



# IMCA's Contracting Principles

## At a Glance

**Our mission is to improve performance in the marine contracting industry**

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# Our Contracting Principles for Renewable Energy

The development of offshore wind projects as an important energy source has quickly become an important goal for many governments in struggling to balance the supply of lower cost and lower carbon electricity alongside increasing demands for security of supply.

According to energy analysts Rystad, today's worldwide installed capacity of around 59GW is forecast to grow to approximately 167GW in the next five years. This almost tripling in demand is positive news and a welcome growth story; however, the achievability of these targets is under severe pressure due to the poor economics of the industry combined with an asset constrained supply-side. Governments are central to the problem and the solution. Low internal rates of return on multi-billion-dollar offshore projects are driving budgets and project risk allocation to unrealistic levels.

Offshore construction is essentially a niche business with high capital investments in ships and equipment and often involves the development of novel technological solutions. It is represented by a limited number of Tier 1 specialist contractors with the necessary specialist ships and equipment supported by the engineering and project management capabilities to conduct large offshore projects around the world often in harsh environments. Marine contractors are an essential link in the overall supply chain. However, the risk allocation by developers has become increasingly unsustainable, which in turn places the long-term sustainability of the industry at risk.

The contracts for these services are highly legalistic and typically awarded on a fixed price EPCI (Engineer, Procure, Construct, and Install) or T&I (Transport and Install) basis. However, increasingly the contracts are loaded with uncovered risks for contractors by the project developers and financiers. The very public nature of losses being sustained by the supply chain demonstrates unrealistic budgets in a fast-growing industry requiring increasingly technologically advanced solutions to develop ever bigger and more productive wind farms.

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The underlying objectives of the contracting principles are:

- Through the negotiation of the contract, all parties should act in good faith and in a spirit of mutual trust and cooperation with the aim of benefiting the project.
- The contractor should bear the risks that have been expressly allocated to it under the contract. Any other or residual project risk should be borne by the employer.
- The contract should provide an adequate mechanism for adjustment of the contract price and/or the program so as to fairly compensate the contractor for the employer's requirements, and the costs and delays incurred for which it would be unreasonable to have expected an experienced and prudent contractor to have allowed for at the date of the contract.
- Through the project work, parties should adopt a fair interpretation and merit-based approach to the administration of the contract and resolution of any disagreements.

In the past, the offshore oil and gas industry experienced similar difficulties, but the development of a suite of standardised contracts and more collaborative risk-sharing ways of working have been instrumental in driving down costs and taking projects off the drawing board. IMCA recommends that a similar approach is taken in offshore wind.

# Examples

There is no standard model of contract in use today in offshore wind. Most contracts are highly modified versions of a FIDIC template which is designed for onshore civil engineering contracts and take no account of the nature of offshore contracting. To address this situation IMCA has published 28 contracting principles, addressing the increasing risk profile in the industry, for instance:

- **Weather risk and liquidated damages (LD) for delay:** contractors cannot price in all the weather risks likely to be encountered during the project and the LD regime is totally unreasonable with respect to weather downtime. Marine warranty surveyors, representing insurers, make decisions on offshore workability and therefore this risk is out of the contractor's control
- **Soils risk:** project developers conduct various surveys which are often not representative of the entire project since the soil conditions across tens of thousands of acres of seafloor is subject to very large degrees of variability. Consequently, this is a risk which contractors cannot bear.
- **Insurance cover:** large projects of this nature should be covered by a comprehensive Construction All Risk (CAR) insurance policy purchased by the developer but made available to the contractor. However, in order to reduce the cost of insurance various carve-outs are now typical, which reduces and obscures the actual cover available to contractors.
- **Warranty:** elaborate warranty provisions can in effect create ever-green obligations with inappropriate risks being placed on contractors.
- **Limit of liability:** before the commencement of any project all contracts should limit the maximum financial exposure to an agreed level so that contractors are not exposed to unlimited liabilities and ultimately company failure.
- **Payment terms:** projects can grind to a halt if payments are not made to the contractor in a timely manner and therefore developers need to manage the cashflow responsibly.

IMCA Members can view the full Contracting Principles online at [www.imca-int.com/publications](http://www.imca-int.com/publications)

IMCA LCIC 014 – IMCA Renewables Contracting Principles is a discussion document and an aide for clients and contractors to use alongside their in-house standard contracts and industry published standard contracts.

IMCA LCIC 014A – IMCA Renewables Contracting Principles – Guidance Document is supplement document for IMCA members intended to be read in conjunction with LCIC 014.

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