Black & Veatch Corporation
11401 Lamar Avenue
Overland Park, KS 66211
P (913) 458-2000 E RossBD@bv.com

VIA ELECTRONIC SUBMISSION

November 4, 2022

RE: IRS Notice 2022-51, Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022

On behalf of Black & Veatch, we appreciate the opportunity to share our perspective as part of the Department of the Treasury and the Internal Revenue Service's public comment process on aspects of the Inflation Reduction Act (IRA).

Black & Veatch is an 100%, employee-owned engineering, procurement, consulting, and construction company with a more than 100-year track record of innovation in sustainable infrastructure. Since 1915, we have helped our clients improve the lives of people across the US and in over 170 countries by addressing the resilience and reliability of our most important infrastructure assets.

Primarily, our comments pertain to the so-called "bonus credits" or credit enhancements related to prevailing wage and apprenticeship programs found in the IRA. Below, please find our responses to select questions in IRS Notice 2022-51 surrounding those topics. In addition to these specific comments, we encourage the Treasury Department to be flexible in its overall approach to drafting in its interpretations and issuance of regulatory guidance. We recognize the scope and scale of the newly created policy changes in the IRA may create complex public policy challenges, however, the ultimate goal of this policy is to boost and expand the development of clean energy infrastructure. Establishing narrow and rigid interpretations that do not take into account real-world impacts ultimately run counter to the best interest of the country and the intent of Congress.

Very truly yours,

Black & Veatch Corporation

Brydon Ross
Director of Government Affairs

Enclosed RFI Responses

.01 Prevailing Wage Requirement

Section 45(b)(7)(A) provides that a taxpayer must ensure that any laborers and mechanics employed by the taxpayer, or any contractor or subcontractor, are paid wages at rates not less than the prevailing wage rates for construction, alteration, or repair of a similar character in the locality in which such facility is located as most recently determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, which is commonly known as the Davis-Bacon Act. Is guidance necessary to clarify how the Davis-Bacon prevailing wage requirements apply for purposes of § 45(b)(7)(A)?

Response: Black & Veatch recommends that specific guidance be developed to avoid misclassification as several wage determinations will be required across all jurisdictions. Misclassification could lead to significant and substantial financial penalties for companies across the country. A simple solution that would minimize these potential inadvertent oversight problems within the Department of Labor (DOL) would be a recommendation to allow contractors to leverage existing wage determinations as much as possible without risk of penalty if a determination is used. For example, solar trades are not common in existing wage determinations. Many companies in the engineering, procurement and construction industries will need to leverage consultants to guide them through the wage determination process to ensure compliance with various forms of regulations at both federal and jurisdictional levels. This means additional costs to projects and potential delays.

Another suggested solution to improve reporting compliance would be the utilization of existing job descriptions and classifications in RAPIDS, the US Occupational Information Network (O*Net) and Classifications of Instructional Programs (CIP). A very comprehensive list of work activities has been developed by the federal government as it applies to apprenticeships. However, prevailing wages have not been specifically outlined by the DOL for these job activities. Rather, a company must determine where each of these job activities fall within a handful of job classifications provided by the DOL for prevailing wage determinations. When no job classification is available for these activities, requests for conformance reviews must be sent to the DOL to receive guidance on where each activity falls within the department's current job classifications. This may result in a lengthy response from DOL that can often take three to four months. During that time, most companies pay prevailing wages at the rates they can best determine. If the DOL comes back with a different job classification and rate to be used, employees must be paid back retroactively to the beginning date of their work. This takes a significant amount of time and resources for companies to track and administer. To make prevailing wage determinations more efficiently, it is recommended that DOL utilize this existing list and identify where each of these job activities falls within its current job classifications. This would ensure the correct prevailing wage could be identified while eliminating the work on both employers and the department to perform conformance reviews.

Section 45(b)(7)(B)(i) generally provides a correction and penalty mechanism for failure to satisfy prevailing wage requirements. What should the Treasury Department and the IRS consider in developing rules for taxpayers to correct a deficiency for failure to satisfy prevailing wage requirements?

Response: Black & Veatch recommends maintaining the current rules for Davis-Bacon projects, and no new rules are required. Adequate time to correct deficiencies should be given to correct

good faith compliance efforts. Most all prevailing wage deficiencies are related to unintentional misclassification of an employee performing a specific task. Thus, the established $5,000 penalty per employee could quickly escalate and become punitive for employers from an unintentional misclassification error. Establishing standard minimum wage rates for all tasks performed on a qualified facility in each geographic region would simplify this and avoid these deficiencies. As mentioned above, the RAPIDS list for apprenticeships would also be a useful resource to help avoid misclassifications.

What documentation or substantiation should be required to show compliance with the prevailing wage requirements?

Response: Existing certified payroll requirements should satisfy substantiation for compliance purposes with prevailing wage requirements. Those wage determinations are provided by the Department of Labor through the SAM.gov web portal and payroll evidence can be made available upon request.

Please provide comments on any other topics relating to the prevailing wage requirements for purposes of § 45(b)(7)(A) that may require guidance.

