

# 7<sup>th</sup> CA EED meeting The Hague

## EPC complaints

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**SEAI**

# Agenda

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- Energy contracting supports and documentation
- EPC 'complaints' escalation and expert determination

# Energy Services Framework – 4 elements

11 public sector exemplar projects



Energy Performance Contracting  
Local Energy Supply Contracting  
Energy Performance Related Payments

# Contract dispute escalation

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- **CLAUSE 51 DISPUTE RESOLUTION**

- - Subject to the provisions of Clause 52 if a dispute or difference arises between the Parties with regard to or in connection with this Agreement, such dispute shall be referred in writing to senior members of each of the Client and the ESCO who will use good faith efforts to resolve such dispute within 30 (thirty) days of such referral.
- - If the Parties are unable to resolve the matter within the thirty (30) day period in Clause 51.1 the Client and the ESCO will attempt to resolve the dispute in question by mediation. Any such mediation will be conducted by a mediator to be mutually agreed upon between the Parties or in the absence of such agreement upon the request of either Party to be appointed by the President for the time being of Engineers Ireland. If a settlement of the dispute is not achieved through the mediation process within three months either Party may refer the dispute to arbitration in accordance with Clause 51.3.
- - Where the Parties are unable to resolve any dispute which may arise under or in connection with this Agreement either through good faith efforts or mediation as set out in Clauses 51.1 and 51.2 either Party may by provision of notice in writing refer the matter to arbitration. The final decision of who will act as arbitrator will be mutually agreed upon between the Parties or in the absence of such agreement the decision as to who to appoint as arbitrator will be referred upon the request of either Party to the President for the time being of Engineers Ireland. Every such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 2010 or any statutory amendment therefore for the time being in force.

# Expert determination

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- **CLAUSE 52 EXPERT DETERMINATION**
  - Where a dispute arises under or in connection with this Agreement in relation to:
    - Substantial Completion of the Works;
    - the Snag List;
    - the calculation of Energy Savings in any Guarantee Year;
    - the method of measurement and verification;
    - the adjustment of the Baseline; or
    - the calculation of the current market value of the Equipment under Clause 35.5.1,
  - the Parties agree in the first instance to use good faith efforts to resolve the dispute within 10 (ten) days as set out in Clause 51.1. If the dispute is not resolved in that time then either Party may submit the matter to an independent expert for determination.

# Experts

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- Engineers Ireland proposed as the arbitrators / experts
- Proposed to establish 'specialist EPC arbitrators/experts' knowledgeable in measurement and verification and other aspects of EPC
- No call from the market yet for such services, albeit small number of EPCs to date

## Example of 'complaints'

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- Hospital EPC contract
  - Dispute over gas savings
  - Hot water set point 60 deg C, ESCO based savings on 55 deg C
  - Esco had to take the hit
- Large city centre hotel EPC contract
  - New owners
  - Didn't want an EPC contract
  - Terminated the contract

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Co-funded by the Irish Government  
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*The Sustainable Energy Authority of Ireland is partly  
financed by Ireland's EU Structural Funds Programme co-  
funded by the Irish Government and the European Union.*