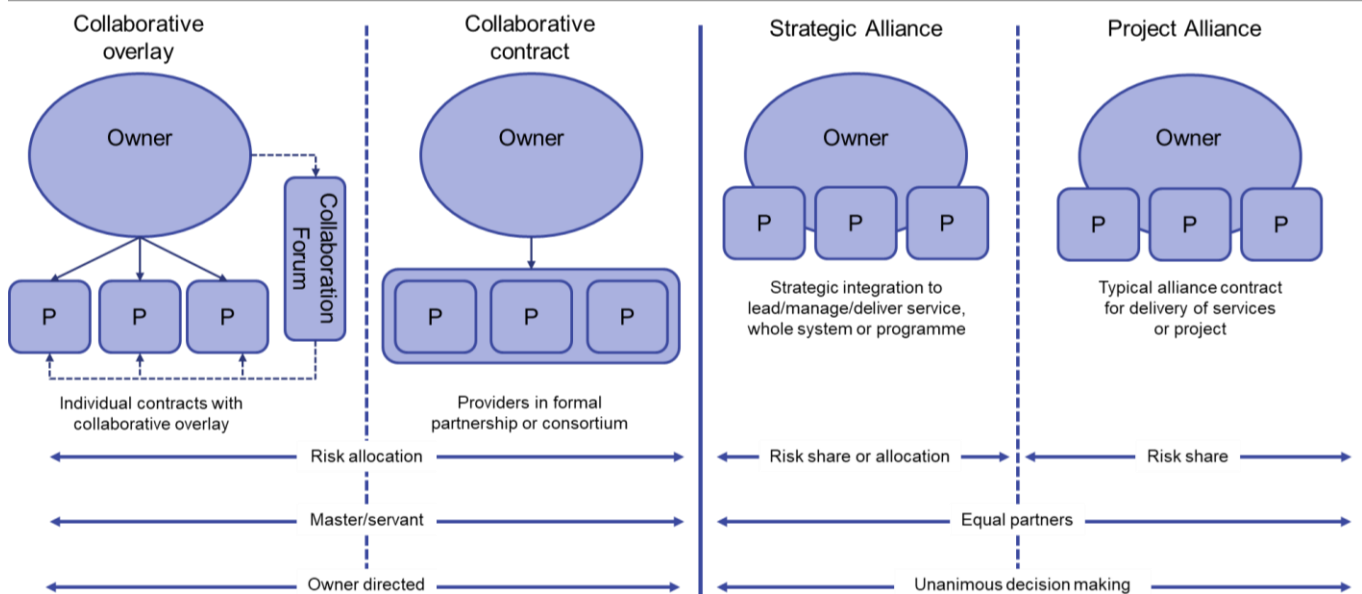


Figure 3: Spectrum of alliance contracting⁵

track performance and incentivises partners to manage risks to prevent negative impacts on completion dates. The NEC4 alliance contract also places limited risk on the supply chain with risks shared to agreed proportions. Compensation events allow for members of the alliance to be compensated for issues such as changes to scope or suspensions. These changes are reflected in changes to the budget and completion dates within the performance table for the alliance contract, with all parties notified of such changes. The contract also includes a 'no blame no claim' provision that promotes shared risk and prevents claims being logged by members of the alliance.

As alliance contracting requires all members to work towards a common goal and contributing throughout their activities, processes allow for partners that are in breach of their role to voted out of the alliance. Alliance contracting can allow lower tiers to influence the approach of T1s and the primary alliance at the preconstruction stage, which can improve efficiencies and reduce risk for the project.

Cons

The NEC4 alliance contract includes a shorter period for notifying compensation events compared to traditional contracts and in practice procedures will require careful consideration, particularly if an event is at fault of the client. Projects will need to consider how client induced events will impact on all alliance members.

In NEC4 alliances, delays due to weather are not considered as compensation events. Instead, the alliance shares this risk and prevents weather risk to be placed on one single party that may experience long delays through no fault of their own.

The conditional appointment of T1s into an alliance could improve bidding efficiencies for lower tiers as they would know up front that the entity they are bidding to are highly likely to see the contract through. Alternatively, where alliances insist on the formation of sub-alliances for each package, reporting to the primary alliance ensures the principles of the alliance benefit all contributors.

As weather events are not regarded as a compensation events in NEC4, their occurrence does not lead to an alteration in budget and completion date, which can negatively impact the risk and reward outcomes for all members. This is a different mindset from traditional contracts and may be met with some resistance of prospective alliance members and financiers.

