

KALLIO**LAW**

Contract practice in Finnish marine construction

Wind Finland Offshore

14 May 2024

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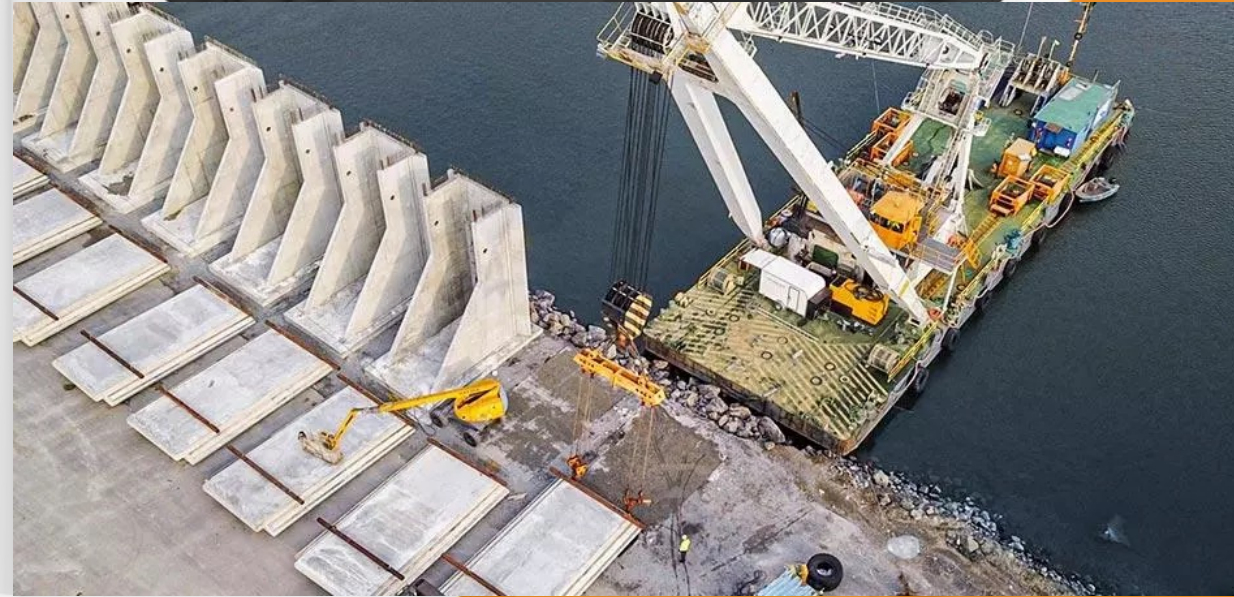
Marine construction in Finland

Dredging of fairways, construction of navigational markers

Dredging and construction of harbours

Land reclamation in urban areas

- A limited amount of offshore structures



Contracts in marine construction

Finnish fairway agency Väylävirasto and Finnish cities (harbours owned by cities)

- Contractor employed using Finnish general terms YSE 1998
 - Fixed price or unit price
 - Fairly typical to split the works to several contractors by area or phase
 - No limitations on liability
- Designs by the client
- Consulting engineer employed by the client prepares the contract and oversees the works
 - Modifications to YSE 1998 terms

