



Optimising contracts in SMR projects: How to ensure the efficient development of new units

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The first small modular reactors (SMRs) will not be bought “off the shelf”. They will be delivered as complex nuclear projects, and the decisive question is not which delivery model is chosen but how risk is allocated between the technology vendor and the local participants: owner, civil works contractor, regulator and host jurisdiction.

This paper argues that the vendor-led turnkey EPC model is neither what vendors are prepared to offer nor what the leading first-of-a-kind (FOAK) projects have adopted; a split structure is emerging instead, in which the vendor owns the design and nuclear island, local contractors own the civil works, and the interface risk is shared.

The authors examine which “local” risks a vendor can legitimately be asked to carry, how price-adjustment and lifecycle service arrangements can share the remainder, and what a foreign vendor should expect when contracting under Polish law, which has recently been adapted to allow staged nuclear construction.

Small modular reactors (SMRs) represent the future of innovative nuclear technologies. Their versatile application enables the potential use of nuclear energy in entirely new areas such as fossil fuel cogeneration replacement for industries, hydrogen production, diesel replacement for mining, district heating, or provision of reliable power for data centres³. Large-scale reactors are gigawatt-scale plants; SMRs are generally below 300 MWe. Small modular reactors represent a promising class of nuclear units that are designed to be manufactured modularly, often in a factory, to reduce system costs⁴, as well as the erection phase risks. That promise has yet to be demonstrated: the cancellation of the first

US SMR project in 2023, after its estimated cost had risen by roughly half, shows that FOAK cost risk does not disappear with size.⁵

Furthermore, this simplified implementation concept faces several challenges in terms of project development and the transition from a ‘project-based’ to a ‘product-based’ approach. Firstly, SMR technologies, as first-of-a-kind projects, not yet seen on the market, must obtain the necessary political and social support. That risk will be only partially mitigated by the efforts made in relation to large-scale units. Secondly, it is necessary to adjust the regulatory level, as the legal framework for nuclear reactors does not currently distinguish between large-scale reactors

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³ NEA (2025), The NEA Small Modular Reactor Dashboard: Third Edition, OECD Publishing, Paris, p. 47.

⁴ NEA (2025), SMRs for Replacing Coal: Opportunities and Challenges for Small Modular Reactors, OECD Publishing, Paris, p. 14.

⁵ Utah Associated Municipal Power Systems (UAMPS) and NuScale Power Agree to Terminate the Carbon Free Power Project (CFPP), 8 November 2023, <Utah Associated Municipal Power Systems (UAMPS) and NuScale Power Agree to Terminate the Carbon Free Power Project (CFPP)> [access: 1.09.2026].

and SMRs. Thirdly, it is recommended to adapt the contractual approach to FOAK risk, serial manufacturing interfaces and the tension between a standardised design and site-specific regulatory requirements.

Challenges to Accelerating SMR Deployment

Although SMR technology has been under development for many years, it still faces a number of challenges that hinder its rapid deployment on a wider scale. These challenges may generally be grouped into three categories:

- 1) **Regulatory challenges:** Can legal requirements be adapted to support the faster development of SMRs while maintaining high levels of safety, security and safeguards, as well as high-quality standards?
- 2) **Social challenges:** How can the public be persuaded that the widespread use of SMRs and the siting of such reactors across multiple dispersed locations will not compromise public safety and will be beneficial to local communities?
- 3) **Contractual and project management challenges:** Can SMRs genuinely be treated today as products, meaning standalone pieces of equipment that can be purchased “off the shelf”, rather than as complex megaprojects involving extensive construction works?

For the purposes of this paper, the answer to the third question will be of primary importance. Nevertheless, the other two issues should also be addressed, at least briefly.

With regard to **regulatory challenges**, the fundamental issue remains that a “small modular reactor” is still a “nuclear reactor”. In many jurisdictions, the core legal and licensing framework applicable to SMRs remains largely the same as those

governing large-scale nuclear reactors. Although regulators are increasingly seeking more flexible approaches, fully distinct statutory legal regimes for SMRs remain uncommon. Similar conclusions may be drawn from international law, which generally distinguishes not by reactor technology, but by location, whether land-based or floating, or by the intended purpose, such as military, civilian or transport-related use⁶.

