

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

overview of the current STW statutes as of July 1, 2019, and the types of projects to which they apply.

In addition, the Public Contract Code authorizes public entities and awarding bodies to require bidders, contractors, or other entities to use a Skilled & Trained Workforce even in the absence of an STW statute or regulation mandating its use.

3. Does the fact a project is a “public work” under the California Prevailing Wage Law affect whether STW requirements apply?

No. The fact a project is a “public work” or “private work” under the California Prevailing Wage Law (California Labor Code sections 1720 - 1815) has no bearing on whether STW requirements apply, and *vice versa*. A project could be subject to either STW or California Prevailing Wage Law requirements, both, or neither.

4. If a project is subject to STW requirements, must prevailing wages also be paid?

Not necessarily. There is no general requirement that prevailing wages must be paid on all STW-covered projects. However, some STW statutes contain their own requirement separate from the California Prevailing Wage Law that prevailing wage rates must be paid on the STW-covered project. These statutes are summarized, for educational purposes, on this **Chart**.

5. Must apprentices be employed on STW-covered projects that do not meet the California Prevailing Wage Law’s definition of a “public work”?

No. In contrast to “public works” projects under the California Prevailing Wage Law, there is no requirement that apprentices must be employed on an STW-covered project (assuming the project is not a public work). However, the STW **apprentices in DAS-approved apprenticeship programs** do count towards the STW requirements.

6. Must contractors and subcontractors on STW-covered projects be registered with the Labor Commissioner?

No. In contrast to “public works” projects under the California Prevailing Wage Law, there is no requirement that contractors and subcontractors on STW-covered projects be registered with the Labor Commissioner. However, if the STW-covered project is a “public work,” then the California Prevailing Wage Law’s contractor and subcontractor registration requirements apply.

7. Can a project be exempt from an STW statute?

Each STW statute or STW requirement imposed by a public entity or awarding body must be individually reviewed to determine if there are any exemptions. As summarized in this **Chart** for educational purposes, many (but not all) of the STW statutes contain limited exemptions for projects subject to project labor agreements which meet certain statutory requirements.

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

the building and construction trades for which the Division of Apprenticeship Standards (“DAS”) approved an apprenticeship program before January 1, 2014 are *either*:

- a. *Apprentices* registered in a DAS-approved apprenticeship program;

OR

- b. *“Skilled journeypersons,”* meaning the worker, in the applicable occupation, *either* (i) graduated from an in-state, DAS-approved apprenticeship program, or an out-of-state federally-approved apprenticeship program, *or* (ii) has at least as many hours of on-the-job experience as would be required to graduate from the applicable DAS-approved apprenticeship program.

AND

- b. Requirement #2: The *Minimum Percentage Graduation Requirements* in **Table 1** are satisfied.

- a. “Minimum Percentage Graduation Requirements” means the minimum percentage of skilled journeypersons who (i) are employed to perform work on the contract or project, (ii) by *every* contractor and *each* of its subcontractors *at every tier*, (iii) for the applicable occupation, *and* (iv) are graduates of *either* an in-state, DAS-approved apprenticeship program *or* of an out-of-state federally-approved apprenticeship program. Individuals who qualify as “skilled journeypersons” based on their on-the-job experience *do not* count towards the Minimum Percentage Graduation Requirements.

TABLE 1: MINIMUM PERCENTAGE GRADUATION REQUIREMENTS

Date Work Performed on Contract or Project	Minimum Percentage Graduation Requirement	Minimum Percentage Graduation Requirement Does <u>Not</u> Apply to the Following Occupations (Alphabetical):
On or after January 1, 2017	30	Teamster
On or after January 1, 2018	40	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
On or after January 1, 2019	50	Acoustical installer, bricklayer, carpenter, cement mason, drywall

Date Work Performed on Contract or Project	Minimum Percentage Graduation Requirement	Minimum Percentage Graduation Requirement Does <u>Not</u> 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:

Subcontractors B and C are not compliant with the Minimum Graduation Requirements. Workforces may not be “combined” across subcontractors. Subcontractor B violates the Minimum Graduation Requirements for glaziers. Subcontractor C violates the Minimum Graduation Requirements for tile layers. Subcontractors B and C are liable for penalties of up to \$5,000 for each calendar month during which they failed to meet the STW requirements [\$10,000 if it was a second or subsequent violation within a three-year period]. Contractor A is liable for the penalties as a result of subcontractors B and C’s failure to comply with the STW requirements, unless the conditions specified in Public Contract Code section 2603(f) have been met.

Second, the Minimum Percentage Graduation Requirements must be calculated on a monthly basis for the calendar month covered by the **Monthly Compliance Report** that the contractor, bidder, or other entity must submit to the public entity or other awarding body.

Third, the Minimum Percentage Graduation Requirements must be calculated for the applicable contractor or subcontractor during the relevant calendar month by *either* (a) the percentage of skilled journeypersons who meet the graduation requirements in **Table 1**, or (b) the number of hours of work performed by skilled journeypersons who meet the graduation requirements.