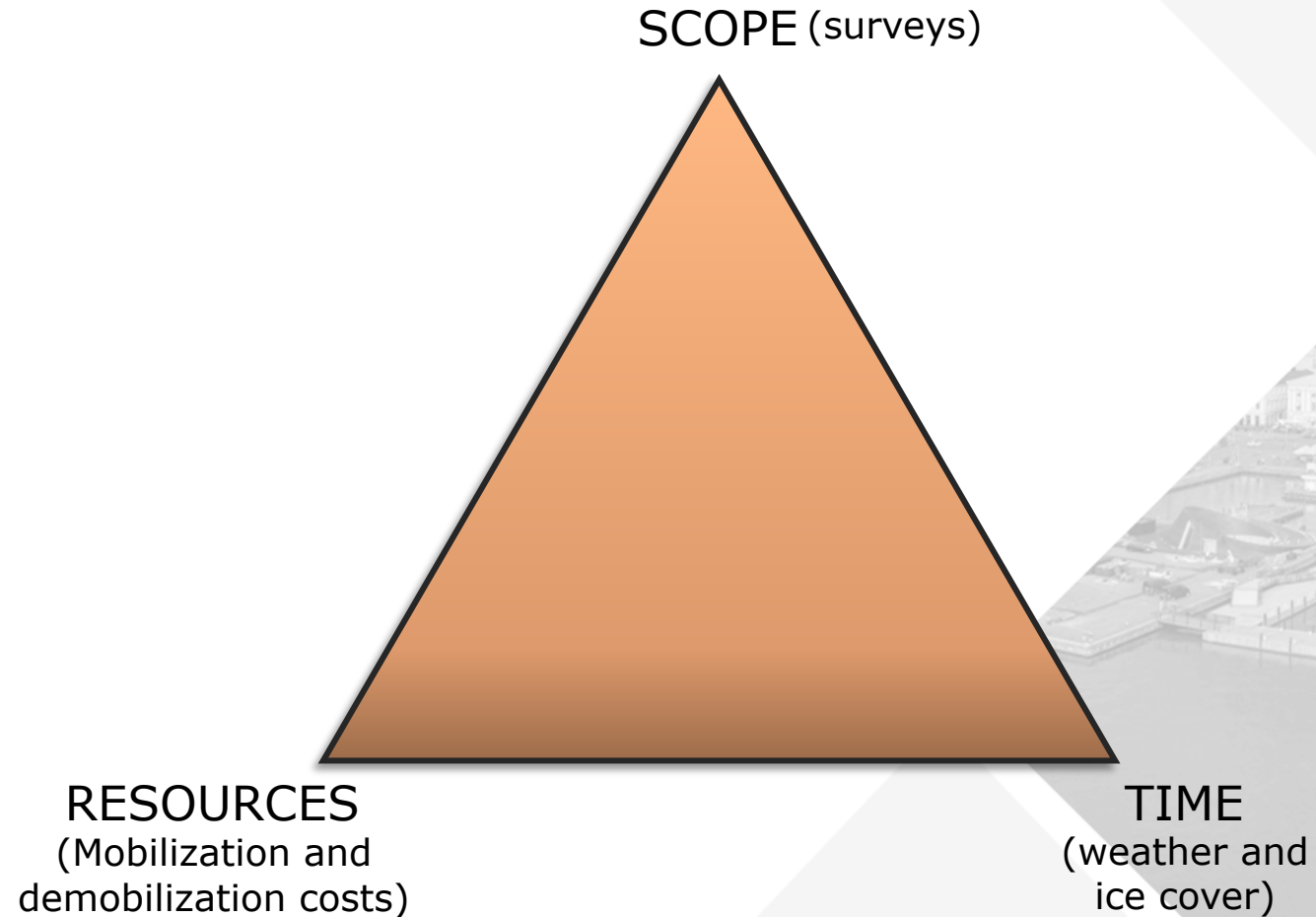
Developments:

- Alliances used in large infrastructure projects

European practice in offshore wind farms

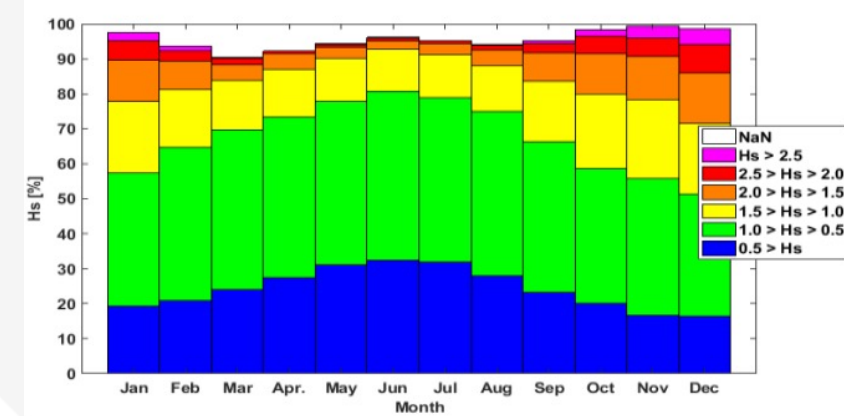
- FIDIC yellow book (design & build)
 - Design & installation by the contractor
 - The risk allocation regarding site data in FIDIC is not usually suitable for offshore projects
- FIDIC has started (2023) developing a new FIDIC contract for offshore wind projects
- LOGIC suite of contracts
 - Risk-sharing between the client and several contractors
- Wind turbine providers on own terms
- Charter of offshore fleet

