Introduksjon til Norsk Industri Juridisk Forum Standardkontrakter (NTK 15) og effektivisering av arbeidsprosesser

Henrik Inadomi, Kvaerner
Kvaerner – A Norwegian-based EPC Contractor

**CONCRETE**

- Global leader in marine concrete structures
  - Substructures
  - CONDEEP™
  - GBS
  - Floating concepts
  - LNG terminals

**JACKETS**

- European leader in steel jackets
  - Steel jackets
  - Other steel structures
  - Piping technology

**TOPSIDE & FLOATERS**

- Leading EPC contractor to the North Sea market
  - Topsides
  - Floating platforms

**ONSHORE**

- Leading Norwegian EPC contractor for onshore plants
  - Upstream plants
  - Treatment facilities
Three recent deliverables – news in product pipeline

› Unmanned Wellhead platform
  ▪ Cost competitive with fast track subsea installations
  ▪ Standardized design
  ▪ Water depth: up to 150 m
  ▪ Minimum facilities on board

› Improved operations, IOR and well management
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Mandate – NIOG Juridisk forum

› Incorporated December 2014 after a formal request from the Board of Directors Norsk Industri Olje og Gass

› Mandate:
  ▪ Report to the administration of Norsk Industri Olje og Gass, and support their handling of relevant legal aspects of current key issues raised by oil companies, governmental bodies and other organisations
  ▪ Observe and suggest improvements to the industry’s national (and international) legal framework
  ▪ Contribute to the development of standard agreements and other standards providing predictability and manageable risk for the oil services industry and for the oil and gas business as a whole
  ▪ Provide a forum where legal representatives from each member can discuss current trends in the industry (within the confines of competition law)

› Main work during 2015:
  ▪ Mandate and work form
  ▪ Standard contracts
  ▪ Support NI’s positions regarding development of Model FOU agreements
  ▪ Submission to Minstry of Industry and Fisheries re Norwegian model for bilateral investment agreements
# 12 Members per 29. November 2015

<table>
<thead>
<tr>
<th>Company</th>
<th>Name</th>
<th>Position*</th>
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<tr>
<td>Kværner</td>
<td>Henrik Inadomi</td>
<td>Juridisk Direktør (Chair)</td>
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<tr>
<td>Aibel</td>
<td>Monica Baardseth</td>
<td>General Counsel (Vice Chair)</td>
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<tr>
<td>Woodgroup Mustang</td>
<td>Gipsy-Ann D’Souza</td>
<td>VP Legal</td>
</tr>
<tr>
<td>EMAS AMC AS</td>
<td>Stina Spanne</td>
<td>Head of Legal</td>
</tr>
<tr>
<td>Worley Parsons</td>
<td>Dag Waldenstrøm</td>
<td>Contract Advisor</td>
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<tr>
<td>Aker Solutions</td>
<td>Axel Gustavsen</td>
<td>Juridisk Direktør</td>
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<tr>
<td>ABB</td>
<td>Kjerstin Bull-Berg (Hege Bretseg)</td>
<td>SVP General Counsel</td>
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<tr>
<td>FMC Technologies</td>
<td>Thomas Bille</td>
<td>Juridisk Direktør</td>
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<tr>
<td>IKM</td>
<td>Tone Kaasen</td>
<td>HR/ Contract Manager</td>
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<tr>
<td>Siemens</td>
<td>Lauren Erin Mittenthal</td>
<td>Legal Counsel</td>
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<tr>
<td>GE Oil and Gas</td>
<td>Cathrine Killi</td>
<td>Global Commercial Manager</td>
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<tr>
<td>Nexans</td>
<td>Bjørn Christian Bergstad</td>
<td>Juridisk Direktør</td>
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* According to the mandate, the representative shall have a position of responsibility within the member’s management of its legal work processes
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330 000 «oljejobber», 13 prosent av alle sysselsatte
186 000 direkte (operatørselskaper/leverandører), 143 000 indirekte

The Norwegian Oil and Gas Cluster

Norges største og viktigste næring

- Primærnæringene
- Varehandel
- Bygg- og anlegg
- Kraftforsyning
- Privat tjenesteyting
- Transport og utenriks...
- Industri og bergverk
- Olje og gass

Norske oljeserviceselskap med omsetning i over 80 land

Næringen har avgjørende betydning

1/5 av landets samlede verdskapning
1/4 av statens inntekter

Grunnlag for 330 000 sysselsatte
311 mrd. til staten i 2014
We are facing significant cuts in EP Investments (from a record high level)

Oil Companies’ investment decisions dependent upon:
- IRR => costs (capex and opex), time from CA to production, regularity during operations, aggregate tax regime
- Risk (political and regulatory stability)
- Strategic fit (NCS attractiveness)
- Etc

How will NCS prevail in the battle for investments?
The obvious need to cut costs on NCS

With zero margin at USD 120 / bl, 20% cost cuts is not enough at USD 50 / bl

Learning from previous downturns

The industry has survived (and thrived) after similar reductions in the oil price

What was done in the previous round?

