

Renewable Energy Certificates and Energy Savings Performance Contracts

Considerations in light of *Honeywell International, Inc.*, ASBCA No. 57779

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The Definition of “Energy Savings”

- “Energy savings” is defined in part as –
 - [A] reduction in the cost of energy, water, or wastewater treatment, from a base cost established through a methodology set forth in the contract[.]
- 42 U.S.C. 8287c(2)(A)
- The statutory definition does not foreclose “net” considerations
 - e.g., benefits that are a direct result from an energy conservation measure that are used to reduce the cost of energy, water, or wastewater

Structuring Ownership to Avoid *Honeywell*

- ESCO maintain ownership of the renewable energy generating equipment
- RECs issued to ESCO
- Price of electricity paid by agency reflects value of REC

OMB Memorandum on Scoring ESPCs that Include Renewable Power Generation

- “For an ESPC or UESC that includes *onsite energy generation* to be scored on an annual basis under this memorandum and M-98-13, the Federal government must retain title to the installed capital goods at the conclusion of the contract.”

<http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-21.pdf>