The existing framework has the advantage of being extensive and well established, but it does not support the rapid, large-scale deployment that is meant to be one of the key advantages of SMRs. The discussion should continue as to whether legal requirements can be amended to facilitate the faster market entry of successive small nuclear reactors without compromising their safety. The aim is not to lower safety standards, but rather to make them proportionate to the actual risks posed by SMRs, which are – in principle – designed to contain less nuclear material, incorporate passive safety systems and have a lower environmental impact⁷.

With reference to the above, as an example – Canadian Nuclear Safety Commission (CNSC) is considering the application of risk-informed graded-approach in its licensing procedures. Under that approach the extent of analysis, documentation and required action is proportionate to the risk, and applicants and licensees may apply a graded approach to any expectation, provided that all regulatory requirements continue to be met⁸. Use of the graded approach can enhance regulatory efficiency without compromising overall safety by focusing on specific issues that are important⁹. A different lever is being used in Poland, where a 2026 amendment of the nuclear investment act allows early works before the full construction licence and

⁶ Van Kalleveen A. (2022), Applicability of the international nuclear legal framework to small modular reactors (SMRs), EUR 30992 EN, Publications Office of the European Union, Luxembourg, ISBN 978-92-76-47607-8, doi:10.2760/085725, JRC128204, p. 11.

⁷ NEA (2025), The NEA Small Modular Reactor Dashboard: Third Edition, OECD Publishing, Paris, p. 27.

⁸ Canadian Nuclear Safety Commission, Stakeholder Workshop Report: Application of the Graded Approach in

Regulating Small Modular Reactors, Held on November 24, 2017, <<https://www.cnsccsn.gc.ca/eng/acts-and-regulations/consultation/history/workshop-report-regulating-small-modular-reactors/#sec2-3>> [access: 23.08.2026]

⁹ SMR Regulators’ Forum, Report from Working Group on Graded Approach, January 2018, <<https://www.iaea.org/sites/default/files/18/01/smr-rf-report-appendix-ii-150118.pdf>> [access: 23.08.2026], p. 1.

staged construction and occupancy permits for parts of a single integrated plant.¹⁰

As regards **social challenges**, SMRs are intended for use across many industries and would be sited closer to homes and workplaces than any previous nuclear facility, among communities with no prior exposure to nuclear projects. Recent research across six European countries shows that SMRs remain an unfamiliar technology to the public, with mixed perceptions of their safety, cost and contribution to climate objectives.¹¹ Public dialogue is therefore a precondition of deployment, although not one that contracts can supply.

Finally, from a **contractual and project management** perspective, the primary challenge lies in structuring an SMR project in a manner that enables its implementation to be completed as quickly and efficiently as possible. Nuclear energy projects are among the most complex, capital-intensive, and time-consuming investment undertakings, and they have a tendency to experience significant delays (in fact, some of the recent projects had original schedules of around five to six years initially announced but later had actual construction times of around ten to over fifteen years¹²). Needless to say, this translates into cost overruns.

To overcome this challenge, SMRs are designed to be deployed repeatedly across multiple projects, enabling lessons learned from earlier units to improve both cost and schedule outcomes. A central feature of this approach is serial construction, with a consistent design replicated across a defined fleet of units. Even at relatively low production volumes, such repetition can increase predictability, strengthen quality assurance and reduce construction risks.¹³ Such an approach requires a contractual framework built around the flexible incorporation of successive units.

What Should an SMR Construction Contract Look Like?

Over the years, a number of established contractual models have been developed and applied in the delivery of major energy and infrastructure projects. These models include, for example:

- 1) **EPC** (Engineering-Procurement-Construction),
- 2) **EPCM** (Engineering-Procurement-Construction Management), and
- 3) **IPD** (Integrated Project Delivery).

Under the **EPC** model, the project contractor remains primarily responsible for the engineering, procurement, and construction aspects of the project and serves as the owner's single point of contact, as well as the single point of liability. Such contracts are often executed on a turnkey lump-sum basis.

By contrast, according to the **EPCM** model, there is no general contractor as such. Its role is limited to providing project management services on behalf of the owner and coordinating the engineering, procurement, and construction activities. The owner contracts directly with the individual suppliers, contractors and designers. As a result, the associated contractual risks such as delays and cost overruns, remain largely with the owner.

