

COMMENTS from BURCELL TECHNOLOGIES, INC (BurCell) pursuant to an October 5, 2022, U.S. Department of the Treasury and the Internal Revenue Service (IRS) issuance of six Notices requesting public input on key climate and clean energy tax incentives in the Inflation Reduction Act.

*BurCell Technologies, Inc. (BTI) is a bio-industrial technology company whose primary business is the commercialization and project development of products and services employing proprietary technologies which include Sponsor's patented "BurCell® System" – a disruptive industrial process for the separation, value extraction and value enhancement of organic source material generated through various industrial, commercial, and agricultural activities.*

*The "BurCell® System" is a batch fed equipment solution proven to produce significant benefits and value through its operation. These benefits include; 1) Macro Separation – A proven technology capable of separating and beneficiating nearly 100% of the organic component of mixed municipal solid waste from the non-organic component, and 2) Value Extraction – The ability to produce value added products from the separated organics through anaerobic digestion for enhanced biogas production and solid fuels for additional energy processes.*

*The BurCell process recovers and homogenizes a high percentage of the organics available in the waste it processes, including the wastepaper and corrugated, homogenizes it, and transforms it into a highly digestible feedstock capable of producing high quality biogas for upgrading to renewable natural gas. The organic feedstock that it delivers to an anaerobic digestion operation for biogas production has the benefit of the "BurCell Boost"; more digestible material that digests faster. BTI biogas projects provide our waste management partners with cost-effective landfill diversion of up to 80% of the waste processed.*

*BurCell provides the following comments for consideration as to NOTICE 2: 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**

**SECTION 1. PURPOSE**

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) plan to issue guidance regarding the provisions of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D of the Internal Revenue Code (Code), as amended or added by Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). This notice requests comments on general as well as specific questions pertaining to the prevailing wage, apprenticeship, domestic content, and energy community requirements for increased or bonus credit (or deduction) amounts under those respective provisions of the Code. Comments received in response to this notice will help to inform development of guidance implementing the provisions of the IRA relating to §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D.

**.02 Prevailing Wage Requirement.**

Sections 45(b)(7), 30C(g)(2), 45L(g), 45Q(h)(3), 45U(d)(2), 45V(e)(3), 45Y(g)(9), 45Z(f)(6), 48(a)(10), 48C(e)(5), and 48E(d)(3) include prevailing wage requirements that taxpayers must satisfy to qualify for increased credit amounts under those sections of the Code. Section 179D(b)(4) includes prevailing wage

requirements that taxpayers must satisfy to qualify for an increased deduction amount under that section.

### SECTION 3. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments on questions arising from the amendments in the IRA regarding prevailing wage, apprenticeship, domestic content, and energy community requirements that should be addressed in guidance. Commenters are encouraged to specify the issues on which guidance is needed most quickly as well as the most important issues on which guidance is needed. In addition to general comments, the Treasury Department and the IRS request comments that address the following specific questions:

#### .01 Prevailing Wage Requirement

*QUESTION 1. BurCell urges Treasury to ensure that compliance with the prevailing wage requirement is straightforward and easily managed. Because prevailing wages can differ significantly based upon location, Treasury should adopt methods to provide information on prevailing wage levels, geographies and specific trades on which taxpayers can rely for compliance purposes.*

*QUESTION 2. BurCell urges Treasury to adopt rules or procedures that, absent a finding of intent to avoid compliance, unintentional non-compliance can be timely rectified upon notice thereof, with minimal or no penalties for good faith attempts to comply and remediate any noncompliance.*

*QUESTION 3. BurCell suggests a periodic filing (possibly semi-annually) by the taxpayer, with an appointed authority.*

*QUESTION 4. BurCell urges Treasury to provide as much guidance and information as possible, recognizing the new nature of the program. BurCell also urges Treasury to adopt a reasonable level of flexibility in compliance and unintentional failures to comply.*

*QUESTION 5. BurCell asks Treasury to clarify whether the Five (5) year post-initial construction Production Tax Credit compliance period also applies to a Taxpayer electing the Investment Tax Credit (ITC) for the qualified energy property. BurCell also asks Treasury to clarify the same question vis-à-vis compliance with Apprenticeship required to achieve the five-fold multiplier for the ITC.*

#### .02 Apprenticeship Requirement

- (1) 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?

*Much of the work involved constructing and providing major alterations and additions to qualified energy facilities including biogas facilities requires exceptionally experienced and*

*qualified EPC contractors and their sub-contractors. While taxpayer can realistically expect EPC contractors and subcontractors to engage qualified apprentices from a registered apprenticeship program as required if such apprentices can reasonably be available, BurCell urges Treasury to recognize that the EPC and the sub should not be required to continue to engage any apprentices who are engaged specifically for the EPC scope of work once such scope of work has been completed, whether by the EPC contractor or by a subcontractor. Taxpayer should not be obligated to continue to engage apprentices beyond the construction and installation obligation of the apprenticeship program, when applicable. To the extent that such apprentices can be realistically employed as facility employees, taxpayer should make a good faith effort to continue their employment.*

- (2) Section 45(b)(8)(D)(ii) provides for a good faith effort exception to the apprenticeship requirement.

*As to questions (2) (a), (b), and (c), BurCell urges Treasury to adopt compliance requirements that are as straight forward and reasonable as possible. Treasury should adopt a broad definition of the 'good faith exception', taking into considerations such as project location and the reality as to what skills can be reasonably required as to a qualified apprentice. BurCell suggest Treasury to provide a readily accessible database to facilitate compliance with all aspects of the apprenticeship program, including relevant databases to assist with engagement and facilitation of reporting.*

- (3) 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?
- (4) Please provide comments on any other topics relating to the apprenticeship requirements in § 45(b)(8)(B) that may require guidance.

*As to (3) and (4) above, BurCell urges Treasury to require reasonable taxpayer employee record retention policies and to avoid overly burdensome recordkeeping; including related to outreach for new hires and for qualified apprentices. As noted previously, Treasury's good faith effort exception should be as broad and realistic as possible taking into consideration the location of the energy facility and the skill set required for safety and diligence.*

*As to (4) above, BurCell asks Treasury to clarify whether the Five (5) year post initial construction Production Tax Credit compliance period also applies to a Taxpayer electing the Investment Tax Credit (ITC) for the qualified energy property.*

### .03 Domestic Content Requirement

- (1) Sections 45(b)(9)(B) and 45Y(g)(11)(B) provide that a taxpayer must certify that any steel, iron, or manufactured product that is a component of a qualified facility (upon completion of construction) was produced in the United States (as determined under 49 C.F.R. 661).

*For purposes of satisfying the Domestic Content Requirement, BurCell urges Treasury to provide as much clarity as possible related to identifying costs as to content of technology and equipment manufactured in the United States.*

*A significant percentage of the cost of any energy project is onsite construction, assemblage, and installation of equipment for the qualified facility. In determining the domestic content threshold required to be fully eligible for the Domestic Content Credit Enhancement, Treasury should include within the numerator of any Domestic Content Credit Enhancement formula all costs of incorporating all such domestically manufactured components, including onsite labor and other activities required for utilization of such items.*