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PUBLIC CONTRACT CODE - PCC

DIVISION 2. GENERAL PROVISIONS [1100 - 22355] (Division 2 enacted by Stats. 1981, Ch. 306.)

PART 1. ADMINISTRATIVE PROVISIONS [1100 - 9204] (Heading of Part 1 added by Stats. 1982, Ch. 1120, Sec. 2.)

CHAPTER 2.9. Skilled and Trained Workforce Requirements [2600 - 2603] (Chapter 2.9 added by Stats. 2016, Ch. 774, Sec. 4.)

2600. (a) This chapter applies when a public entity is required by statute or regulation to obtain an enforceable commitment that a bidder, contractor, or other entity will use a skilled and trained workforce to complete a contract or project.

(b) A public entity may require a bidder, contractor, or other entity to use a skilled and trained workforce to complete a contract or project regardless of whether the public entity is required to do so by a statute or regulation.

(c) When the use of a skilled and trained workforce to complete a contract or project is required pursuant to subdivision (a) or (b), the public entity shall include in all bid documents and construction contracts a notice that the project is subject to the skilled and trained workforce requirement.

(Amended by Stats. 2020, Ch. 347, Sec. 1. (AB 2311) Effective January 1, 2021.)

2600.5. The failure of a public entity to provide a notice pursuant to subdivision (c) of Section 2600 shall not excuse either of the following:

(a) The public entity from the requirement to obtain an enforceable commitment that a bidder, contractor, or other entity will use a skilled and trained workforce to complete a contract or project.

(b) A bidder, contractor, or other entity from the obligation to use a skilled or trained workforce if such a requirement is imposed by a statute or regulation.

(Added by Stats. 2020, Ch. 347, Sec. 2. (AB 2311) Effective January 1, 2021.)

2601. For purposes of this chapter:

(a) "Apprenticeable occupation" means an occupation for which the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations had approved an apprenticeship program pursuant to Section 3075 of the Labor Code before January 1, 2014.

(b) "Chief" means the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations.

(c) "Graduate of an apprenticeship program" means either of the following:

(1) An individual that has been issued a certificate of completion under the authority of the California Apprenticeship Council for completing an apprenticeship program approved by the chief pursuant to Section 3075 of the Labor Code.

(2) An individual that has completed an apprenticeship program located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(d) "Skilled and trained workforce" means a workforce that meets all of the following conditions:

(1) All the workers performing work in an apprenticeable occupation in the building and construction trades are either skilled journeymen or apprentices registered in an apprenticeship program approved by the chief.

(2) (A) For work performed on or after January 1, 2017, at least 30 percent of the skilled journeypersons employed to perform work on the contract or project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation. This requirement shall not apply to work performed in the occupation of teamster.

(B) For work performed on or after January 1, 2018, at least 40 percent of the skilled journeypersons employed to perform work on the contract or project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation, except that the requirements of subparagraph (A) shall continue to apply to work performed in the following occupations: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.

(C) For work performed on or after January 1, 2019, at least 50 percent of the skilled journeypersons employed to perform work on the contract or project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation, except that the requirements of subparagraph (A) shall continue to apply to work performed in the following occupations: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.

(D) For work performed on or after January 1, 2020, at least 60 percent of the skilled journeypersons employed to perform work on the contract or project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation, except that the requirements of subparagraph (A) shall continue to apply to work performed in the following occupations: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.

(3) For an apprenticeable occupation in which no apprenticeship program had been approved by the chief before January 1, 1995, up to one-half of the graduation percentage requirements of paragraph (2) may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation before the chief's approval of an apprenticeship program for that occupation in the county in which the project is located.

(4) The apprenticeship graduation percentage requirements of paragraph (2) are satisfied if, in a particular calendar month, either of the following is true:

(A) At least the required percentage of the skilled journeypersons employed by the contractor or subcontractor to perform work on the contract or project meet the graduation percentage requirement.