Response: If an area has wage determinations resulting in direct costs greater than the value of the tax credits, the price of a job will be higher than today's market. Overall, engineering, procurement, and construction (EPC) costs could increase by 10% to 15%. Development and operational costs may go down slightly, rate-payers costs may remain unchanged and profits for utilities and developers would be expected to increase. Laborers and mechanics' wages will likely increase along with their taxes to pay for the credits and inflation, which could lead to uncertainty in the overall additional benefit to their take home pay.

Additionally, selecting the correct wage to utilize for each task can be a very burdensome process and an arduous administrative burden to manage in the field. For example, some regions of the country have different wage classifications for operators depending on the equipment type they are operating. Large, complex projects could span multiple state and local jurisdictions with multiple wages.

02 Apprenticeship Requirement

Section 45(b)(8)(C) provides that each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to a qualified facility must employ one or more qualified apprentices from a registered apprenticeship program to perform that work. What factors should the Treasury Department and the IRS consider regarding the appropriate duration of employment of individuals for construction, alteration, or repair work for purposes of this requirement?

Response: A clear definition for the standard "employ one of more qualified apprentices" should be issued. The realities of managing large complex construction projects are challenging enough without a contractor having to also manage who stays on or may resign from a job. These factors

are completely out of their control. A simple potential solution could be the allowance of having one or more apprentices per four individuals "hired" to meet the standard.

In addition, our interpretation and reading of Section (b)(8)(c) is that it conflicts with Section 45(b)(8)(A) where the percentage of total labor hours should be 10% or greater depending on the year. Section (b)(8)(c) implies the percentage of "employees" for "qualified facilities" receiving the credit should be 25% or greater. Clarifying language and regulatory interpretation is needed to ensure that the standards for the percentage of hours and the percentage of employees is harmonized and, should be the same. These requirements should be hours-based instead of a headcount requirement of one apprentice for every four employees. Making this change will also greatly assist in more accurate prevailing wage reporting. Most companies will have the hours documented by job classification, and a determination can be provided to track the number of hours by an apprentice compared to other employees. Lastly, additional clarity and guidance should be provided to give portability for qualified apprentices. If an apprentice is registered in another state and continues their apprenticeship program requirements in that state, they should qualify as a registered apprentice.

Section 45(b)(8)(D)(ii) provides for a good faith effort exception to the apprenticeship requirement.
(a) What, if any, clarification is needed regarding the good faith effort exception?
(b) What factors should be considered in administering and promoting compliance with this good faith effort exception?
(c) Are there existing methods to facilitate reporting requirements, for example, through current Davis-Bacon reporting forms, current performance reporting requirements for contracts or grants, and/or through DOL's Registered Apprenticeship Partners Information Management Data System (RAPIDS) database or a State Apprenticeship Agency's database?

Response: Black & Veatch would urge that the definition of a "request" be developed along with guidance for how that effort should be accomplished. Should this be a formal, written request? Would phone calls or emails by the employer suffice? Under our interpretation, this section is ambiguous.

With regard to additional factors for consideration in (b), the hourly wage penalty factors created under the bill would be considered extreme and many contractors would likely become insolvent if they are deemed in non-compliance. Separately, as it relates to apprenticeship factors and "good faith efforts", California has created a process for demonstrating a "good faith effort" when the contractor requests a dispatch for an apprentice to the job site and they do not receive a response or there are simply no available apprentices for the specific classification they are requesting. Under the California process, the contractor must show proof it made "a good faith attempt" to contact the apprenticeship program either by email or fax and save copies of these contacts with their certified payroll reports in the event of future audits. If there are multiple local apprenticeship programs for the class needed, the contractor must show a "good faith effort" that they reached out to at least three programs if three programs exist.

To encourage efficient reporting under Davis-Bacon requirements, common reporting method should be implemented. Providing too many options can create confusion and future penalty scenarios where a contractor can mistakenly believe they are complying only to determine later they are not. This puts their balance sheet and projects at unnecessary risk. The number of

contractors and individuals required to report into the Department of Labor should be streamlined to avoid additional administrative costs that could overwhelm current department systems and support services. As demonstrated previously, the RAPIDS database provides very helpful guidance and references links to various apprenticeship programs by class and state that would facilitate efficient reporting.

What documentation or substantiation do taxpayers maintain or could they create to demonstrate compliance with the apprenticeship requirements in § 45(b)(8)(A), (B), and (C), or the good faith effort exception?

Response: Company timekeeping records, manpower requisitions, and personnel records should adequately meet the substantiation requirements under these provisions.

Please provide comments on any other topics relating to the apprenticeship requirements in § 45(b)(8)(B) that may require guidance.

Response: As mentioned above, Treasury should clarify whether apprentices have portability if they are registered in an apprenticeship program and working in another state with differing registered apprenticeship standards to continue meeting the requirements of the federal tax credit. In addition, Treasury guidance should promote viability and equivalency for the major types of apprenticeship programs. Lastly, additional guidance is needed to clarify potential differences between federal and state apprentice-to-journey worker ratios and how to harmonize differences between federal and state ratios with respect to specific employment activities.