OFFSHORE WIND CONSTRUCTION CONTRACTS

Adele Os

26th April 2017
Offshore Wind Construction Contracts

- Turbine Supply Agreement ("TSA")
  - Installation and O&M
- Construct Contracts for balance of plant ("BoP") covering:
  - Foundation
  - Inter-array
  - [Transmission system]
  - Installation
  - EPCM
- Operation and Maintenance phase
  - General management
  - O&M for BoP
  - Offtake
  - Onshore facility, logistics services, control room etc
Contracting strategies

- EPC for BoP
  - Early days
- Multi-contracting
  - Single contractor are not willing to accept full EPC risk for the totality.
  - Developers manage interphase risks and may save costs (but sufficient contingency required).
- Number of packages
- Financing
  - Balance sheet
  - Project financing
    - pre and post construction
Contract forms

- Influenced by developers background
- Standards from offshore oil&gas and shipping work well
  - NTK – standard forms for Norwegian Continental Shelf
    - Fabrication (NF);
    - Total Contract /EPC (NTK);
    - Purchasing (NIB);
    - Marine Operations (NSC)
  - LOGIC – UK Oil&Gas standards
  - BIMCO terms – supply vessels / marine operations
- FIDIC or FIDIC based
  - Red Book: Conditions of Contract for Construction for Building and Engineering Works Designed by Employer;
  - Yellow Book: Conditions of Contract for Plant and Design-Build;
  - Silver Book: Conditions of Contract for EPC/Turnkey Projects;
- Other bespoke forms
- Frame agreements
Implications

- Understanding and managing contractual risk
  - Tender process
    - understanding scope and responsibilities
    - allocation of risks; caps, indemnities, securities
    - contract review document
  - Contract follow up
    - variation order system
    - Time-bars for claims
- Meeting local law; eg
  - offer and acceptance
  - validity and enforceability
Project financing in brief

- Project Finance is:
  - Lending to a single purpose company
    - Highly geared with security in the projects assets
  - With little (or no) recourse to owners for repayment of debt should the project fail to complete or be delayed
    - So debt repayment relies on the successfully built and operated value of the asset (i.e. cash flows)
    - So Lenders need a very detailed plan, and contractual arrangements in place, designed to generate those cash flows;
    - And Lenders expect the Borrower to stick to that plan
  - Security over all assets of and shares in the project company
    - Main object is to enable lenders to take over the project at an early stage if things go wrong.
Project Financing – how will it impact the Construction Contracts?

- **Lenders requirements**
  - Full insight into project – affect confidentiality clause
  - Security requirements
    - Direct agreements, "step-in right"
    - Ability to transfer by way of security
      - and subsequent transfer of assets
    - Performance bonds

- **No (or limited) payment guarantees from parents to contractor**
  - Contractors must rely on equity contribution and payments under the loan agreement
  - Lenders reserve the right to stop payments under the loan agreement
Impact on Construction Contracts - continue

- Lenders have a strong preference for "proven" technology
  - unless risk can be covered by other means
- Lenders involvement usually means stricter terms
  - Increased focus on passing risks onto the contractors
    - Prefer EPC or few contract packages.
    - Scope – more "all including" wording.
  - Increased liability caps
  - Can risks be insured?
  - Focus on funding needs throughout project
    - Increased liquidated damages (and unconditional)
Summary

- Offshore Wind Contraction Contracts
  - No set standard
  - You need to understand and manage the contractual risks
    - for each contract
  - Requirements depend on the players involved
    - Oil&gas company, utility, lenders
  - Project finance introduce further requirements
    - Challenging to finance "non-proven" technology
    - Contractual rights to lenders
    - No parent company payments guarantees
    - Contractors expected to carry further risks

- BUT the offshore wind market has a fantastic volumes!
Thank you!

Adele Os
Partner
T: +47 24 13 16 89
M: +47 48 12 13 45
Adele.os@dlapiper.com