

Under Construction in Time for a Treasury Cash Grant?

by John Marciano and John Modzelewski, in Washington

New renewable energy projects in the United States qualify for a cash payment from the US Treasury for 30% of the project cost if they are under construction by the end of this year.

The projects must also be completed by a deadline.

The deadline is 2012 for wind farms, 2016 for solar and fuel cell projects, and 2013 for other projects.

There are two ways to show that a project is under construction in time. One is show that “physical work of a significant nature” started on the project by the end of this year. The other is to show that the developer “incurred” more than 5% of the project cost by the end of the year. It is not enough merely to have made payments in 2010.

Once construction starts under the physical work test, it must be continuous. A developer starting work under the 5% test does not have to show the work is continuous.

More detailed articles about strategies for starting construction can be found in earlier issues of the *NewsWire* (“Strategies for Starting Construction,” April 2010, at p. 1, “Cash Grant Update,” July 2010, at p. 9).

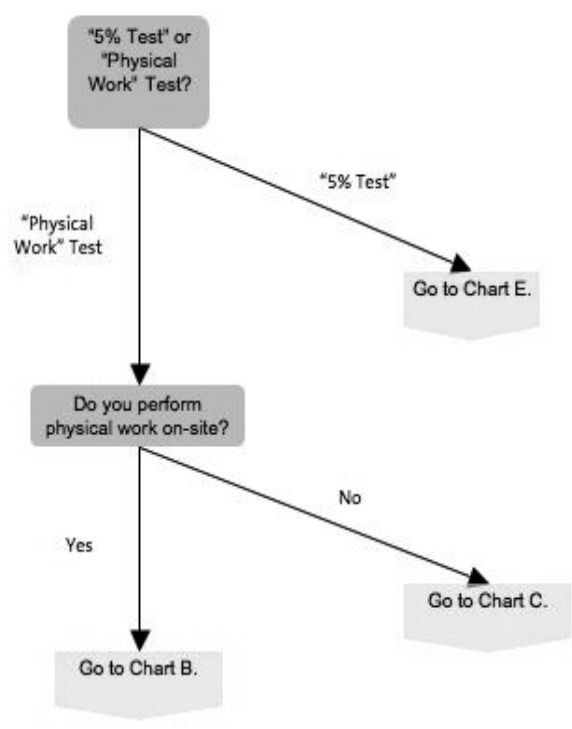
The Treasury cash grants were intended as a temporary economic stimulus measure. They are not available for projects on which construction started before 2009.

Congress is considering extending the deadline to start construction, but it is unlikely to make a decision before a “lame-duck” session after the November elections.

The following flow charts are a simple step-by-step way for a project developer to determine in the meantime whether he or she has started construction in time. ☺

September 2010

Chart A: Cash Grant Initial Decisions



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Chart B: Physical Work On Site

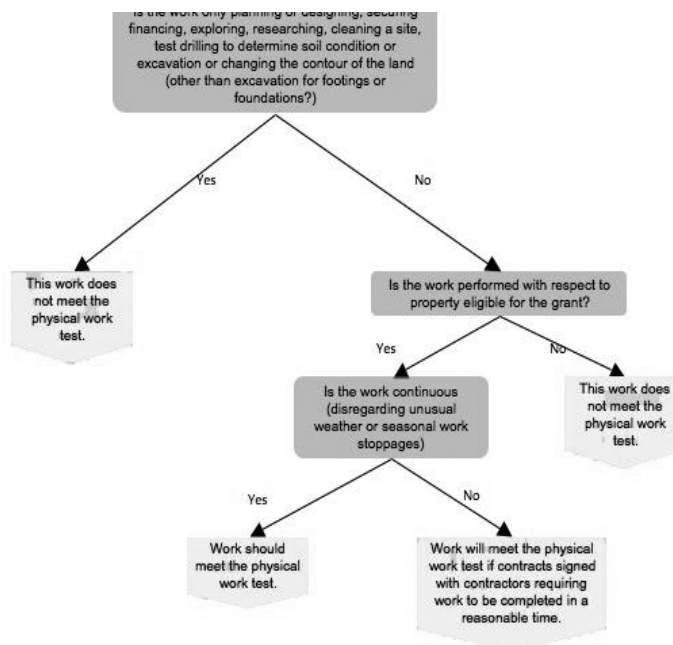
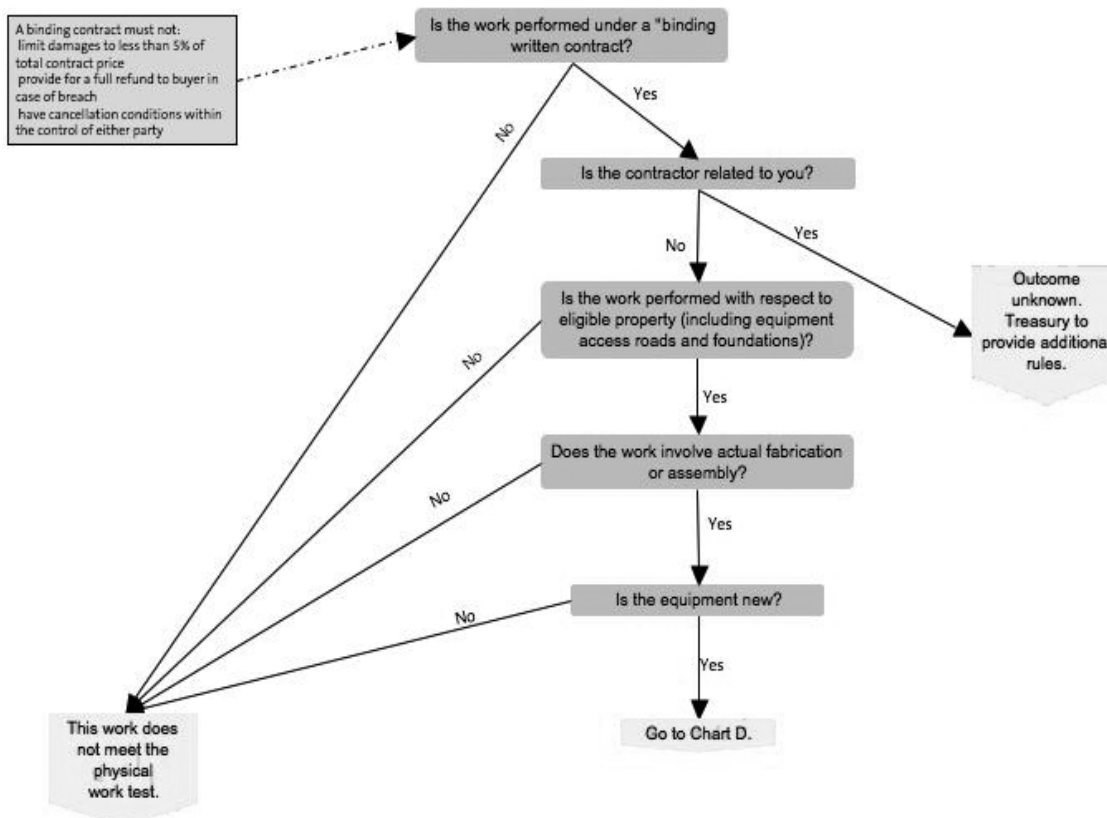


