terrasmart™

Terrasmart, Inc. (Terrasmart) respectfully submits the following comments in response to a request from the Department of the Treasury and the Internal Revenue Service (IRS) in Notice 2022-51.

A solar industry founder, Terrasmart provides a uniquely broad portfolio of technology and smart solar construction solutions solely supporting the domestic clean energy market. With three U.S. manufacturing facilities that produce solar foundations, steel components used for racking, electrical balance of systems, electrical components, and installation machinery, and full-service construction teams, we've dedicated our work to improving the American job landscape and powering U.S. renewable energy progress for a cleaner and safer future. More than a sum of their parts, our proprietary racking solutions support over 20GWs of solar deployed across 4800 PV systems that power 2.4 million homes across the U.S. We continue to invest in our domestic operations, most recently by expanding our capacity at our Cincinnati, Ohio and Grand Rapids, MI facilities and renovating our Columbus, OH facility, to meet demand and drive growth for U.S. solar racking technologies and electrical balance-of-systems products.

We thank the members of the 117th Congress and President Biden's administration for their efforts to pass the landmark climate legislation included in the Inflation Reduction Act (IRA), and we fully support the spirit and intent of the law. We appreciate the opportunity to provide the following comments addressing certain provisions contained within the IRA. With the breadth of our portfolio spanning racking technology, construction services, and electrical balance of systems solutions and a sole focus on the U.S. market, the implementation of the IRA will directly affect our business strategy and growth potential in the coming years. We appreciate your consideration of these comments and would welcome the opportunity to meet with members of Treasury or the IRS to discuss the contents of these comments further. Please contact Ed McKiernan, President, Terrasmart, at emckiernan@terrasmart.com should the need arise.

Below are the company's comments in response to selected questions to the Treasury Department Request for Comments on Notice 2022-51

Section 3.01 (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 needed to clarify how the Davis-Bacon prevailing wage requirements apply for the purposes of § 45(b)(7)(A)?

Guidance is needed on the application of Davis-Bacon prevailing wage requirements for qualified facilities that span two or more localities should those localities have different prevailing wage requirements. Treasury and the IRS should consider guidance that directs the prevailing wage requirements for the entire qualified facility to be the same as those set by the locality where the majority of the qualified facility resides.

Section 3.01 (5) Please provide comments on any other topics relating to the prevailing wage requirements for purposes of § 45(b)(7)(A) that may require guidance.

Additional guidance is needed on the following:

- How non-electrical solar construction job titles map to existing job titles under the Davis-Bacon prevailing wage requirements. For non-electrical solar construction, the general laborer title is most closely aligned with the work performed by solar racking and foundation installation laborers.
- Green tech construction jobs are not often listed in Davis-Bacon wage determinations. How will contractors know what the correct prevailing wage classification will be and where can they get guidance?

- Can new technology classifications for green construction jobs be added to the wage determinations using the existing wage conformance process, and what will that entail?
- Can we get confirmation that prevailing wage requirements apply only to the site of construction work?
- Which fringe benefits can be credited toward the prevailing wage calculation?
- What rules will govern the correction of any deficiencies for failing to satisfy prevailing wage requirements?
- How will work hours need to be tracked and reported. If reported, to whom?

Section 3.02 (2)(a) What, if any, clarification is needed regarding the good faith effort exception?

Clarification is needed on whether a good faith effort exception will be granted if an apprentice voluntarily leaves the job and/or apprentice program before completion of the construction, alteration or repair work on a qualified facility and the parties seeking the credit are not able to consistently recruit and maintain the required level of apprentice participation in the project despite good faith efforts to do so.

Section 3.02 (4) Please provide any comments on other topics relating to the apprenticeship requirements in § 45(b)(8)(B) that may require guidance.

Additional guidance is needed on the following topics:

- Clarification is needed on Section 45(b)(8)(C) to confirm that the requirement is one or more apprentice if a taxpayer, contractor, or subcontractor employs four or more individuals to perform construction, alteration, or repair work with respect to a qualified facility; not that one apprentice is required for every four individuals employed in the previously described work.
- Non-electrical apprenticeable roles in the renewable energy and construction fields
- Whether apprenticeship requirements apply to pre-construction work performed on a qualified facility (e.g. soil testing, earthworks, etc.)
- Is each contractor performing work on a qualified facility required to meet the apprenticeship threshold or does this apply to the entire construction project in aggregate counting all the work performed on the project? In other words, does each contractor need to satisfy the 10% threshold or is it acceptable to satisfy the 10% threshold in aggregate? Guidance is also needed on how this all will need to be documented.

Section 3.03 (1)(a) What regulations, if any, under 49 C.F.R 661 (such as 49 C.F.R 661.5 or 661.6) should apply in determining whether the requirements of section §§ 45(b)(9)(B) or 45Y(g)(11)(B) are satisfied? Why?

Under 49 C.F.R 661.5, basic structural items must be comprised of 100% domestic iron and steel. As this is intended for transportation structural foundations it is the most relevant rule book for solar structural foundations. As foundations systems are both a sub-component of a solar racking system end-product and a basic structural item, 49 C.F.R. 661.5 should be the regulations followed to satisfy the requirements of section §§ 45(b)(9)(B) or 45Y(g)(11)(B). The solar racking system, as the end-product, should comply with the 49 C.F.R. 661 requirements as it contains more sophisticated and processed items that are not required to meet the 661.5 requirements given the broader definition set for manufactured and end products under the Federal Transportation Act precedent.

Section 3.03 (1)(b) What should the Treasury Department and the IRS consider when determining "completion of construction" for purposes of the domestic content requirements? Should the "completion of construction date" be the same as the "placed in service date"? If not, why?

The "completion of construction date" should be determined based on the substantial completion of construction of a qualified facility. There is often a lengthy time period between completion of construction dates and placed in service dates on qualified facility due to interconnection agreement delays, utility service issues, etc. Linking the domestic content requirements to the substantial completion of construction ensures more qualified facilities are being developed and built thus creating a sustainable source of demand for domestic content.

Section 3.03 (2)(c) Does the term "manufactured product" with regard to the various technologies eligible for the domestic content bonus credit need further clarification? If so, what should be clarified? Is guidance needed to clarify what constitutes an "end product" (as defined in 49 C.F.R. 661.3) for purposes of satisfying the domestic content requirements?

Specifically for solar energy production, confirmation is needed that the racking system is considered the "manufactured product" with assembly, integration and/or incorporation occurring in both the manufacturing facility and on the construction site. Subsequent confirmation would also be needed that the foundation would be considered a structural sub-component of the racking systems, following precedent set by 49 C.F.R 661.