

## MEMORANDUM

### Shovel-Ready Capital Recovery and Investment Act Guidance

This Policy remains effective until it is amended, superseded, or rescinded.

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#### SUBJECT: Compliance with 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.

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#### ISSUE:

- I. For purposes of DED's administration of the Shovel-Ready Capital Recovery and Investment Act ("Act"), how will a qualified nonprofit organization ("beneficiary") abide by the federal laws commonly known as the Davis-Bacon and Related Acts ("DBRA")?
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#### ANALYSIS:

- I. Nebraska Revised Statute § 81-12,223(1)(b) requires each beneficiary that receives a grant under the Act to abide by DBRA.
  - II. Paragraph (II)(D)(1) of the agreement between DED and a beneficiary requires the beneficiary to comply with DBRA.
  - III. Paragraph (II)(D)(2) of the agreement between DED and a beneficiary requires the beneficiary to submit quarterly reports to DED for the duration of the beneficiary's capital project. Among other requirements, the beneficiary's quarterly reports must detail compliance with DBRA.
  - IV. Paragraph (II)(D)(3) of the agreement between DED and a beneficiary requires, in part, that grant funds expended to pay wages must comply with DBRA.
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#### CONCLUSION:

- I. For purposes of the Act, a beneficiary is required to comply with DBRA. The obligation to comply with DBRA begins on October 1, 2022. Shovel-Ready capital project costs expended prior to October 1, 2022, will not be scrutinized by DED for DBRA compliance. A beneficiary will be allowed to receive the first, up-front, Shovel-Ready grant payment irrespective of its past DBRA compliance on its Shovel-Ready capital project.
- II. Laborers and mechanics employed directly upon a beneficiary's Shovel-Ready capital project site must be paid the applicable locally prevailing wage rate, regardless of whether Shovel-Ready grant funds—or other sources of funding—are used to pay wages for laborers and mechanics employed directly on the capital project site.

- III. Laborers and mechanics employed directly upon the Shovel-Ready capital project site must be paid on a weekly basis. Every week a beneficiary must collect from its contractor and subcontractors the completed Form WH-347 (available on the DED Shovel-Ready webpage) for each laborer and mechanic employed directly upon the Shovel-Ready capital project site. The contractor and subcontractors—or their agent who pays or supervises the payment of the persons employed—must complete and sign the “Statement of Compliance” on the reverse side of Form WH-347.
- IV. Each beneficiary is required to upload the collected weekly certified payroll records (i.e. the collected Form WH-347s) to its quarterly reports to DED.
- V. The weekly certified payroll records must demonstrate that laborers and mechanics were paid the locally prevailing wage and fringe benefits. The prevailing wage determinations issued by the Wage and Hour Division of the United States Department of Labor in its general wage determinations published on June 3, 2022 (for building construction projects), or on June 2, 2022 (for heavy construction projects) are the operative locally prevailing wage and fringe benefits rates for purposes of DED’s administration of the Act. (See the Department of Labor’s All Agency Memorandum Nos. 130 and 131 to assist in determining whether a beneficiary’s particular Shovel-Ready capital project constitutes a building construction project or a heavy construction project). The operative wage determinations for each Nebraska county will be posted on the DED Shovel-Ready webpage.
- VI. The Form WH-347 documentation uploaded to each quarterly report must pertain to the applicable reporting period, excluding the calendar month in which the quarterly report is due to DED. For example, the quarterly report due to DED by December 17, 2022, must include the Form WH-347 documentation for the months of October and November. The quarterly report due to DED by March 17, 2023, must include the Form WH-347 documentation for the months of December, January, and February.
- VII. The applicable wage determination and a [Davis-Bacon poster \(WH-1321\)](#) must be posted in a prominent and accessible place where it can be easily seen at all times at the beneficiary’s Shovel-Ready capital project site.

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**END OF GUIDANCE MEMORANDUM**