- Development of the EPC model (reduced lead times realizes time value of money)
- Development of Norsok standards

The benefits of standardization and industrialization

- Across the industry, not company specific
- The price of a jacket is the same in real terms as for 10 years ago
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NTK 15 Mod / NTK 15 – contract standards

> NIOG-JF supports the standardization work done on NTK 15 / NTK 15 Mod
> All actors on NCS are strongly encouraged to use NTK 15 contracts
> We fully support Norsk Olje og Gass that standard contracts reduce costs
  - Enables competition on delivery model and cost of production
  - Reduces transaction costs through efficient project preparations
> NIOG-JF well positioned to monitor use of NTK 15

Standardization initiative

How standard contracts reduce costs

- Cost efficient award processes
- Cost efficient administration
- Precision in pricing
- Industry practice
Standardization will contribute to improved efficiency on NCS

➤ Efficient and accurate pricing
  ▪ Predictability and commercial security for the developer, supplier and subcontractors contributes to efficient and accurate pricing
  ▪ (Assuming risk in the contract can be adequately priced)

➤ Deliveries to the right quality and time
  ▪ Appropriate and predictable risk balance helps to ensure that projects are delivered contractually and on time

➤ Cost-effective procurement and administration:
  ▪ Use of standard contracts enables cost procurement and contract management throughout the value chain

➤ Increased focus on implementation and less on conflict
  ▪ Attention to appropriate and effective project instead of much conflict during and after the project

➤ Development of industry practices
  ▪ Use of standard contracts contributes to industry practices that increase the predictability and efficiency even further : Socially desirable that industry uses standard contract terms
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NCS projects – working smarter in the value chain

▶ Two ways of reducing costs:
  (i) “squeezing suppliers”
  (ii) “working smarter”

▶ Efficient allocation of risk and responsibility

▶ Risk = probability of risk occurring \( \times \) consequence if the risk occurs

Which party is best positioned to reduce the probability of the risk occurring?
Which party is best positioned to reduce the consequence of the risk if it occurs?

▶ The value chain perspective
  ▪ How should the risk be structured in the value chain so that the probability of the risk occurring is reduced?
  ▪ How should the risk be structured in the value chain so that the consequences if the risk occurs are reduced?
  ▪ Reducing transaction costs within the value chain
Working smarter – the need for background investigations of Company’s Framework Agreements

**Article XX SANCTIONS**

XX.1 Contractor represents and warrants that neither he, nor to his knowledge any member of the Contractor Group, is a) listed on a Sanction List, or owned (in whole or in part) or otherwise controlled, directly or indirectly, by any person or entity listed on a Sanctions List or b) resident or incorporated under the laws or any country or territory subject to Sanctions. Contractor undertakes immediately to notify the Company’s Representative in writing should he become aware of any changes in this respect.

NTK 15 Art 8 – Contractor responsible for Frame Agreements (unless specified in Appendix H). No carve out for FA subcontractors insolvency.

- **Company**
  - 10* Hrs of work
  - Compliance / Sanction list investigations / financial background checks

- **Company’s Frame Agreement supplier**

- **Company’s Frame Agreement supplier**
  - **Company **
    - ?? Hrs of work
  - Compliance / Sanction list investigations / financial background checks
  - **Tenderer 1**
    - 10 Hrs of work
  - **Tenderer 2**
    - 10 Hrs of work
  - **Tenderer 3**
    - 10 Hrs of work
  - **Tenderer 4**
    - 10 Hrs of work