The **IPD** model assumes that all the parties involved in the project delivery: the owner, designer, contractor, and key subcontractors, work as a single integrated team from the earliest stages of the project. It is implemented through a single multi-party agreement covering objectives, decision-making and risk allocation. In theory, this improves communication, allows the design to be refined during construction and reduces the risk of disputes.

A closely related contractual model is Alliance Contracting, which shares many of the underlying principles of IPD, although the degree of integration between the participants is typically less extensive.

¹⁰ Act of 3 July 2026 Amending the Act on the Preparation and Implementation of Investments in Nuclear Energy Facilities and Associated Investments, and Certain Other Acts (Journal of Laws, item 1097).

¹¹ Durdovic, M., et al. (2025): Public attitudes towards small modular reactors. An emerging research field and evidence from six countries. ECOSSENS Deliverable D 1.1., p. 37.

¹² NEA (2020), Unlocking Reductions in the Construction Costs of Nuclear, OECD Publishing, Paris, p.23.

¹³ NEA (2025), The NEA Small Modular Reactor Dashboard: Third Edition, OECD Publishing, Paris, p. 24.

Such contracts are based on shared risk and reward: cost and schedule targets are agreed, and overruns or savings are allocated among the participants under pre-agreed sharing mechanisms.

Applied to SMRs, which are meant to be rolled out rapidly while maintaining standardisation and repeatability, none of these models is an obvious starting point. Given the significant regulatory requirements (including a demanding licensing process) as well as the strong interdependence between the civil construction works and the reactor's technological components, the prospect of completely abandoning traditional project delivery models in favour of simplified equipment supply contracts is unlikely.

As matters currently stand, reactor structures, including the containment, perform essential nuclear safety and security functions, requiring close coordination between technology vendors and civil works contractors. Technology vendors therefore cannot be engaged merely as equipment suppliers but must be involved throughout the design of the facility. This also makes the EPCM model an unlikely choice for the first projects: the coordination risk would rest with an owner who lacks the vendor's knowledge of the reactor.

IPD and Alliance Contract models may offer an attractive framework for delivering such projects, especially first-of-a-kind projects involving technology that has not yet been proven on the market. They require a lengthy preparatory phase to define the framework for cooperation among owner, vendor and contractor. At the same time, the risk of internal disputes within such an integrated project team cannot be completely eliminated. Such close cooperation also raises a question specific to nuclear law: as construction progresses, it must remain clear which entity is the licensed operator, since under international nuclear law generally, and nuclear liability law in particular, primary responsibility rests

exclusively with the person authorised to operate the installation.¹⁴

The textbook answer would be a vendor-led turnkey EPC contract, with the technology vendor as the single point of responsibility for a fully functional nuclear facility. The market, however, is moving the other way. Vendors have learned from the large-scale programmes of the last two decades, in which a reactor designer's assumption of turnkey construction risk led to losses far exceeding the value of the technology itself.¹⁵ The leading Western FOAK SMR project, at Darlington in Ontario, is structured on the opposite premise: the owner retains integration, the vendor supplies the reactor and its design, a domestic contractor builds and an engineering firm supports the owner, under a collaborative overlay rather than a single turnkey obligation.¹⁶

What is emerging is neither EPC nor EPCM in its pure form but a split structure: a technology supply and design contract with the vendor, a civil works and balance-of-plant contract with a local contractor, and an owner (or an integrator acting for it) holding the interface, with alliancing elements – shared targets, pain/gain, a joint risk register – layered onto the interfaces rather than the whole project. In FIDIC terms, a Silver Book allocation is a poor fit for a first-of-a-kind reactor, whereas Yellow Book-type risk allocation for the balance of plant combined with a bespoke technology supply agreement is closer to what the market will bear. The real question is therefore not “which model” but “which risks sit with the vendor, which with the local side, and how the boundary is managed”.

Allocating risk between the technology vendor and local participants

A foreign technology vendor entering a new market will wish to confine its exposure to what it controls – design, manufacture, delivery and nuclear

¹⁴ Horbach N.L.J.T., Brown O.F. (2023), Nuclear liability in respect of Ukraine's nuclear installations under Russian military control, in: NEA (2025), Nuclear Law Bulletin No. 111 – Volume 2023/2, OECD Publishing, Paris, p. 11.