(B) For the hours of work performed by skilled journeypersons employed by the contractor or subcontractor on the contract or project, the percentage of hours performed by skilled journeypersons who met the graduation requirement is at least equal to the required graduation percentage.

(5) The contractor or subcontractor need not meet the apprenticeship graduation requirements of paragraph (2) if, during the calendar month, the contractor or subcontractor employs skilled journeypersons to perform fewer than 10 hours of work on the contract or project.

(6) A subcontractor need not meet the apprenticeship graduation requirements of paragraph (2) if both of the following requirements are met:

(A) The subcontractor was not a listed subcontractor under Section 4104 or a substitute for a listed subcontractor.

(B) The subcontract does not exceed one-half of 1 percent of the price of the prime contract.

(e) "Skilled journeyperson" means a worker who either:

(1) Graduated from an apprenticeship program for the applicable occupation that was approved by the chief or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(2) Has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the chief.

2602. (a) When a contractor, bidder, or other entity is required to provide an enforceable commitment that a skilled and trained workforce will be used to complete a contract or project, the commitment shall be made in an enforceable agreement with the public entity or other awarding body that provides both of the following:

- (1) The contractor, bidder, or other entity, and its contractors and subcontractors at every tier, will comply with this chapter.
- (2) The contractor, bidder, or other entity will provide to the public entity or other awarding body, on a monthly basis while the project or contract is being performed, a report demonstrating compliance with this chapter.

(b) If the contractor, bidder, or other entity fails to provide the monthly report required by this section, or provides a report that is incomplete, the public agency or other awarding body shall withhold further payments until a complete report is provided. If a monthly report is incomplete due to the failure of a subcontractor to timely submit the required information to the contractor, bidder, or other entity, the public agency or awarding body shall only withhold an amount equal to 150 percent of the value of the monthly billing for the relevant subcontractor. If a public agency or other awarding body withholds amounts pursuant to this subdivision, the contractor, bidder, or other entity shall be entitled to withhold the same amount from the subcontractor until the subcontractor provides the contractor, bidder, or other entity a complete report, and the public agency or awarding body subsequently pays the contractor, bidder, or other entity the withheld payments. If the contractor, bidder, or other entity substitutes a subcontractor pursuant to Chapter 4 (commencing with Section 4100) for failure to provide a complete report, and the contractor, bidder, or other entity replaces the subcontractor with one that provides an enforceable commitment that a skilled and trained workforce will be used to complete the contract or project, the public agency or awarding body shall immediately resume making payments to the contractor, bidder, or other entity, including all previously withheld payments.

(c) If a monthly report does not demonstrate compliance with this chapter, the public agency or other awarding body shall do all of the following:

- (1) Withhold further payments until the contractor, bidder, or other entity provides a plan to achieve substantial compliance with this chapter, with respect to the relevant apprenticeable occupation, prior to completion of the contract or project. All of the following shall apply to the withholding of payments under this paragraph:

(A) The public agency or awarding body shall withhold an amount equal to 150 percent of the value of the monthly billing for the entity that failed to comply with this chapter, or 150 percent of the value of the monthly billing for the subcontractor that failed to comply with this chapter. If a public agency or other awarding body withholds amounts pursuant to this paragraph, the contractor, bidder, or other entity shall be entitled to withhold the same amount from the subcontractor that did not demonstrate compliance with this chapter.

(B) If the contractor, bidder, or other entity substitutes a subcontractor pursuant to Chapter 4 (commencing with Section 4100) for failure to demonstrate compliance, and the contractor, bidder, or other entity replaces the subcontractor with one that provides an enforceable commitment that a skilled and trained workforce will be used to complete the contract or project, the public agency or awarding body shall immediately resume making payments to the contractor, bidder, or other entity, including all previously withheld payments.

(C) If a contractor, bidder, or other entity submits to the public agency or awarding body a plan to achieve substantial compliance with this chapter, the public agency or awarding body shall immediately resume making payments to the contractor, bidder, or other entity, including all previously withheld payments unless, within a reasonable time, the public agency or awarding body rejects the plan as insufficient and explains the reasons for the rejection.