Chart C: Physical Work Off Site



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Chart D: Physical Work Off Site (cont'd)

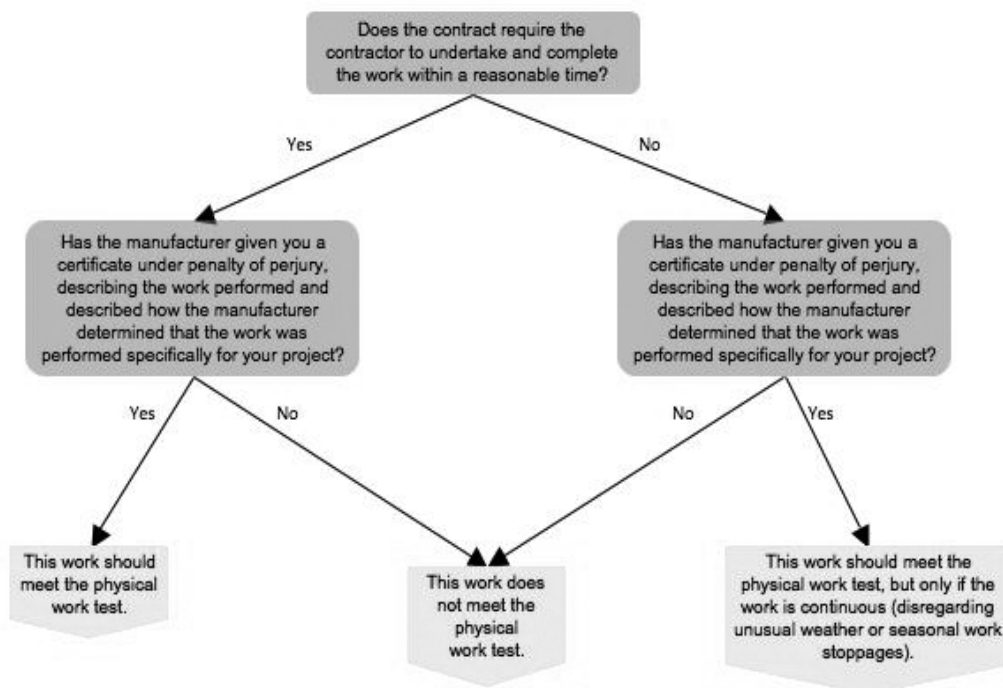
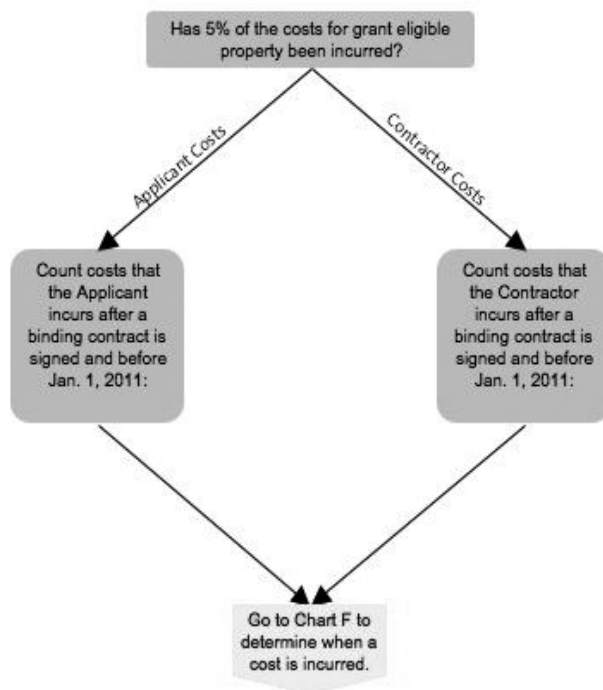


Chart E: 5% Test



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Chart F: "Incur"