Total = 10 hrs of work

* 10 hour of work per subsupplier assumed as an example

Total = 40 + ?? hrs of work
# Procurement statistics from three recent topsides

<table>
<thead>
<tr>
<th>Project</th>
<th>Topside 1</th>
<th>Topside 2</th>
<th>Topside 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procurement packages total</td>
<td>156</td>
<td>148</td>
<td>140</td>
</tr>
<tr>
<td>Tagged equipment</td>
<td>75</td>
<td>75</td>
<td>76</td>
</tr>
<tr>
<td>Bulk</td>
<td>81</td>
<td>73</td>
<td>64</td>
</tr>
<tr>
<td>Company FAs</td>
<td>54</td>
<td>10</td>
<td>84</td>
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<tr>
<td>Feed Contractor’s subsequent amendments</td>
<td>0</td>
<td>0</td>
<td>58</td>
</tr>
<tr>
<td>Contractor’s FAs</td>
<td>102</td>
<td>138</td>
<td>56</td>
</tr>
<tr>
<td>Values at contract award</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equipment</td>
<td>MNOK 1560</td>
<td>MNOK 3095</td>
<td>MNOK 1160</td>
</tr>
<tr>
<td>Bulk</td>
<td>MNOK 1319</td>
<td>MNOK 875</td>
<td>MNOK 1040</td>
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<tr>
<td>Comments</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Terms and conditions</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Company’s framework agreements were prepared</td>
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<td></td>
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<tr>
<td>during FEED. The conditions were a &quot;merging&quot;</td>
<td></td>
<td></td>
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<tr>
<td>of FEED-provider and the company's General</td>
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<tr>
<td>Conditions of Purchase.</td>
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<tr>
<td>No gaps with EPC contract.</td>
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<tr>
<td>EPC-contractor responsible for most of the</td>
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<tr>
<td>procurement. Company’s framework agreements</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>were signed by FEED provider.</td>
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<tr>
<td>Feed Supplier’s and Contractor’s standard</td>
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<tr>
<td>terms for procurement are similar.</td>
<td></td>
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<tr>
<td>No gaps with EPC contracts.</td>
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<tr>
<td>Terms and Conditions for Company’s framework</td>
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<tr>
<td>agreements come in 5-6 different versions,</td>
<td></td>
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<tr>
<td>of varying quality. The most recent versions</td>
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<td></td>
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<tr>
<td>are NF / NTK based. Amendments to older</td>
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<tr>
<td>framework agreements are being made by FEED</td>
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<td>provider (during the project phase). Further</td>
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<tr>
<td>adjustments will be required on certain</td>
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<tr>
<td>packages (eg compliance regulations), with</td>
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<tr>
<td>very limited mandate for price impact.</td>
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<tr>
<td>Time-consuming negotiations between Contractor</td>
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<td></td>
<td></td>
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<tr>
<td>and Equipment Supplier.</td>
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<tr>
<td>Not insignificant gaps with main EPC Contract</td>
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<tr>
<td>and procurement terms.</td>
<td></td>
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<tr>
<td>Summary</td>
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<tr>
<td>Procurement terms vary from project to project – custom preparations for each project.</td>
<td></td>
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<tr>
<td>Procurement terms may vary significantly within a project – this creates residual risk and increases transaction costs</td>
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Recent examples of gaps between Main Contract and Company’s Framework Agreements

- Loss and damage to the contract object – knock for knock regulations not aligned
- Contractor’s Jump Obligation (“hoppeplikt”) in one instance not extended to FA Supplier
- The right to demand delivery of equipment in case of anticipated delay
- Audit rights against FA supplier not always provided for, while Contractor has an obligation in the main contract to provide for audits of itself and of Subcontractors
- FA supplier’s contributions to the detailed engineering process of varies
- Obligation to complete documentation – LD exposure?
- Responsibility for re-testing – costs for re-testing may not be part of the FA contract price
- Alignment with main contract re CSR, Anti-Corruption and Fair Competition, HSSE and Pollution not always provided for (obligations extend to FA Supplier’s subcontractors)
Standardization in the value chain

FEED supplier

Oil Company

EPC / FC contractor

Pre-fabrication

Modules

Discipline Subcontractor

Procurement (Bulk and Equipment)

- Standardized FEED Agreement incentivized for constructability and maturity
- Standardised procurement terms for bulk or tagged equipment (Norske innkjøpsbetingelser NIB?)
- Company’s Frame Agreements (Bulk and equipment)
- Novation of call-off
- Standardised procurement terms for bulk or tagged equipment (Norske innkjøpsbetingelser NIB?)

NTK 15 / NF 15

NCS’ competitive strength in a global context: Efficient work processes Improved planning

NF 15 (back to back)

NTK 15 (back-to-back)

Discipline service agreement back-to-back with NTK 15

Standardized procurement terms for bulk or tagged equipment (Norske innkjøpsbetingelser NIB?)
Potential for enacting a standardized set of “back to back” terms for procurement for tagged equipment on NCS if Companies use NTK 15/NF15 contracts for field developments on NCS
- Main EPC (Greenfield/Brownfield) contract is the starting point for standardization initiatives
- If NF 15 is harmonized with NTK, a scaled down and “back to back” adjusted version may work well as procurement terms
- Alternatively, an updated version of Norske Innkjøpsbetingelser (NIB)

Such standardization reduces risk associated with NTK 15 section 8.3 where Contractor takes responsibility for Company’s Frame Agreements and subsuppliers
- The framework that Contractor is stepping into will be more predictable and transparent
- Reduces emphasis on Appendix H exceptions re Company’s FAs

Norsk Industri suggests that procurement terms are included in the standardization processes for NCS
- To be negotiated between Companies, Contractors and Equipment Suppliers
- Company, EPC Contractor, FEED supplier and Equipment Suppliers should operate with standardized terms for NCS
- Ensures predictability for all parties
- Ensures that Company’s requirements in NTK (incl Contractor’s follow on obligations) are safeguarded
- Can be extended to Companies’ and Contractors’ own frame agreements
- “Resistance” from Headquarters needs to be handled
Thank you