

Tax Bonus Rules Create a Clean Energy Contracting Crunch

Media Mentions

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Labor and US manufacturing requirements in the Inflation Reduction Act have inserted another pressure point into deals between clean energy developers and the firms they hire to build their projects given how significantly those requirements can boost, or reduce, the value of their projects' tax credits.

Armed with US Department of the Treasury guidance on how to satisfy both requirements, project developers are ramping up negotiations with their engineering, procurement and construction firms and other contractors about ensuring compliance. Developers and contractors are also grappling with how to share the risks of not complying and potentially having the tax credit bonuses clawed back by the federal government.

The IRA also offers significant bonuses for tax credits like the investment tax credit and production tax credit when developers meet requirements that raw materials and manufactured products used in their projects are made in the US.

Bracewell's **Liz McGinley** explained to *Law360* how those adders can be the difference between projects being viable and not viable.

"It commits [EPC firms] to have the same language in their agreements with subcontractors, and it raises the big issue of indemnification if they screw it up," said McGinley. "The magnitude of the credit differential if they screw it up can be massive."

McGinley added that project developers may also feel pressure from their tax equity investors to ensure contractors are complying with the IRA's labor and manufacturing provisions, and simple indemnification against a compliance problem may not be enough to assuage investors' concerns.

"If they have that concern, you might want to go out and seek tax insurance to fill the gap," McGinley said. "What is the cost of that tax insurance, and

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who bears it? The bigger the job ... the more challenging perfect compliance becomes."

In addition, allocating the IRA labor and domestic manufacturing compliance risks between project owners and their contractors will vary from project to project, as well as the individual preferences of the parties.

"This can be a pretty big undertaking, something that wasn't a requirement pre-IRA and something for everyone to watch out for," McGinley said. "There is no standard, as I have seen yet, and it can take time to negotiate."