

# DIR ENFORCEMENT OF SKILLED AND TRAINED WORKFORCE REQUIREMENTS

JANUARY 25, 2019  
A PRESENTATION TO



**FINCH • THORNTON • BAIRD<sup>LLP</sup>**

ATTORNEYS AT LAW

## PRESENTERS

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# Agenda

- ⬢ Projects Covered
- ⬢ Requirements
- ⬢ Enforcement
  - By the Awarding Body/Public Agency
  - By the Labor Commissioner
  - Safe Harbor
- ⬢ Reporting





# PROJECTS COVERED

## Under existing (pre-2019) law:

- Public Contract Code sections 2600–2601 (SB 693), established provisions to be generally applicable when a public entity is required by statute 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.

## Projects Covered

### SKILLED & TRAINED WORKFORCE REQUIREMENTS

AS OF JANUARY 1, 2019

Skilled workforce required under PCC§2600 et seq. applies to the following procurements:

- **City, County, and Other Specified State and Local Agencies Design-Build > \$1 Million**  
— Reference PCC§10191 and PCC§22162-22164
- **School District K-12 Design-Build ≥ \$1 Million**  
— Reference EdC§17250.25
- **School District K-12 Lease-Leaseback**  
— Reference EdC§17407.5
- **City of San Diego Construction Manager at Risk > \$25 Million**  
— Reference PCC§20175
- **San Diego County Construction Manager at Risk > \$1 Million**  
— Reference PCC§20146
- **Best Value – Los Angeles Unified ≥ \$1 Million**  
— Reference PCC§20119.1
- **Best Value – Alameda, Los Angeles, Riverside, San Bernardino, San Diego, Solano, and Yuba County ≥ \$1 Million**  
— Reference PCC§20155.2
- **SANDAG, MTS, and NCTD ≥ \$1 Million**  
— Reference PUC§120221.5, PUC§125222.5, and PUC§132354.7
- **Housing Development Approvals**  
— Reference GovC§65913 et seq. (§65913.4)<sup>†</sup>

<sup>†</sup> Requires compliance with PCC 2600 et seq. and has its own penalty provisions.

Contractors must have at least **30%** of journeypersons be graduates of an apprenticeship program for the following trades:

Acoustical installer  
Bricklayer  
Carpenter  
Cement mason  
Drywall installer or lather  
Marble mason, setter, finisher  
Modular furniture or systems installer  
Operating engineer  
Pile driver  
Plasterer  
Roofer  
Waterproofer  
Stone mason  
Surveyor  
Terrazzo worker or finisher  
Tile layer, setter, finisher

For all other apprenticeable trades—except teamsters—annual graduation rate requirements increase per the schedule below:

**40%** by January 1, 2018

**50%** by January 1, 2019

**60%** by January 1, 2020

This requirement does not apply to teamsters.

For occupations with no approved apprenticeship program before 1995 (such as Laborers), up to one-half of the graduation percentage can be journeypersons who started working in the occupation before the apprenticeship program was approved.





# REQUIREMENTS

# What is required?

# Skilled & Trained



# What is “Skilled?”

- ⬢ All the workers performing work in an apprenticeable occupation in the building and construction trades are either skilled journeypersons or apprentices in an apprenticeship program approved by the Chief of the DAS.

# “Skilled Journeyperson” = a worker who has either:

- ❖ Graduated from an apprenticeship program (California or federally approved), or
- ❖ At least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an approved California apprenticeship program

# What is “Trained?”

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Contractors must have at least **30%\*** of journeypersons be graduates of an apprenticeship program for the following trades:

- Acoustical installer
- Bricklayer
- Carpenter
- Cement mason
- Drywall installer or lather
- Marble mason, setter, finisher
- Modular furniture or systems installer
- Operating engineer
- Pile driver
- Plasterer
- Roofer
- Waterproofing
- Stone mason
- Surveyor
- Terrazzo worker or finisher
- Tile layer, setter, finisher

\* This requirement does not apply to teamsters.