The project triangle in marine construction

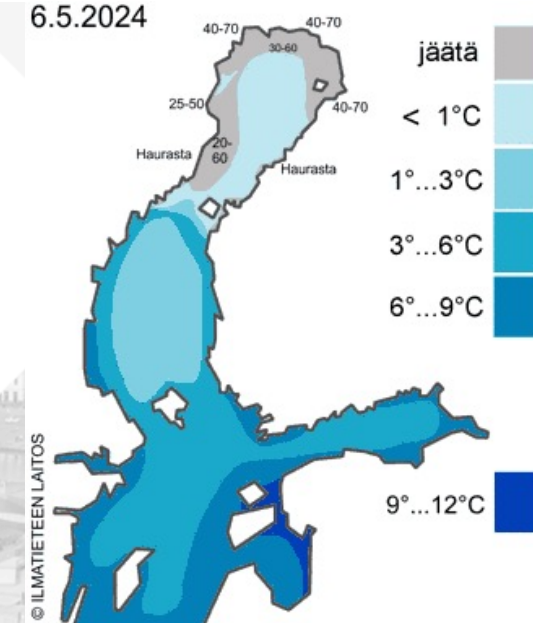


Time

- Offshore works very dependent on weather
 - Waves determine working conditions
 - Ice cover prevents working
- June, July, August are good months, May and September ok
 - A 2-year contract worth 30 MEUR might be carried out in two 3-month increments aggregating 5 MEUR per month
- In marine construction, delay in one phase of work often causes delay for all subsequent works (critical path)
- Contracts typically include a schedule where working periods are indicated
 - End of ice cover (start of season)
 - End of season (low workability, probability of ice)



6.5.2024



Resources (costs)

- Marine construction is capital intensive compared to construction on land
 - Vessels work 24/7 with several crews
- Mobilization and demobilization costs for equipment (offshore fleet)
- Separate sets of vessels (equipment) for different tasks
 - Boulder removal, rock blasting
 - Seabed preparation (dredging and bed leveling)
 - Piling / GBS installation
 - Scour protection and ballasting
 - Cable installation
 - Installation of wind turbines
- Delay in the 1st year may lead to remobilization costs in the 2nd year of works, if the task could not be completed during 1st year



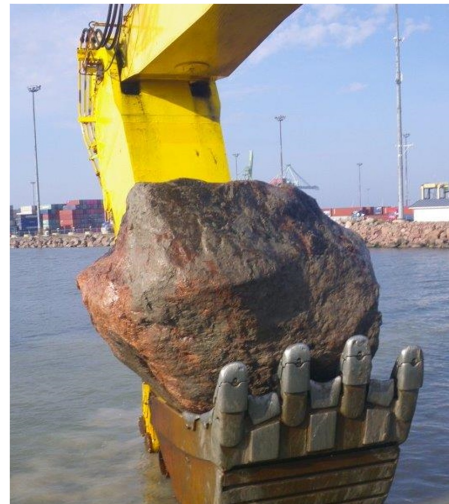
Surveys

- Survey of the seabed challenging in general and requires time for measurement and interpretation
- The results of surveys determine the working methods and vessels used
 - E.g. for gravity-based structures the dredging required underneath the structures
 - Inaccuracy or false interpretation of surveys cause mobilization and demobilization costs
- Industry specific terms and practices in marine construction may differ from the terms and practices of civil engineering

Typical cases

Survey data insufficient

- Boulder
- Rock
- Existing cables
- UXO



Incidents

- Weather (wind)
 - Ice cover
 - Late or early winter
 - Damage caused to the works over winter
 - Navigational incidents
- Force majeure clauses important

- Both parties would benefit if the contractor's right to extension of time could be decided during the winter season
 - FIDIC: Dispute Avoidance/Adjudication Board

The parties' risk allocation

For survey data:

FIDIC yellow book sub-clause 4.10

- *'To the extent which was practicable (taking account of cost and time), the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Tender or Works. To the same extent, the Contractor shall be deemed to have inspected and examined...'*
 - (a) *the form and nature of the site, including sub-surface conditions*
- Industry consensus on what is practicable or necessary should not be assumed

Indemnities in the LOGIC suite of contracts ("Knock-for-knock")

- As a general legal doctrine, Finnish law does not recognize limitations of liability, if the damage is caused intentionally or by gross negligence

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