Example:

During the calendar month covered by its **Monthly Compliance Report** (January 7 to February 7, 2019), Subcontractor D employs four glaziers. One glazier graduated from a DAS-approved apprenticeship program. The remaining three glaziers have equivalent hours of on-the-job experience. The one glazier who graduated from a DAS-approved apprenticeship program worked 45 hours on the project that month. The remaining three glaziers with equivalent on-the-job experience each worked 15 hours.

Analysis:

Subcontractor D is in compliance with the Minimum Graduation Requirements. Even though only one of the four glaziers graduated from a DAS-approved apprenticeship program (25% is lower than the 50% Minimum Percentage Graduation Requirement for glaziers as of January 1, 2019), the one glazier worked 45 out of the 90 monthly hours performed by Subcontractor D’s glaziers on the project. Because these 45 hours are at least 50% of Subcontractor D’s total 90 glazier hours for the calendar month, the Minimum Graduation Requirements are satisfied.

4. 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?

There is a *partial* exemption. For apprenticeable occupations for which the DAS had approved no apprenticeship program before January 1, 1995, *up to one one-half* of the Minimum Percentage Graduation Requirements in **Table 1** may be satisfied by **skilled journeypersons** who began working in the apprenticeable occupation before the DAS approved an apprenticeship program for that occupation in the county in which the project is located.

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

apprenticeship program, click [here](#).

To verify if an individual has graduated from an out-of-state, federally-approved apprenticeship program, please contact the federally approved Apprenticeship Agency for that state. Click [here](#) for contact information.

8. 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?

Yes. If an apprenticeable occupation is completely or partially exempt from the **Minimum Percentage Graduation Requirements**, the contractor or subcontractor must still comply with all of the remaining Skilled & Trained Workforce requirements under Public Contract Code sections 2600 – 2603.

Examples of these remaining STW requirements include, but are not limited to:

- The requirement that all workers performing work in an apprenticeable occupation in the building and construction trades for which the DAS approved an apprenticeship program before January 1, 2014, are either (1) apprentices registered in a DAS-approved apprenticeship program, or (2) skilled journeypersons as defined **above**;
- Completion of **Monthly Compliance Reports**;
- Submission and/or compliance with a **Substantial Compliance Plan**, if applicable, *etc.*

Enforceable Agreements, Monitoring, and Withholding Obligations

Definitions

- What is an Enforceable Agreement under Public Contract Code sections 2600 – 2603?
- What is a Monthly Compliance Report under Public Contract Code sections 2600 – 2603?
- What is a Substantial Compliance Plan under Public Contract Code sections 2600 – 2603?

Monitoring & Withholding Obligations – Public Entities and Awarding Bodies

- What are the monitoring and withholding obligations of public entities and awarding bodies with respect to the STW requirements under Public Contract Code sections 2600 – 2603?
- What are the obligations of the public entity or other awarding body if the contractor, bidder, or other entity submits a Monthly Compliance Report that does not demonstrate compliance with the requirements of Public Contract Code sections 2600 – 2603?

- 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

specify the form of the Monthly Compliance Report, only that the report must contain information sufficient to demonstrate that the STW requirements have been met.

The contractor, bidder, or other entity must submit a Monthly Compliance Report to the public entity on a monthly basis for each month while the STW-covered project or contract is being performed. The report covers a calendar month. If work on the STW-covered project began on September 7, 2019, the first Monthly Compliance Report would be from September 7 to October 7, 2019.

3. What is a Substantial Compliance Plan under Public Contract Code sections 2600 - 2603?

If a contractor submits a **Monthly Compliance Report** to a public entity or awarding body that fails to demonstrate compliance with the requirements of Public Contract Code sections 2600 - 2603, then the public entity must **withhold funds** from the contractor. For the public entity to resume payments under these circumstances, the contractor must submit a *Substantial Compliance Plan*. The statute does not specify the exact form of the plan, only that it must be a plan to achieve “substantial compliance” with Public Contract Code sections 2600 – 2603 with respect to the apprenticeable occupation(s) for which the STW requirements were violated before the contract or project is completed.

A public entity may reject a Substantial Compliance Plan as insufficient and refuse to resume payments to the contractor only if within a reasonable time, the public entity notifies the contractor of the reasons of the rejection.

Monitoring & Withholding Obligations – Public Entities and Awarding Bodies

4. What are the monitoring and withholding obligations of public entities and awarding bodies with respect to the STW requirements under Public Contract Code sections 2600 - 2603?

Generally, the obligations of public entities and awarding bodies are: (1) to make an **Enforceable Agreement** with the contractor, bidder, or other entity on the project regarding the use of a Skilled & Trained Workforce, (2) to collect and review **Monthly Compliance Reports** from the contractor, bidder, or other entity to ensure that it demonstrates compliance with the STW requirements; (3) if the **Monthly Compliance Report** is not provided, incomplete, or does not demonstrate compliance with Public Contract Code sections 2600 - 2603, to **withhold payments**; and (4) under certain circumstances, to forward **Monthly Compliance Reports** and **Substantial Compliance Plans** to the Labor Commissioner.