For all other apprenticeable trades—except teamsters—annual graduation rate requirements increase per the schedule below:

**40% by January 1, 2018**

**50% by January 1, 2019**

**60% by January 1, 2020**

For occupations with no approved apprenticeship program before 1995 (such as Laborers), up to one-half of the graduation percentage can be journeypersons who started working in the occupation before the apprenticeship program was approved.

## Graduate Percentages





# ENFORCEMENT



# AB 3018

## ENFORCEMENT UPDATE TO SKILLED AND TRAINED WORKFORCE

Amends Sections 2601–2602 and Adds Section 2603 of the Public Contract Code.

# What must you do to comply?

- ❖ Provide the awarding body, on a monthly basis while the project is being performed, a report demonstrating compliance.

*PCC § 2602 (a)(2)*



# What can the awarding body do if a monthly report is not provided, or is incomplete?

- ❖ Withhold further payments until a complete report is provided.

*PCC § 2602 (b)*

# What if a monthly report is incomplete due to the failure of a subcontractor to timely submit the required information?

- ⬢ The awarding body and the general contractor shall withhold 150% of the value of the monthly billing for that subcontractor.

# What if a monthly report does not demonstrate compliance?

## ⬢ The awarding body shall:

- 1) Withhold further payment until a plan is provided to achieve substantial compliance prior to completion of the contract or project
- 2) Forward a copy of the monthly report to the Labor Commissioner
- 3) Forward a copy of the plan to achieve substantial compliance to the Labor Commissioner

*PCC § 2602 (c)(1)–(3)*



# How much can an awarding body withhold?

- ⬢ 150% of the value of the monthly billing for the entity or subcontractor that failed to comply.

*PCC § 2602 (c)(1)(A)*

- ⬢ If any awarding body withholds, a contractor may withhold the same amount from a subcontractor that did not demonstrate compliance.

*PCC § 2602 (c)(1)(A)*

# Labor Commissioner Penalties

- ⬢ Up to \$5,000 per month of work performed in violation of this chapter.
- ⬢ For a second or subsequent violation within a three-year period: \$10,000 per month of work performed.

*PCC § 2603 (a)*

# The Labor Commissioner has discretion to reduce or waive the amount of this penalty:

- 1) If the violation was not intentional
- 2) If the contractor has not committed other violations of this chapter or of the Labor Code
- 3) If upon notice of the violation, the contractor took steps to voluntarily remedy the violation
- 4) Depending on the extent or severity of the violation
- 5) If the contractor submitted and followed a plan to achieve substantial compliance

*PCC § 2602 (b)*

- ❖ The Labor Commissioner shall issue a civil wage and penalty assessment, under Labor Code § 1742 and the prevailing wage regulations.

*PCC § 2603 (d)*



# Safe Harbor

- ⬢ No penalties for a subcontractor's failure to comply if the contractor did not have knowledge and:
  - 1) Included a copy of this chapter in the subcontract (for contracts entered into on or after January 1, 2019);
  - 2) Periodically monitored the subcontractor's use of a skilled and trained workforce;
  - 3) Took corrective action upon becoming aware of a failure, including, but not limited to, retaining 150% of the amount due to the subcontractor for work performed on the project until the failure is corrected; and
  - 4) Obtained a sworn declaration of compliance from the subcontractor prior to making final payment.

# Debarment

- ⚙ When a violation of this chapter is “with intent to defraud:”
  - ▶ 1–3 years debarment (no bidding, no award, no performing work on a public works project)
- ⚙ When 2 or more separate “willful” violations of this chapter with in a three-year period:
  - ▶ Up to 3 years debarment

*PCC § 2603 (h)–(i)*

## In Summary:

“SKILLED”

# 100%

must be “Skilled”

“TRAINED”

# 30%

Contractors must have at least 30% of journeypersons be graduates of apprenticeship program for following trades:

Acoustical installer  
Bricklayer  
Carpenter  
Cement mason  
Drywall installer or lather  
Marble mason,  
setter, or finisher  
Modular furniture  
or systems installer  
Operating engineer

Pile driver  
Plasterer  
Roofer  
Waterproofers  
Stone mason  
Surveyor  
Terrazzo worker  
or finisher  
Tile layer, setter,  
or finisher

# 50%

Annual graduation rate requirement as of January 1, 2019 for all other apprenticeable trades (*except teamsters*)

**Increases to 60%  
on January 1, 2020**



# REPORTING

# DIR ENFORCEMENT OF SKILLED & TRAINED WORKFORCE REQUIREMENTS: REPORTING

ATTACHMENT NO. “\_\_”

## Skilled and Trained Workforce

(Public Contract Code section 2600 et seq.)