- (2) Forward a copy of the monthly report to the Labor Commissioner for issuance of a civil wage and penalty assessment in accordance with Section 2603.

- (3) Forward to the Labor Commissioner a copy of the plan, if any, submitted by the contractor, bidder, or other entity to achieve substantial compliance with this chapter and the response to that plan, if any, by the public agency or awarding body.

(d) A monthly report provided to the public agency or other awarding body shall be a public record under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code)

and shall be open to public inspection.

(Amended by Stats. 2021, Ch. 615, Sec. 353. (AB 474) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 463 of Stats. 2021, Ch. 615.)

2603. (a) If the Labor Commissioner or his or her designee determines after an investigation that a contractor or subcontractor failed to use a skilled and trained workforce in accordance with this chapter, the contractor or subcontractor responsible for the violation shall forfeit, as a civil penalty to the state, not more than five thousand dollars (\$5,000) per month of work performed in violation of this chapter. A contractor or subcontractor that commits a second or subsequent violation within a three-year period shall forfeit as a civil penalty to the state the sum of not more than ten thousand dollars (\$10,000) per month of work performed in violation of this chapter.

(b) For the purposes of this section:

(1) "Any interest" shall have the same meaning as in subdivision (h) of Section 1777.1 of the Labor Code.

(2) "Contractor or subcontractor" shall have the same meaning as in subdivision (g) of Section 1777.1 of the Labor Code.

(3) "Entity" shall have the same meaning as in subdivision (i) of Section 1777.1 of the Labor Code.

(c) The amount of any monetary penalty may be reduced or waived by the Labor Commissioner if the amount of the penalty would be disproportionate to the severity of the violation. The Labor Commissioner shall consider, in setting the amount of a monetary penalty, all of the following circumstances:

(1) Whether the violation was intentional.

(2) Whether the contractor or subcontractor has committed other violations of this chapter or of the Labor Code.

(3) Whether, upon notice of the violation, the contractor or subcontractor took steps to voluntarily remedy the violation.

(4) The extent or severity of the violation.

(5) Whether a contractor or subcontractor submitted and followed a plan to achieve substantial compliance with this chapter.

(d) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741 of the Labor Code, upon determination of penalties assessed under subdivision (a). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742 of the Labor Code. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code, shall apply.

(e) The determination of the Labor Commissioner as to the amount of the penalty imposed under subdivision (a) shall be reviewable by the Director of Industrial Relations only for an abuse of discretion.

(f) If a subcontractor is found to have violated this chapter, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of the subcontractor's failure to comply with this chapter or unless the prime contractor fails to comply with any of the following requirements:

(1) For contracts entered into on or after January 1, 2019, the contract executed between the contractor and the subcontractor for the performance of work on the project shall include a copy of this chapter.

(2) The contractor shall periodically monitor the subcontractor's use of a skilled and trained workforce.

(3) Upon becoming aware of a failure of the subcontractor to use a skilled and trained workforce, the contractor shall take corrective action, including, but not limited to, retaining 150 percent of the amount due to the subcontractor for work performed on the project until the failure is corrected.

(4) Prior to making the final payment to the subcontractor for work performed on the project, the contractor shall obtain a declaration signed under penalty of perjury from the subcontractor that the subcontractor has met the requirements of this chapter.

(g) The Labor Commissioner shall notify the prime contractor within 15 days of the receipt by the Labor Commissioner of a complaint that a subcontractor violated this chapter.

(h) Whenever a contractor or subcontractor is found by the Labor Commissioner to be in violation of this chapter with intent to defraud, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of not less than one year or more than three years to do either of the following:

(1) Bid on or be awarded a contract for a public works project.

(2) Perform work as a subcontractor on a public works project.