¹⁵ How two cutting edge U.S. nuclear projects bankrupted Westinghouse, Reuters, 2 May 2017, <[https://www.reuters.com/article/world/how-two-cutting-](https://www.reuters.com/article/world/how-two-cutting-edge-us-nuclear-projects-bankrupted-westinghouse-idUSKBN17Y0C7/)

[edge-us-nuclear-projects-bankrupted-westinghouse-idUSKBN17Y0C7/](https://www.reuters.com/article/world/how-two-cutting-edge-us-nuclear-projects-bankrupted-westinghouse-idUSKBN17Y0C7/)> [access: 1.09.2026].

¹⁶ The first Western world SMR construction is in full swing in Canada, Fermi Energia, 5 May 2026, <https://fermi.ec/en/esimene-laanemaailma-smr-ehitus-on-kanadas-taies-hoos/> [access: 1.09.2026].

performance of the modules – and will resist “local” risk as a matter of policy, while owners, financiers and governments press the other way, because a vendor unwilling to stand behind its product in the host jurisdiction offers a product that is harder to finance and to license. The task is to disaggregate “local risk” into components that can be allocated on their merits.

Design-related regulatory risk. The safety case, the conformity of the standard design with the host regulator’s requirements and any design changes the regulator requires are risks only the vendor can control. A vendor that has obtained a design assessment or general opinion from the host regulator should warrant that the adapted design will satisfy the licensing basis and carry the cost of design-driven regulatory change. This is the first and most legitimate concession a local owner should expect.

Site licensing and general change in law. Siting, environmental consents and construction and operating licences are obtained by the investor, and general legislative change is beyond any contractor’s control. Under the principle that a risk should sit with the party best able to manage it, these remain with the owner; asking a vendor to take them signals inexperience rather than strength. The exception is regulatory change specific to the reactor class, which is closer to design risk and can be shared.

Construction risk. This is where the negotiation is real. The vendor should carry the installation of the nuclear island and the fitness of its modules for the civil structures it has specified; the local contractor should carry the civil works. The interface – tolerances, sequencing of “first nuclear concrete”, hold points for factory-made components – is the risk neither wants and both must share, through a joint interface register, a single integrated schedule with shared float and a pain/gain mechanism limited to interface-driven delay.

Nuclear third-party liability. This risk cannot be shared by contract at all. Under the Vienna and Paris Conventions liability for nuclear damage is channelled exclusively to the licensed operator, who has recourse against a supplier only where the contract expressly

so provides or in cases of intent.¹⁷ The contract should mirror this: nuclear liability follows the statutory channelling, any contractual recourse is negotiated expressly, and hold-harmless provisions track the operator’s mandatory insurance.

What the local side offers in return. Concessions are not free. The realistic currency is reference-plant status in a new jurisdiction, options for further units (fleet orders are the economic basis of the SMR model), a price premium reflecting the risk taken, a clear statement of the overrun the owner itself will absorb, and a firm overall liability cap. An owner that arrives with these on offer, rather than a demand that the vendor “take the risk”, will find the vendor’s policy more flexible than its opening position suggests.

Is a fixed lump-sum price a myth?

As indicated above, EPC projects are typically delivered on a fixed lump-sum basis, irrespective of the costs ultimately incurred in delivering the project. This gives the owner cost predictability at the price of a risk premium in the bid. SMR technology is intended to be predictable, scalable and replicable, all of which should facilitate pricing. However, at the same time, it remains an innovative solution with few reference projects and uncertainty regarding potential unforeseen costs.

In practice, describing a price simply as “fixed lump-sum” no longer guarantees that the project will remain within budget. Events in recent years, such as the COVID-19 pandemic, the war in Ukraine, armed conflict in the Middle East and changes in customs duties and tariffs, demonstrate that the impact of certain factors on project delivery costs cannot reasonably be determined and that contractors cannot assume unlimited levels of risk.

The point is reinforced where the governing law itself qualifies the lump sum. Under Polish law a contractor cannot demand an increase merely because the work proved more costly than expected (Article 632 § 1 of the Polish Civil Code¹⁸), but a court may increase the

¹⁷ Article X of the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963, as amended by the Protocol of 12 September 1997; Article 6(f) of the Paris

Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, as amended.

