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November 4, 2022

Internal Revenue Service
CC:PA:LPD:PR
Room 5203, Ben Franklin Station
Washington, DC 20044

Submitted electronically via the Federal eRulemaking Portal

Re: Notice IRS-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

To Whom It May Concern:

Thank you for the opportunity to respond to the October 5, 2022, Request for Comments on Credit Enhancements. Malta Inc. (Malta) is a Cambridge, Massachusetts-based, women-led small business that has developed an innovative, long-duration energy storage (LDES) technology.

Malta has reimagined the modern power plant. Our innovative, long-duration energy storage technology replaces GHG-emitting fossil fuel combustion with a utility-scale (100+ MW), renewably-powered heat engine to deliver clean energy on-demand and around the clock. The engine is "fueled" by a molten-salt energy storage system driven by industrial-grade heat pumps and charged with abundant, low-cost, and clean renewable energy.

Please do not hesitate to contact me should you have any questions about Malta's comments or wish to discuss these ideas.

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.01 Prevailing Wage Requirement

(1) 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)?

Guidance is required to define "alteration" and "repair." "Alteration" and "repair" should only include work performed on the site of work of a qualified facility or energy property and be limited to actions that the taxpayer is required to capitalize as costs. The site of work definitions applicable to construction in section (d) should also be applicable to alteration and repair activities and performed only by the laborers and mechanics that are defined in section (c).

The terms "alteration" and repair" should refer to making permanent and substantial work on the site of a qualified facility or energy property. This would include the reconstruction or remodeling of existing facilities, buildings, or components thereof, by overhauling, reprocessing, or replacing constituent parts or materials that have deteriorated to a substantial degree and have not been corrected through routine maintenance. This would also include unplanned maintenance that requires replacement or material alteration of the property, significant construction activity, or work that requires skilled labor to restore equipment. The terms would not include normal and routine operation and maintenance activities (including landscaping and vegetation management), preventive maintenance work, and minor repairs (such as cyclical, planned work on capital assets to keep equipment working in its existing state, i.e., preventing its failure or decline).

In determining whether work constitutes alteration and repair, a *de minimis* threshold should be applied so that the requirement does not apply to any scope of work for which projected expenses required for the alteration and repair of the project have a total gross cost below 10% (or $10,000,000 if greater) of all initial construction costs and expenses required to place the project in service.

.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).

(b) What should the Treasury Department and the IRS consider when determining "completion of construction" for purposes of the domestic content requirement? Should the "completion of construction date" be the same as the placed in service date? If not, why?

"Completion of construction" should be the same as the placed-in-service date. This will simplify documentation and/or substantiation requirements for taxpayers.

(3) Solely for purposes of determining whether a reduction in an elective payment amount is required under § 6417, §§ 45(b)(10)(D) and 45Y(g)(12)(D) provide an exception for the

> requirements contained in §§ 45(b)(9)(B) and 45Y(g)(10)(B) (respectively) if the inclusion of steel, iron, or manufactured productions that are produced in the United States increases the overall costs of construction of qualified facilities by more than 25 percent or relevant steel, iron, or manufactured products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.
>
> (c) Do the "sufficient and reasonably available quantities" and "satisfactory quality" standards need further clarification? If so, what should be clarified?

Regulations on domestic content requirements should be formulated in the context of a nuanced understanding that many specialty manufactured products for energy storage systems may not yet be available entirely within the United States. Since the supply chain for advanced energy systems is still in nascent formation in the United States, Treasury and IRS should clarify the procedures for and implications of exceptions from domestic content requirements (§§45(b)(9)(B) and 45Y(g)(10)(B)).

Treasury and IRS should also clarify the terms "sufficient and reasonably available qualities" and "satisfactory quality." In some cases, a specific component will simply not be produced by any U.S. manufacturer. This would be a clear-cut example of a "manufactured product" "not produced in the United States in sufficient and reasonably available quantities."

In other cases, a product may be produced by a U.S. manufacturer, but delivery of an order may not be possible without significant delay. "Reasonably available" should be clarified to specify a period of delay that would make a product not "reasonably available." Similarly, an order may be partially deliverable within an acceptable period, but the full delivery is not possible. Clarity and certainty about "sufficient" availability will expedite project development, construction, and deployment so the climate and economic benefits of this historic legislation can be felt as quickly as possible.

"Satisfactory quality" should also be clarified. Requisite "quality" of products depends on end use. For example, ball bearings for use in fidget spinners can be of dramatically lower quality than those required by guidance systems. "Satisfactory" must be tied to the specifications and requirements of the energy property in which the manufactured product is integrated. Guidance should allow for considerations of performance, suitability, and cost, as well as financing implications like the creditworthiness of the supplier. Should an exception be requested, guidance should allow taxpayers discretion to determine whether domestically produced manufactured goods are available in a "satisfactory quality" for the purposes of the trade or business of the taxpayer.

.04 <u>Energy Community Requirement</u>

> (5) For each of the three categories of energy communities allowed under § 45(b)(11)(B), what past or possible future changes in the definition, scope, boundary, or status of a "brownfield site" under § 45(b)(11)(B)(i), a "metropolitan statistical area or non-metropolitan statistical area" under § 45(b)(11)(B)(ii), or a "census tract" under § 45(b)(11)(B)(iii) should be considered, and why?

Coal-fired power plants are being retired at historic rates. To date, much of the lost capacity has been replaced by natural-gas fired plants, many of which will operate for decades to recoup their costs.

We are already seeing some gas-fired plant retirements linked to renewable energy (e.g., solar and wind) being less expensive on a per kilowatt hour basis. Renewable power also has less price volatility, which benefits low-income taxpayers, and is not subject to the same seasonal and market constraints (i.e., heat customers get preference). Treasury and IRS should consider possible future changes in the definition and scope of the "census tract" under §45(b)(11)(B)(iii) to include the retirements of all fossil fuel-fired power plants. The sooner that renewables are established as reliable replacements for new fossil fueled power plants, the fewer new gas plants will be built with decades-long cost recovery periods.

> (7) Please provide comments on any other topics relating to the energy community requirement that may require guidance.

Congress provided broad latitude in identifying metropolitan and non-metropolitan statistical areas as energy communities in §45(b)(11)(B)(ii) (i.e., "as determined by the Secretary"). An expansive interpretation of the statutory language would ensure that as many eligible taxpayers as possible benefit from the incentives provided by this landmark legislation and that communities impacted and disadvantaged by the fossil fuel industry can benefit from new, clean energy development. Direct employment and local tax revenues "related to" the coal, oil, and natural gas sectors should include the full value chains of "extraction, processing, transport, or storage." Employment "related to" "processing" of natural gas, for example, should include employment at natural gas-fired power plants.