As NEC4 and alliance contracting is a new method potential parties and investors will need to have confidence that this mechanism would perform better than traditional FIDIC or LOGIC contracts. This paradox as the only way for NEC and alliance contracting to demonstrate its value is for increased uptake in the sector. This could be enabled by sanctioned or recommended use from Government, set out in guidance or a recommended industry supply chain charter.

⁵ Alliance Contracting – Collaboration NI, September 2016, available online at: https://collaborationni.nicva.org/sites/default/files/d7content/attachments-articles/september_2016_alliance_contracting_report.pdf

Alliance contracting can create complex project structures and requires diligent management to ensure the process is executed correctly. Complexity could increase with the introduction of sub-alliances for each package. For lower tier suppliers to benefit, development and testing of various project structures will be needed to identify the most effective option.

7.5. Collaborative bidding

Collaborative bidding could be a further mechanism to standardise contract terms and tenders across a subset of projects. This would give the opportunity for contractors to bid on standardised scopes across a cluster of wind farms within the same approximate vicinity. While there could be variations in the hardware to be installed, standard requests for tender could be agreed amongst the respective developers where work will follow a similar scope. This would imply that the terms of contract would be similar or near identical for the individual wind farms in the cluster and has the potential to streamline the process for all parties.

Developers within a cluster could coordinate themselves into a buyer's network that would enable the standardisation of solicitation documents, contract terms, bid review processes and evaluation criteria. Flexibility will be required throughout the network which would feed through to contracts such as the duration, and the location of where the work will be performed. This will require coordination with successful suppliers or contractors, that may suggest alignment and alteration of development timelines to take advantage of potential synergies.

This collaborative approach could be tested on a set of pilot projects and supported by CES, the Scottish Government and a Scottish stakeholder group to lead the buyer's network. Additionally, this group or a non-profit organisation could be allocated to conduct procurement that would oversee elements such as bond financing across the proposed cluster. This entity would need to act in the best interests of purchasers and suppliers.

Pros

A collaborative bidding process presents a streamlined approach for similar tenders across several windfarms in a similar geographical location. This would mean less variation in terms posed to suppliers.

A collaborative buyer's network gathering several developers into a collective consortium could reduce the overall capital costs of development across a range of

offshore projects. This would take advantage of the economies of scale, amortisation of costs for shared infrastructure and reduced concentration of risk on a particular project or scopes.

A buyer's network could also benefit from a reduction in transaction costs through centralised procurement and administrative processes.

Cons

Developers and purchasers could be reluctant to form or be included in buyer's networks. Several developers consulted throughout this project have indicated that they work hard to develop an internal supplier database, which they often regard as internal IP. Developers could therefore deem a collaborative procurement approach as a threat to their competitive edge if there was compulsion to share their supply base with other members of the network.

The buyer's network could have a negative impact on the opportunities available for smaller, less experienced suppliers. This could occur when a select few preferred bidders are allocated the same scope in a cluster, leaving less opportunities for other suppliers that would have otherwise been able to bid for work on neighbouring wind farms. While there are clear benefits for consistency and streamlining, care would be needed to ensure that collaborative bidding, buyer's networks and clustering do not allow for bias, whereby developers use this approach as a means to repeatedly select the same set of contractors. Care should be taken to avoid the emergence of behaviours that might fall foul of competition laws.

7.6. Supply chain charter

Another mechanism is a top-down supply chain charter that defines a set of behaviours and recommendations for higher tiers and developers to follow when engaging and awarding contracts to Scottish suppliers. Figure 4 presents the Supply Chain Code of Practice (SCCoP) that was developed for the UK oil and gas sector and its implementation was overseen as part of LOGIC⁶. FPAL refers to the Achilles FPAL advertising portal. IMHH is the industry mutual hold harmless deed.

The SCCoP has since been replaced by a set of supply chain principles⁷ that follow the same fundamental approach encouraging clear planning, streamlining prequalification and feedback, and shortening payment

⁶ Supply Chain Code of Practice - Streamlining processes and increasing value for the oil and gas industry, Pilot, 2013, available online at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/48175/2819-pilot-supply-chain-code-of-practice-sccop.pdf

[m/uploads/attachment_data/file/48175/2819-pilot-supply-chain-code-of-practice-sccop.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/48175/2819-pilot-supply-chain-code-of-practice-sccop.pdf)

⁷ Supply Chain Principles, Oil and Gas UK, 2019, available online at: <https://oilandgasuk.co.uk/supplychainprinciples/>

processes to improve performance. These supply chain principles of the are included in Appendix A.