(For Use on Certain California Public Works Projects, As Applicable)

Subcontractor understands that the Subcontract Work and Subcontract Documents may require compliance with Public Contract Code section 2600 et. seq. regarding the use of workers in apprenticeable occupations. Subcontractor shall provide workers to the project that are skilled journeypersons and graduates of approved apprenticeship programs in the required percentage as set forth in the Public Contract Code. Subcontractor agrees to comply with the requirements in effect during performance of the Subcontract Work on the project with respect to all of Subcontractor’s workers. Subcontractor shall provide a completed report demonstrating its compliance with these requirements on a monthly basis. The report shall be in the form required by the Prime Contract or in the form below if no form is provided by Owner in Prime Contract.

### MONTHLY REPORT

Month: \_\_\_\_\_ 20\_\_

In accordance with Public Contract Code section 2600 et seq., all the workers of \_\_\_\_\_ [INSERT NAME OF SUBCONTRACTOR] performing work in an apprenticeable occupation in the building and construction trades on the project known as \_\_\_\_\_ [INSERT PROJECT NAME AND LOCATION] are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards of the California Department of Industrial Relations (the “Chief”). “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, or
- (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.

In addition, the required percentage of the skilled journeypersons employed by \_\_\_\_\_ [INSERT NAME OF SUBCONTRACTOR] to perform work on the project are graduates of an apprenticeship program for the applicable occupation.<sup>1</sup> A graduate of an apprenticeship program means either of the following:

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

Exhibit A shall be utilized to demonstrate that all workers are either skilled journeypersons or apprentices registered in an apprenticeship program, pursuant to Public Contract Code Section 2601, subdivision (d)(1). Either Exhibit B or C must be completed to demonstrate compliance with Skilled and Trained Workforce “graduate” requirements, pursuant to Public Contract Code Section 2601, subdivision (d)(2). Exhibits are to be completed for each trade utilized by subcontractor.

Subcontractor declares under penalty of perjury the information provided in Exhibits A – C is true and correct. Subcontractor additionally declares under penalty of perjury that any and all documentary proof supporting the information provided in Exhibits A – C is in Subcontractor’s possession and will be supplied upon request.

Date: \_\_\_\_\_ Subcontractor: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Title: \_\_\_\_\_

<sup>1</sup> Skilled journeypersons employed to perform work on the project by Contractor or its subcontractors at every tier must be graduates of an apprenticeship program for the applicable occupation at the following percentages per Section 2601: at least 30 percent for work performed on or after January 1, 2017; at least 40 percent for work performed on or after January 1, 2018; at least 50 percent for work performed on or after January 1, 2019; and at least 60 percent for work performed on or after January 1, 2020. The increases for 2018, 2019, and 2020 shall not 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, terrazzo worker or finisher, and tile layer, setter, or finisher. A percentage of graduates does not apply to the teamster occupation.



# DIR ENFORCEMENT OF SKILLED & TRAINED WORKFORCE REQUIREMENTS: REPORTING

## EXHIBIT A:

\_\_\_\_\_ [Insert Month] REQUIREMENT OF SKILLED JOURNEYPEOPLENS OR APPRENTICES

Name of Employee	Journeyman who Graduated from Apprenticeship Program (Yes/No)	Journeyman with Sufficient On-The-Job Experience (Yes/No)	Apprentice Registered in an Approved Program (Yes/No)

[Identify each **worker** as one of the following]

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct and complies with Public Contract Code Section 2601, subdivisions (d)(1) and (e).