¹⁸ Act of 23 April 1964, the Civil Code (consolidated text: Journal of Laws of 2026, item 795).

price or terminate the contract where an unforeseeable change of circumstances would cause the contractor a gross loss (Article 632 § 2, applied by analogy to construction contracts)¹⁹, and the general hardship rule of Article 357¹ of the Polish Civil Code allows judicial modification after an extraordinary change of circumstances. A “fixed” price under such a law is fixed only within limits, which the contract should define expressly through indexation, change-in-law and hardship clauses rather than leave to a court.

Moving from a fixed lump-sum arrangement to a fully open-book model for SMR projects may not be entirely comfortable for many owners, particularly as they may require specific cost estimates to secure financing. However, contracts may incorporate transparent mechanisms allowing adjustments to the contract price in defined circumstances. Clauses addressing indexation, Force Majeure, Changes in Law and Hardship have recently become a central focus in negotiations for major infrastructure projects. They will also play a crucial role in SMR projects, given their complexity and reliance on global supply chains.

Are there any SMR-specific contract clauses?

Given the limited number of SMR projects worldwide, no established market standard for SMR construction contracts has yet emerged. From a theoretical perspective, however, several aspects can be identified that are likely to be relevant to the delivery of such projects:

1) **Modularity, repeatability and scalability** - One of the greatest advantages of SMRs is their modular design, which allows the size and capacity of a nuclear power plant to be adjusted by adding further units. Accordingly, contracts for the construction of SMR-based nuclear power plants could include detailed provisions allowing the contractual scope to be optionally expanded through the installation of additional units. The licensing framework should likewise allow expansion without repeating the entire process.

- 2) **Learning from first-of-a-kind project delivery** - The contract may require the parties to monitor and analyse lessons learned during the delivery of the first module, including identified defects, difficulties and design uncertainties, and to implement appropriate improvements in subsequent modules, while clearly defining the resulting benefits for each party.
- 3) **Reservation of manufacturing capacity** - For contracts involving multiple small modular reactors, it is important to ensure continuity in the production of successive units and reserve sufficient manufacturing capacity to avoid project delays caused by the technology vendor's production constraints.
- 4) **Oversight of factory manufacturing** - One of the key assumptions underlying SMR technology is that most reactor components will be manufactured off-site and will be delivered to the construction site as ready-to-install parts. This requires clear and transparent rules governing manufacturing oversight, testing and compliance with applicable quality standards.
- 5) **Interface management** - Because the vendor's modules are designed to a standard and the civil structures are built to local conditions, the contract should treat the interface as a defined scope with its own owner, register, tolerances and hold points, rather than as an undefined space between two scopes. Most FOAK disputes will arise here.
- 6) **Phased acceptance** - The contract should clearly specify whether individual modules may be accepted separately or only the power plant as a whole. It may also be important to establish clear rules for operating the nuclear power plant during the period in which subsequent modules are being constructed. Host legislation should support this; Poland's 2026 move to staged construction and occupancy permits for parts of a single integrated plant is an example of a framework aligning with the phased model that multi-unit SMR contracts require.
- 7) **Incentive mechanisms, rewards and risk sharing** - While many infrastructure contracts include mechanisms intended to encourage the contractor to perform the contract properly and meet the agreed deadlines, these mechanisms do

¹⁹ Resolution of the Polish Supreme Court of 29 September 2009, III CZP 41/09.

not always prove sufficient. Alternative contractual mechanisms should therefore be considered, such as bonuses for the early completion of particular project stages, sharing indirect costs arising from construction delays, or requiring the contractor to prepare a comprehensive remedial plan to mitigate or stabilise any delay.

Beyond completion: lifecycle and O&M contracting

The strongest argument for treating an SMR as a “product” lies in what happens after take-over. A manufacturer of a standardised product sells a service tail: in the conventional power sector, gas turbine OEMs commit under long-term service agreements to availability, performance and outage scope for a defined term against a fee, and so share the consequences of their own product’s shortcomings.