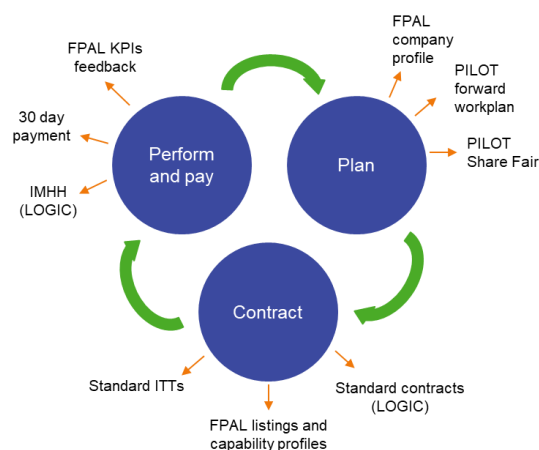


Figure 4: Oil and gas UK The Supply Chain Code of Practice (2013)⁶

The essence of a similar mechanism in the offshore wind industry would be to encourage developers and higher tier contractors to be transparent with smaller tiers, offering clarity on the decision process of potential contracts and presenting supplier criteria up front. This will allow businesses to clearly assess their suitability for a tender and effectively manage resource. The charter should also set out minimum supplier capability and required accreditations, allowing prospective suppliers to quickly identify suitable tenders. Developers would be required to notify unsuccessful bids in a timely manner, as consultation revealed some lower tier suppliers or contractors are often left unaware of the outcome of prospective bids.

The charter would focus on payment terms from developers and higher tier contractors. A maximum payment term of 30 days should be encouraged and recommended in the guidance.

NEC4 alliance contracting or similar could be promoted under the code of conduct. These forms and approaches are widely regarded as being fairer and more collaborative, and in principle have the potential to alleviate many of the issues we present in Section 6. As NEC4 and alliance contracting has seen limited use for the main packages in offshore wind, the charter would have to clarify the benefits for all parties. Should a standard offshore wind contract be developed that adopts the most relevant and effective terms from existing contracts, the charter should clearly recommend its use.

Standardised ITTs and scopes of work could be promoted within a charter and templates made available for developers and T1s. This has the potential to simplify contracting and speed up the ITT process. Templates would be developed for the core activities for offshore wind projects such as design, construction, general services and marine construction. The ITTs should be formulated to

capture the principles of the charter, encouraging transparency and fairness in terms.

The charter should also provide the opportunity for smaller tiers to present alternatives to the preliminary specification of a tender without endangering their opportunity of award. If a prospective supplier recognises an opportunity to improve the efficiency of a task, a forum or process should be recommended to allow improvements to be clearly defined.

The charter should be mandated by CES working with a central Scottish body such as SOWEC to implement the charter and monitor its impact. This would likely require support from Government and broader stakeholder groups to promote its uptake with developers. Developers could be offered the opportunity to voluntarily sign an agreement of social responsibility underpinned by the elements presented in the charter.

Pros

Implementation of a charter would be simpler than directly standardising T&Cs. The recommendation of NEC contracts or a potential standard offshore wind contract within the charter could be a simpler mechanism for standardising terms and would enable transparent communication.

If voluntary, the charter would identify developers and contractors that are willing to follow recommended behaviours and practices. There would be a reputational risk for those that choose not to sign up, which could incentivise uptake. Alternatively, the charter could be compulsory for all active developers in Scotland and would ensure developers and contractors abide by the defined principles.

The charter would support smaller tier suppliers and contractors offering certainty on payment timeframes and an efficient way to assess their eligibility for live tenders. Suppliers would also have the chance to present suggested improvements to scope when tendering which could reduce development and operational costs for projects.

Cons

A voluntary charter would mean that some developers may choose not to sign the agreement. If a level of compulsion is to be implemented, this will require careful management with the Scottish Government, CES and broader supply chain stakeholder groups, so as not to undermine future leasing or deter prospective developers.

The embodiment of the charter will require management from a central entity. Resource will be required to further consult with industry and to agree on suitable terms and recommendations. If implemented in conjunction with a

centralised PQQ and advertising portal, harmonisation across these elements will be necessary.

8. Recommended next steps

The key recommendations for further work are defined below, recognising that some interdependencies and shared processes exist across these suggestions.

Develop a supply chain charter – A charter is fundamental and should be prepared to unify practices and conduct in the Scottish offshore wind industry. A similar approach was defined for the oil and gas industry in the UK and led to agreed payment terms and the integration of standardised contracts. The charter would be a means to capture several of the potential solutions presented in this work. It should define the processes and contracts to be adopted by developers. The development of a charter will require collaboration with the industry and should take inspiration from the supply chain principles in place in the oil and gas sector. These principles are presented in Appendix A.

