



GUIDANCE DOCUMENT

DATE: March 14, 2024
PROGRAM: 2023 Shovel-Ready Capital Recovery and Investment Act
SUBJECT: Applicability of Davis-Bacon and Related Acts

This guidance document is advisory in nature but is binding on the Department of Economic Development (DED) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of DED and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

ISSUE:

- I. The purpose of this guidance document is to clarify the applicability of Davis-Bacon and Related Acts (“DBRA”) to nonprofit organizations receiving grants under the Shovel-Ready Capital Recovery and Investment Act (“Shovel-Ready Act”) second round of funding awarded in 2023.

ANALYSIS:

- I. Neb. Rev. Stat. § 81-12,223(1)(b) requires each nonprofit that receives a grant under the Shovel-Ready Act to abide by the federal laws commonly known as the Davis-Bacon and Related Acts.
- II. Davis-Bacon and its Related Acts apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair of public buildings or public works. (40 U.S.C. §§ 3141 to 3148; see 29 C.F.R. § 5.1 for a list of federal laws requiring Davis-Bacon labor standards provisions).
- III. 2023 grants under the second round of funding for the Shovel-Ready Act are not funded with federal dollars. 2023 Shovel-Ready Act grants are funded solely with state funds. (LB 818, Sec. 34(29) (108th Leg.)).

CONCLUSION:

- I. A nonprofit’s receipt and use of Shovel-Ready Act grant funds does not independently trigger the applicability of the federal DBRA laws. Federal DBRA laws apply only if a nonprofit organization supplements its Shovel-Ready project funding with federal funds that stipulate compliance with DBRA.

- II. The Shovel-Ready Act does not require or authorize the Department of Economic Development to extend DBRA beyond the prescribed reach of the federal laws. Rather, the Shovel-Ready Act requires compliance with the federal DBRA laws only in the limited circumstances in which those federal laws apply. Absent a nonprofit organization supplementing its Shovel-Ready project funding with federal funds encumbered by DBRA, the state Shovel-Ready Act does not, by itself, create DBRA labor standard requirements.
- III. If a nonprofit organization supplements its Shovel-Ready Act grant funds with federal funds that require compliance with DBRA, then the state Shovel-Ready Act also requires the nonprofit organization to abide by the federal DBRA laws. Under such a scenario, the nonprofit organization will be required to provide the Department of Economic Development with sufficient documentation demonstrating the nonprofit's compliance with the federal DBRA laws.

END OF GUIDANCE DOCUMENT