Two features of nuclear law limit the transposition. The licensed operator must itself possess the capability to operate the installation and cannot contract out its licence responsibilities, so the vendor cannot “operate” an SMR as an O&M contractor operates a gas plant; and the channelling of nuclear liability means the vendor’s operational-phase exposure is contractual, not tortious.

Within those limits a lifecycle services agreement can carry real risk-sharing weight: availability and capacity-factor guarantees with performance-linked fees; outage and refuelling services with schedule commitments; fuel and spare-parts continuity; vendor secondees in the first operating years; and a “fleet learning” mechanism passing improvements from one unit to the owner’s others. A vendor willing to carry operational performance risk signals confidence in its FOAK product and gives financiers a contracted rather than unknown operating profile. The counter-risks – OEM lock-in, single-source fuel, transfer of the know-how and IP needed for independent operation, step-in and exit rights – are familiar from the conventional sector and should be settled at the outset.

Contracting under Polish law: what a foreign vendor should expect

Poland illustrates how a jurisdiction with a mature construction market but no operating nuclear power plant adapts to nuclear contracting. Several features are worth knowing before a vendor sits down to negotiate.

Regulatory sequence. A nuclear investment proceeds through a decision-in-principle from the minister responsible for energy, a siting decision and construction and operating licences from the President of the National Atomic Energy Agency (PAA), alongside ordinary building and environmental permits. A vendor may obtain the PAA President’s general opinion on its design ahead of any project, an early signal of licensability, and the 2026 amendment brings the statutory sequence closer to phased delivery. Regulatory documentation is submitted in Polish, with practical consequences for configuration control of a standard design across languages.

Freedom of contract and disputes. Contractual freedom is broad (Article 353¹ of the Polish Civil Code); the parties may choose a foreign governing law, and arbitration, including seated abroad, is common in the energy sector. Where the owner is a public or sectoral contracting entity, the public procurement regime may govern the award.

Penalties and liability caps. Contractual penalties (in Polish: *kary umowne*) for non-monetary obligations are enforceable without proof of loss, but a court may reduce a penalty that is grossly excessive or where the obligation has largely been performed (Article 484 § 2 of the Polish Civil Code), damages above the penalty are recoverable only if the contract so provides, and penalties cannot attach to monetary obligations. Uncapped delay penalties have been held permissible,²⁰ which makes an express overall cap essential for the vendor. Liability caps are generally enforceable, but liability for intentional damage cannot be excluded (Article 473 § 2 of the Polish Civil Code).

²⁰ Resolution of the Polish Supreme Court of 9 December 2021, III CZP 16/21.

Design and construction formalities. The building design must be signed by designers with Polish building qualifications (or recognised equivalents) and the site managed by a qualified site manager, so a vendor's standard design will be "domesticated" by Polish-licensed engineers – itself an interface to be contracted for.

Nuclear liability. Poland is party to the Vienna Convention as amended by the 1997 Protocol and to the Joint Protocol. The Atomic Law channels liability for nuclear damage exclusively to the operator, subject to a statutory limit of 300 million SDR and mandatory insurance, with recourse against a supplier only where the contract so provides.²¹

Statutory warranties. A statutory warranty for defects (in Polish: *rękojmia*) applies alongside any contractual guarantee; between businesses it can be modified, and the contract should state how the two regimes interact for factory-made modules.

Summary and conclusions

The first SMR projects will be delivered as nuclear projects, not as products. Their contracts will differ from those of large-scale plants in one fundamental respect: the balance of risk between a vendor whose product is standardised and a local side whose conditions are not.

The emerging split structure – vendor owning design and nuclear island, local contractors owning civil works, the interface managed collaboratively – is the realistic starting point. Within it, a vendor can legitimately be asked to carry design-related regulatory risk, nuclear-island installation and, through lifecycle services, part of the operational performance risk, in exchange for reference status, fleet options and a firm cap. Site licensing, general change in law and nuclear third-party liability will remain, by economics or by statute, where they are. A host jurisdiction that understands this division, and adapts its legislation to staged delivery, as Poland has begun to do, will find vendors more willing to make the concessions that credibility requires.

²¹ Chapter 12 (Article 100 et seq.) of the Act of 29 November 2000 – Atomic Law (consolidated text: Journal of Laws of 2026, item 1).

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