5. What are the obligations of the public entity or other awarding body if the contractor, bidder, or other entity submits a Monthly Compliance Report that does not demonstrate compliance with the requirements of Public Contract Code sections 2600 – 2603?

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**?

If the contractor fails to provide a Monthly Compliance Report or provides an incomplete Monthly Compliance Report, the public entity or other awarding body must withhold all further payments. However, if the monthly report is incomplete because a subcontractor failed to timely submit the required information to the contractor, the public entity or other awarding body must withhold an amount only equal to 150 percent (150%) of the value of the monthly billing for the relevant subcontractor.

- NOTE: The contractor may withhold the same amount from the subcontractor until the subcontractor provides a complete report and the awarding body subsequently pays the withheld amounts to the contractor.

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:

- A complete report is provided.

OR

- 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.

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

8. 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?

Generally, the obligations of contractors, bidders, and other entities are: (1) to enter into an **Enforceable Agreement** with the public entity or awarding body that the contractor, bidder, or other entity *and* its contractors and subcontractors at every tier, will comply with the STW requirements of Public Contract Code section 2600 - 2603, (2) to 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** demonstrating compliance with the STW requirements, and (3) if necessary, to submit and comply with a **Substantial Compliance Plan**.

Also, contractors are financially liable for civil penalties assessed against their subcontractors as a result of a subcontractor's failure to comply with the STW requirements. Contractors may avoid these substantial liabilities by doing all of the following:

- *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

required by the contractor to sign a declaration under penalty of perjury that the subcontractor has met the Skilled & Trained Workforce requirements in order to receive final payment.

Like contractors, subcontractors may also have funds withheld and face **civil penalties** and **debarment** if they violate these requirements. Finally, offending subcontractors may be **substituted** on the project.

Labor Commissioner Enforcement: Civil Penalties & Debarment

Enforcement Overview

- Generally, how are the Skilled & Trained Workforce requirements enforced?

Civil Penalty

- What is the maximum civil penalty the Labor Commissioner can issue under Public Contract Code section 2600 - 2603?
- What factors does the Labor Commissioner consider when determining the amount of the civil penalty under Public Contract Code section 2600 - 2603?
- Can a general contractor be liable for penalties resulting from a subcontractor's violations under Public Contract Code sections 2600 - 2603?
- Procedurally, how are civil penalties issued under Public Contract Code sections 2600 - 2603? Is administrative review available?

Debarment

- What does it mean to be debarred?
- When can the Labor Commissioner debar a contractor or subcontractor under Public Contract Code sections 2600 - 2603?
- What contractors or subcontractors must be debarred under Public Contract Code sections 2600 - 2603?
- How long does a debarment last under Public Contract Code sections 2600 - 2603?
- Procedurally, how do debarments take place under Public Contract Code sections 2600 - 2603?
- How do I know if a contractor has been debarred under Public Contract Code sections 2600 - 2603?

Enforcement Overview

1. Generally, how are the Skilled & Trained Workforce requirements enforced?

This depends on the individual STW statute. This **Chart**, for educational purposes, summarizes the enforcement provisions. Many (but not all) of the STW statutes follow the enforcement procedures of Public Contract Code sections 2600 - 2603, under which the Labor Commissioner may both (1) issue a civil penalty and (2) debar contractors or subcontractors.

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.

5. Procedurally, how are civil penalties issued under Public Contract Code sections 2600 - 2603? Is administrative review available?

The Labor Commissioner issues civil penalties under Public Contract Code sections 2600 - 2603 following the same procedures it uses to issue Civil Wage and Penalty Assessments (“CWPA”) on public works projects under California Labor Code section 1741 and its regulations. A contractor or subcontractor served with a CWPA for STW violations can request administrative review from the Director of the Department of Industrial Relations under California Labor Code section 1742 and its regulations. If no hearing is requested within 60 days after service, the CWPA becomes final. The determination of the Labor Commissioner as to the amount of the penalty is reviewable by the Director of the Department of Industrial Relations only for an abuse of discretion.

Debarment

6. What does it mean to be debarred?

A debarred contractor or subcontractor is ineligible for a designated period of time to both: (1) bid on or be awarded a contract for a public works project, and (2) perform work on a public works project.

7. When can the Labor Commissioner debar a contractor or subcontractor under Public Contract Code sections 2600 - 2603?

A contractor or subcontractor can be debarred for any violation of Public Contract Code sections 2600 - 2603 committed with intent to defraud. Generally, intent to defraud requires the intent to deceive another person or entity, and to induce such person or entity, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation, or power with reference to property of any kind.

A contractor or subcontractor can also be debarred if it commits two or more separate willful violations of Public Contract Code section 2603 within a three-year period. A willful violation occurs when the contractor or subcontractor knew or reasonably should have known of its legal obligations and deliberately fails or refuses to comply with them.

8. What contractors or subcontractors must be debarred under Public Contract Code sections 2600 - 2603?

The offending contractor or subcontractor, as described in Question #7, immediately above, and as defined by California Labor Code section 1777.1(g), along with any firm, corporation, partnership, or association in which the contractor or subcontractor has any interest, as defined by California Labor Code section 1777.1(h), must be debarred.

9. How long does a debarment last under 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.