(i) Whenever a contractor or subcontractor is found by the Labor Commissioner to have committed two or more separate willful violations of this chapter within a three-year period, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of up to three years to do either of the following:

(1) Bid on or be awarded a contract for a public works project.

(2) Perform work as a subcontractor on a public works project.

(j) The debarment procedures adopted by the Labor Commissioner pursuant to Section 1777.1 of the Labor Code shall apply to any finding made under subdivisions (h) or (i) of this section.

(k) The Labor Commissioner shall publish on the commissioner's Internet Web site a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project pursuant to this section. The list shall contain the name of the contractor, the Contractors' State License Board license number of the contractor, and the effective period of debarment of the contractor. Contractors shall be added to the list upon issuance of a debarment order and the commissioner shall also notify the Contractors' State License Board when the list is updated. At least annually, the commissioner shall notify awarding bodies of the availability of the list of debarred contractors.

(l) (1) If a public entity or awarding body that is required to obtain an enforceable commitment that a skilled and trained workforce will be used to complete a contract or project receives a monthly report which does not demonstrate compliance with the skilled and trained workforce requirements of subdivision (c) of Section 10506.6, Section 10506.8, Section 10506.9, or subdivision (c) of Section 20928.2 of this code, Article 9 (commencing with Section 388) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, or subparagraph (B) of paragraph (8) of subdivision (a) of Section 65913.4 or subparagraph (B) of paragraph (4) of subdivision (f) of Section 66201 of the Government Code, the public entity or awarding body shall forward a copy of the monthly report to the Labor Commissioner for issuance of a civil wage and penalty assessment in accordance with this section.

(2) The penalty and debarment procedures of this section shall apply to violations of subdivision (c) of Section 10506.6, Section 10506.8, Section 10506.9, or subdivision (c) of Section 20928.2 of this code, Article 9 (commencing with Section 388) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, or subparagraph (B) of paragraph (8) of subdivision (a) of Section 65913.4 or subparagraph (B) of paragraph (4) of subdivision (f) of Section 66201 of the Government Code.

(Added by Stats. 2018, Ch. 882, Sec. 3. (AB 3018) Effective January 1, 2019.)

Frequently Asked Questions on Skilled & Trained Workforce (“STW”) Requirements

This FAQ addresses the changes in A.B. 3018 (2018) to Public Contract Code sections 2600 - 2603, which took effect on January 1, 2019. This information is current as of July 1, 2019, and is intended only as an educational tool for our community.

FAQ topics include:

- General Information
- Skilled & Trained Workforce Definition
- Enforceable Agreements, Monitoring, and Withholding Obligations
- Labor Commissioner Enforcement: Civil Penalties & Debarment
- California Public Records Act

General Information

- What are the Skilled & Trained Workforce (“STW”) requirements?
- How do I know if STW requirements apply to a project?
- Does the fact a project is a "public work" under California's Prevailing Wage Law affect whether STW requirements apply?
- If a project is subject to STW requirements must prevailing wages also be paid?
- Must apprentices be employed on STW-covered projects that do not meet the California Prevailing Wage Law’s definition of a “public work”?
- Must contractors and subcontractors on STW-covered projects be registered with the Labor Commissioner?
- Can a project be exempt from an STW statute?

1. What are the Skilled & Trained Workforce (“STW”) requirements?

The Skilled & Trained Workforce (“STW”) requirements are qualifications for the building and construction workforce that California law requires on certain projects. Contractors and subcontractors who violate STW requirements can face civil penalties of up to \$10,000 per month and debarment, *i.e.* being prohibited from bidding on, being awarded, or performing work on a public works contract. For these reasons, public entities, awarding bodies, bidders, contractors, subcontractors, and other STW-covered entities should understand and comply with the STW requirements.