Educate the supply chain – Subsidised legal support should be made available to support smaller tier suppliers or new entrants to the offshore wind industry. A suitable entity will be required to administer this process in Scotland, seeking collaboration and services from law firms active in the offshore wind space. Educational seminars should be considered either as part of meet the buyer events or as separate sessions. A degree of compulsion will be required for developers operating in Scotland, insisting that their financiers and insurers are in attendance to understand the contracting landscape for smaller tier suppliers. CES or SOWEC could lead these supply chain focused seminars with leading figures presenting the issues regularly encountered by lower tiers of the supply chain.

Promote alliances and collaborative contracting – Several mechanisms have been highlighted that could promote improved collaboration across all tiers of the supply chain. The NEC suite of contracts seeks to benefit all parties by distributing risk fairly and promoting transparent communication. Alliance contracting, either held within NEC4 contracts or built into a new dedicated offshore wind contract, could ensure fairer practice with a common set of terms agreed at project inception. How the benefits of alliance contracts could cascade down to lower tiers would require some consideration and would likely need the support of Scottish enabling bodies or stakeholder groups to define the structure that would best suit the industry. As these forms have not been used in offshore wind to date, Government support could be offered to trial alliances on a small subset of projects.

Collaborative bidding could be promoted by SOWEC and other stakeholder groups to allow project clusters to share standard scopes and contract terms for package activities

that relate to all projects within the cluster. This would reduce the administrative burden for suppliers who would bid for work knowing they can qualify across several projects. Developer's buyer networks could be established with support and oversight from SOWEC or another stakeholder group to promote collaboration and ensure clusters act fairly and responsibly when inviting tenders for collaborative bids.

Consider the development a standard offshore wind contract – The success of LOGIC contracts in the oil and gas sector demonstrates that cost savings and consistent practices can be achieved through a standardised suite of contracts. If this option is pursued, an organisation will should be allocated with the responsibility of developing these contracts. Alternatively, standardised amendments for each contract form could be developed and promoted by SOWEC across the supply chain.

Leverage the influence of the Scottish Government – The Scottish Government has a key role to play in encouraging the Scottish offshore wind industry to adopt a supply chain charter. The government could also provide funding to develop the charter and the development of a standard contract for offshore wind. More widely, support from the government will be required to achieve the goals of the industry and work closely with SOWEC to develop a world class supply chain in Scotland.

Implementation of these actions – The next steps presented here will require consultation with stakeholders to agree on the most effective route forward and to identify which recommendations should be implemented in the Scottish offshore wind industry.

We suggest that a series of workshops are held with relevant stakeholders, developers, and members of the supply chain. These workshops should aim to present these recommendations and seek feedback from those in attendance, gauging appetite, feasibility and identifying any unforeseen issues in their implementation.

As some overlap exists across the recommendations, many of which would be captured within the proposed overarching supply chain charter, a route map could be defined following this consultation. This route map would define the prioritised recommendations and a pathway for their implementation. We are well positioned to facilitate these workshops and could work closely with CES and SOWEC to document the route map resulting from these meetings.

Appendix A: Oil and Gas UK - Supply Chain Principles⁷

- Risk and costs should be borne appropriately, be proportional to the work scope and not be forced on anyone; opportunity or good performance should benefit everyone, and performance based contractual rewards should be investigated.
- Contractual terms and conditions (length of contract & work scope) will seek to utilise industry standard contracts when appropriate and all parties will commit to mutuality of payment terms (including 'mutual SC payment terms'). These should reflect that the supplier has to invest for the future of the UK and make an adequate return on its investment in innovation and new technology.
- All parties should ensure they have the competence and skill to deliver work being tendered and will not accept unsustainable overbidding as a means of driving price down.
- Contract cancellations should not be without good reason or cause. If an operator or contractor must have the ability to terminate a contract the circumstance or risk should be outlined, explained and understood, not hidden.
- Purchasers shall endeavour to optimise their Tendering and Audit requirements to ensure Supplier's resources, time and costs are not unnecessarily impacted or wasted.
- Tender processes and evaluation should be based on value added rather than unit rates and be flexible to evaluate alternative offers as part of the bidding process.
- An alternate bid (either technical or commercial) which an operator sees as a winning proposition should be selected for award on its merit. Current practice of sharing alternate solutions with other bidders to allow them to price against it should cease.
- Operators and Contractors should discourage the practice of "low ball" bidding - which invariably leads to multiple contract variations and effects re-negotiation in the early phase of the contract.
- To support respective labour agreements in place across the workforce, operators should agree clear rate escalation mechanisms and move away from the practice of fixing labour rates for multiple years.
- Where a supplier (or potential supplier) feels unfairly treated/taken advantage of, they should notify the Operator MD who will ensure speaking up is not held against them.