

MEMORANDUM

Shovel-Ready Capital Recovery and Investment Act Guidance

This Policy remains effective until it is amended, superseded, or rescinded.

SUBJECT: Clarification of the Davis-Bacon and Related Acts Compliance Requirement

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 memorandum is to clarify the scope of the statutory requirement that each nonprofit organization receiving a grant under the Shovel-Ready Capital Recovery and Investment Act (“Shovel-Ready Act”) must abide by the federal laws commonly known as Davis-Bacon and Related Acts (“DBRA”).

ANALYSIS:

- I. Nebraska Revised Statute § 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. DED Memorandum 22-01, dated September 19, 2022, explained that each Shovel-Ready nonprofit is required to comply with DBRA beginning on October 1, 2022.
- III. Following enactment of the Shovel-Ready Act, the United States Department of the Treasury issued its Final Rule and related guidance documents indicating that DBRA requirements do not apply to the Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”)—which constitute the federal component to the Shovel-Ready grant funds—unless those funds are used in conjunction with funds from another federal program that requires enforcement of DBRA. Consequently, DED’s effort to apply DBRA to all Shovel-Ready nonprofits pursuant to Neb. Rev. Stat. § 81-12,223(1)(b) of the Shovel-Ready Act would likely be severed from the necessary assistance of the United States Department of Labor and leave DED unable to properly implement DBRA.

CONCLUSION:

- I. For purposes of its administration of the Shovel-Ready Act, DED will align § 81-12,223(1)(b) of the Shovel-Ready Act with the SLFRF Final Rule and limit enforcement of DBRA to those nonprofits that finance their Shovel-Ready projects with Shovel-Ready grant funds in conjunction with funds from a federal program that requires enforcement of DBRA.
- II. DED Memorandum 22-01, dated September 19, 2022, is amended to limit the scope of its application to those nonprofits that finance their Shovel-Ready projects with funds from a federal program that requires enforcement of DBRA. Except as amended herein, DED Memorandum 22-01 remains in full force and effect as to those

nonprofit organizations that finance their Shovel-Ready project with funds from a federal program that requires enforcement of DBRA.

- III. A nonprofit organization will be deemed to have fulfilled the Shovel-Ready Act's requirement to abide by the federal DBRA laws if: (a) pursuant to the SLFRF Final Rule, the nonprofit does not finance the Shovel-Ready project with funds from a federal program that requires enforcement of DBRA; or (b) if a nonprofit does use funds from a federal program that requires enforcement of DBRA, the nonprofit complies with DBRA and follows the procedures outlined in DED Memorandum 22-01.
- IV. The provisions of the Shovel-Ready Act agreement that pertain to DBRA are to be interpreted in conformity with this guidance memorandum. Nonprofits comply with the DBRA-related provisions of the agreement by: (a) timely submitting the requisite quarterly reports to DED and indicating whether the Shovel-Ready project is financed with funds from a federal program that requires enforcement of DBRA, and (b) for any nonprofit that indicates it is using funds from a federal program that requires enforcement of DBRA, the nonprofit must comply with DBRA and follow the procedures outlined in DED Memorandum 22-01.

END OF GUIDANCE MEMORANDUM