2. How do I know if STW requirements apply to a project?

Currently, there are over fifteen STW statutes in various state codes, each of which applies to different types of projects. This **Chart**, which is intended as an educational tool, provides an

Skilled & Trained Workforce Definition

- What is the definition of a Skilled & Trained Workforce?
- What is the definition of a Skilled & Trained Workforce under Chapter 2.9 of Part 1 of Division 2 of the Public Contract Code (sections 2600 - 2603)?
- How do you calculate the Minimum Percentage Graduation Requirements under Public Contract Code sections 2600 - 2603?
- Under Public Contract Code sections 2600 - 2603, do the Minimum Percentage Graduation Requirements apply to occupations in which the DAS approved no apprenticeship program before January 1, 1995?
- Under Public Contract Code sections 2600 – 2603, are there any exemptions from the Minimum Percentage Graduation Requirements for a contractor or subcontractor for months in which the contractor or subcontractor performs fewer than 10 hours of work on the project?
- Under Public Contract Code sections 2600 - 2603, are there any exemptions from the Minimum Percentage Graduation Requirements for subcontractors whose subcontracts are less than one-half of one-percent of the prime contract?
- What are some tools to help verify if an individual has graduated from an apprenticeship program?
- If an apprenticeable occupation is completely or partially exempt from the Minimum Percentage Graduation Requirements, is the contractor or subcontractor still otherwise required to comply with the remaining Skilled & Trained Workforce requirements under Public Contract Code sections 2600 – 2603?

1. What is the definition of a Skilled & Trained Workforce?

There is no single definition of a Skilled & Trained Workforce that applies to all projects. Instead, each STW statute contains its own definition. This **Chart**, which is intended for educational purposes, summarizes the various STW definitions.

The vast majority (but not all) of the STW statutes use the Skilled & Trained Workforce definition in Public Contract Code Section 2601. This definition applies whenever a statute or regulation requires a public entity to obtain a legally enforceable commitment that a bidder, contractor, or other entity (like a private developer, for example) will use a Skilled & Trained Workforce to complete a contract or project.

2. What is the definition of a Skilled & Trained Workforce under Chapter 2.9 of Part 1 of Division 2 of the Public Contract Code (sections 2600 - 2603)?

Section 2601 of the Public Contract Code defines a Skilled & Trained Workforce as one that meets both of the following:

- a. Requirement #1: *All the workers* performing work in an apprenticeable occupation in

Date Work Performed on Contract or Project	Minimum Percentage Graduation Requirement	Minimum Percentage Graduation Requirement Does Not Apply to the Following Occupations (Alphabetical):
		installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher
On or after January 1, 2020	60	Acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher

As shown in **Table 1**, the Minimum Graduation requirements do not apply to teamsters. The Minimum Graduation Requirements are fixed at 30% for: acoustical installers, bricklayers, carpenters, cement masons, drywall installers or lathers, marble masons, finishers, or setters, modular furniture or systems installers, operating engineers, pile drivers, plasterers, roofers or waterproofers, stone masons, surveyors, terrazzo workers or finishers, and tile layers, setters, and finishers. For all other apprenticeable occupations, the Minimum Graduation Percentage Requirements increase by 10% annually, from 30% on January 1, 2017, to 60% on January 1, 2020.

3. How do you calculate the Minimum Percentage Graduation Requirements under Public Contract Code sections 2600 - 2603?

Three general rules apply. *First*, the Minimum Percentage Graduation Requirements are calculated by each individual contractor and subcontractor, *and* within each contractor and subcontractor, by each apprenticeable occupation.

Example:

Contractor A is the prime contractor on a project which began on July 2, 2018. Subcontractor B employs ten tile layers, all of whom meet the Minimum Graduation Requirements, and two glaziers, none of whom meet the Minimum Graduation requirements. Subcontractor C employs two tile layers, none of whom meet the Minimum Graduation Requirements, and fifteen glaziers, all of whom meet the Minimum Graduation Requirements.

Analysis:

5. Under Public Contract Code sections 2600 - 2603, are there any exemptions from the Minimum Percentage Graduation Requirements for a contractor or subcontractor for months in which the contractor or subcontractor performs fewer than 10 hours of work on the project?

Yes, under certain circumstances. A contractor or subcontractor is exempt from the Minimum Percentage Graduation Requirements if, during the calendar month covered by the **Monthly Compliance Report**, the contractor or subcontractor employs skilled journeypersons who, in total, perform *fewer than 10 hours of work in a particular craft* on the contract or project. All other STW requirements still apply to the contractor or subcontractor.

Example:

Subcontractor A employs 9 carpenters, each of whom, during the relevant calendar month, works 1 hour on the project. Subcontractor A also employs 4 roofers, each of whom, during the relevant calendar month, works 3 hours on the project, and one cement mason, who, during the relevant calendar month, works 10 hours on the project.

Analysis:

Subcontractor A's carpenters are exempt from the Minimum Percentage Graduation Requirement for the calendar month. Subcontractor A's carpenters worked only 9 hours. Subcontractor A's roofers and cement mason are not exempt from the Minimum Percentage Graduation Requirements. They worked 12 and 10 hours respectively, which is in excess of the fewer than 10-hour threshold.

6. Are there any exemptions under Public Contract Code sections 2600-2603 from the Minimum Percentage Graduation Requirements for subcontractors whose subcontracts are less than one-half of one-percent of the prime contract?

Yes, under certain circumstances. A subcontractor is exempt from meeting the Minimum Graduation Requirements if it meets *both* of the following: (i) the subcontractor was not a listed subcontractor under Public Contract Code section 4104 or a substitute for a listed subcontractor, *and* (ii) the subcontract does not exceed one-half of one percent of the price of the prime contract. All other STW requirements still apply to the subcontractor.

7. What are some tools to help verify if an individual has graduated from an apprenticeship program?

Apprentices

- To verify if an individual is currently registered in a DAS-approved apprenticeship program, click [here](#).

Skilled Journeypersons

- To verify if an individual has graduated from an in-state, DAS-approved

- If a public entity or awarding body withholds funds because a contractor, bidder, or other entity submitted a Monthly Compliance Report that does not demonstrate compliance with the STW requirements under Public Contract Code sections 2600 – 2603, under what circumstances must the public entity *resume payment* of those funds?
- What are the withholding obligations of the public entity or other awarding body if the contractor, bidder, or other entity fails to provide a Monthly Compliance Report or provides an incomplete Monthly Compliance Report?

Monitoring & Withholding Obligations – Contractors, Bidders, and Other Entities

- What are the monitoring and withholding obligations of contractors, bidders, and other entities with respect to the STW requirements under Public Contract Code sections 2600 - 2603?
- If a subcontractor does not comply with the STW requirements under Public Contract Code sections 2600 – 2603, what actions may the contractor, bidder, or other entity take against the offending subcontractor?

Monitoring & Withholding Obligations – Subcontractors

- What are the obligations of subcontractors under Public Contract Code sections 2600 - 2603?

Definitions

1. What is an Enforceable Agreement under Public Contract Code sections 2600 - 2603?

Whenever a contractor, bidder, or other entity is required to provide an enforceable commitment that a Skilled & Trained Workforce will be used to complete a contract or project, the public entity or other awarding body and the bidder, contractor, or other entity must enter into an enforceable written agreement that contains *both* of the following terms:

- The *contractor, bidder, or other entity, and its contractors and subcontractors at every tier*, will comply with Chapter 2.9 of Part 1 of Division 2 of the Public Contract Code (sections 2600 - 2603); *and*
- The contractor, bidder, or other entity will provide to the public entity or other awarding body, on a monthly basis while the project or contract is being performed, a **Monthly Compliance Report**.

2. What is a Monthly Compliance Report under Public Contract Code sections 2600 - 2603?

The Monthly Compliance Report must contain information demonstrating that the contractor and its subcontractors at every tier have complied with all of the requirements of Chapter 2.9 of Part 1 of Division 2 of the Public Contract Code (sections 2600 - 2603). The statute does not

The public entity or other awarding body must do all of the following:

- Withhold further payments in an amount equal to (1) 150 percent of the value of the monthly billing for the contractor, bidder, or entity that failed to comply with the STW requirements of Public Contract Code sections 2600 – 2603, or (2) 150 percent of the value of the monthly billing for the subcontractor that failed to comply with the STW requirements of Public Contract Code sections 2600 – 2603.
 - Forward a copy of the **Monthly Compliance Report** to the Labor Commissioner for the issuance of a **Civil Wage and Penalty Assessment** under Public Contract Code section 2603; and
 - Forward a copy of the **Substantial Compliance Plan**, if any, submitted by the contractor, bidder, or other entity, and the response to that plan, if any, by the public agency or awarding body.
6. **If a public entity or awarding body withholds funds because a contractor, bidder, or other entity submitted a Monthly Compliance Report that does not demonstrate compliance with the STW requirements under Public Contract Code sections 2600 – 2603, under what circumstances must the public entity *resume payment* of those funds?**

The public entity must immediately resume making payments to the contractor, bidder, or other entity, including all previously withheld payments, if either of the following occur:

- Substitution of Offending Subcontractor: (1) The contractor, bidder, or other entity substitutes the offending subcontractor who violated the STW requirements of Public Contract Code sections 2600 – 2603 for failure to demonstrate compliance, in accordance with Public Contract Code sections 4100 – 4114, and (2) the contractor, bidder, or other entity replaces the offending subcontractor with one that provides an enforceable commitment that a skilled and trained workforce will be used to complete the contract or project.

OR

- Submission of a Substantial Compliance Plan: If the contractor, bidder, or other entity submits to the public entity or awarding body a **Substantial Compliance Plan**, *unless* within a reasonable time, the public agency or awarding body rejects the plan as insufficient and explains the reason for the rejection.
7. **What are the withholding obligations of the public entity or other awarding body if the contractor, bidder, or other entity fails to provide a Monthly Compliance Report or provides an incomplete Monthly Compliance Report?**

- *Include a copy of Chapter 2.9 of Part 1 of Division 2 of the Public Contract Code (sections 2600 - 2603) in contracts executed after January 1, 2019, between the contractor and the subcontractor for work on the STW-covered project;*
- *Periodically monitor the subcontractor's use of a Skilled & Trained Workforce;*
- *Take corrective action, upon becoming aware of the subcontractor's violation, including, but not limited to retaining 150 percent of the amount due to the subcontractor for work performed on the project until the failure is corrected; and*
- *Obtain a declaration signed under penalty of perjury from the subcontractor that the subcontractor has met the requirements of Public Contract Code sections 2600 - 2603 prior to making the final payment to the subcontractor for its work on the project.*

Because the consequences of violations on STW-covered projects can include substantial civil penalties and debarment, contractors may want to consider engaging in the above-listed actions as standard operating procedure.

9. If a subcontractor does not comply with the STW requirements under Public Contract Code sections 2600 – 2603, what actions may the contractor, bidder, or other entity take against the offending subcontractor?

The contractor, bidder, or other entity may do either or both of the following:

- *Withhold Funds:* Contractor, bidder, or other entity may withhold from the offending subcontractor the same amount of funds that the public entity is withholding from it (150 percent of the amount due) on account of the offending subcontractor until the failure is corrected. The contractor's withholding of funds may be necessary to avoid the contractor's liability for the subcontractor's **civil penalty**.

AND/OR

- *Subcontractor Substitution:* If the contractor, bidder, or other entity chooses to substitute the offending subcontractor with a new subcontractor, then it must do both of the following: (1) substitute the offending subcontractor in accordance with Public Contract Code sections 4100 – 4114, and (2) obtain an **Enforceable Commitment** from the new subcontractor that a Skilled & Trained Workforce will be used to complete the contract or project.

Monitoring & Withholding Obligations - Subcontractors

10. What are the obligations of subcontractors under Public Contract Code sections 2600 - 2603?

Generally, each individual subcontractor (1) must use a Skilled & Trained Workforce, (2) must submit complete information demonstrating its compliance with the STW requirements to the contractor for its **Monthly Compliance Report**, (3) may be subject to period monitoring by the contractor to verify the subcontractor's use of a Skilled & Trained Workforce, and (4) may be

Civil Penalty

2. What is the maximum civil penalty the Labor Commissioner can issue under Public Contract Code sections 2600 - 2603?

The Labor Commissioner can issue a civil penalty of up to \$5,000 per month for work performed in violation of Public Contract Code Section 2600-2603. A contractor or subcontractor that commits a second or subsequent violation within a three-year period, may be assessed a civil penalty of up to \$10,000 per month.

3. What factors does the Labor Commissioner consider when determining the amount of the civil penalty under Public Contract Code section 2600 - 2603?

In determining the amount of civil penalties for violations of the STW requirements, the Labor Commissioner will consider the following: (1) whether the violation was intentional; (2) whether the contractor or subcontractor violated other provisions of Public Contract Code sections 2600 - 2603 or the California Labor Code; (3) whether, upon notice of the violation, the contractor or subcontractor took steps to voluntarily remedy the violation; (4) the extent or severity of the violation; *and* (5) whether the contractor or subcontractor submitted and followed a **Substantial Compliance Plan**.

4. Is a general contractor liable for penalties resulting from a subcontractor's violations under Public Contract Code sections 2600 - 2603?

Yes. A general contractor is liable for a subcontractor's civil penalties as a result of the subcontractor's failure to comply with the STW requirements under Public Contract Code sections 2600 – 2603 unless certain conditions are met. Specifically, a contractor will not be liable for civil penalties assessed against a subcontractor (1) unless the prime contractor had knowledge of the subcontractor's failure to comply with Public Contract Code section 2600 – 2603, or (2) unless the prime contractor fails to comply with any of the following requirements:

- The contractor included a copy of Chapter 2.9 of Part 1 of Division 2 of the Public Contract Code (sections 2600 – 2603) in the contract executed after January 1, 2019, between the contractor and the subcontractor for work on the STW-covered project;
- The contractor *periodically monitored* the subcontractor's use of a Skilled & Trained Workforce;
- The contractor *took corrective action* upon becoming aware of the subcontractor's violation, including, but not limited to retaining 150 percent of the amount due to the subcontractor until the failure is corrected;
- Prior to making the final payment to the subcontractor, the contractor *obtained a declaration* signed under penalty of perjury from the subcontractor that the subcontractor has met the requirements of Public Contract Code sections 2600 - 2603.

If the debarment is for “intent to defraud” then the debarment period must be at minimum for one year and no more than three years. If the debarment is for “two or more separate willful violations” then the debarment must be for a maximum of three years, and there is no minimum debarment period.

10. Procedurally, how do debarments take place under Public Contract Code sections 2600 - 2603?

STW debarments follow the same procedures as public works contracts debarments, *i.e.* they follow the procedures in California Labor Code section 1777.1.

11. How do I know if a contractor has been debarred under Public Contract Code sections 2600 - 2603?

The names of these contractors are posted [here](#).

California Public Records Act

1. Under Public Contract Code section 2602, what STW-related documents are considered public records under the California Public Records Act (Government Code sections 6250 – 6276.48) that must be made available by the public entity or awarding body to members of the public?

Under Public Contract Code section 2602, any **Monthly Compliance Report** that has been provided to a public entity or other awarding body is a public record under the Public Record Act that must be made available for public inspection. Public Contract Code section 2602 does not state whether the **Substantial Compliance Plan** or the **Enforceable Agreement** are public records. Thus, the public agencies must analyze the California Public Records Act when determining whether part and/or all of these documents must be disclosed. In enacting the California Public Records Act, the Legislature stated that access to information concerning the conduct of the public’s business is a fundamental and necessary right for every person in the State.