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Subcontractor: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT B:

\_\_\_\_\_ [Insert Month] HEADCOUNT OF APPRENTICESHIP GRADUATES

Name of Skilled Journeyman	Last 4 Digits of Social Security	Graduate of Apprenticeship Program? (Yes/No)	Name of Apprenticeship Program or Meets § 2601, Subdivision (d)(3) Exception	Graduation Documentation on file? (Yes/No)

List all Skilled Journeypeople in \_\_\_\_\_ [applicable occupation/trade] Classification

Total Number of Apprenticeship Graduates Worked in \_\_\_\_\_ [applicable occupation] Classification  
÷ Total Number of Skilled Journeypeople Worked in \_\_\_\_\_ [applicable occupation]  
Classification = \_\_\_\_%

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct and complies with Public Contract Code Sections 2601(d)(2) – (4).

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Subcontractor: \_\_\_\_\_

Date: \_\_\_\_\_

\*\* See attached plan to achieve substantial compliance per PCC § 2602 if Subcontractor falls short of required percentage of participation.

## EXHIBIT C:

\_\_\_\_\_ [Insert Month] HOURS WORKED OF APPRENTICESHIP GRADUATES

Name of Skilled Journeyman	Last 4 Digits of Social Security	Graduate of Apprenticeship Program? (Yes/No)	Name of Apprenticeship Program or Meets § 2601, Subdivision (d)(3) Exception	Graduation Documentation on file? (Yes/No)	Total Hours Worked

List all Skilled Journeypeople in \_\_\_\_\_ [applicable occupation/trade] Classification

Total Hours of Apprenticeship Graduates Worked in \_\_\_\_\_ [applicable occupation] Classification  
÷ Total Hours of Skilled Journeypeople Worked in \_\_\_\_\_ [applicable occupation]  
Classification = \_\_\_\_%

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct and complies with Public Contract Code Section 2601, subdivisions (d)(2) – (4).

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Subcontractor: \_\_\_\_\_

Date: \_\_\_\_\_

\*\* See attached plan to achieve substantial compliance per PCC § 2602 if Subcontractor falls short of required percentage of participation.

Exhibit A

EXHIBIT A:  
\_\_\_\_\_ [Insert Month] REQUIREMENT OF SKILLED JOURNEYPERSONS OR APPRENTICES

Name of Employee	Journey person who Graduated from Apprenticeship Program (Yes/No)	Journey person with Sufficient On-The-Job Experience (Yes/No)	Apprentice Registered in an Approved Program (Yes/No)

Name of Employee	Journey person who Graduated from Apprenticeship Program (Yes/No)	Journey person with Sufficient On-the-Job Experience (Yes/No)	Apprentice Registered in an Approved Program (Yes/No)

# Documents to Prove On-the-Job Experience

- ⬡ Worker Affidavit
- ⬡ Employer Affidavit
- ⬡ W-2s or Other Back-up

# Hours of On-the-Job Training: Required Minimum Industry Training Criteria

CRAFT	HOURS	CRAFT	HOURS	CRAFT	HOURS
Air Conditioning and Refrigeration	7,500	Elevator Constructor	6,800	Terrazzo Finisher	2,800
Acoustical Installer	3,600	Field Ironworker	4,800	Terrazzo Worker	4,200
Cabinet Maker	4,800	Floor Covering Installer	6,000	Operating Engineer	6,000
Carpentry	4,800	Glazier, Architectural, Metal and Glass Workers	7,500	Fire Sprinkler Fitter	7,000
Drywall Applicator	4,800	Heat & Frost Insulators and Asbestos Workers	6,000	Landscape & Irrigation Pipefitter	9,000
Hardwood Floor Layer	3,600	Drywall Finisher	3,600	Utility Pipeline Installer	7,800
Insulator	3,600	Industrial Painter	7,200	Plastering	6,000
Modular Installer	2,400	Painter, Decorator & Paperhanger	4,800	Plumbing	7,200
Millwright	4,800	Construction Craft Laborer	3,000	Roofer & Waterproofing	4,000
Pile Driver	4,800	Plaster Tender	3,000	Sheet Metal	6,500
Scaffold Erector	4,800	Bricklayer	4,200	Sound and Communication	4,800
Shingler	2,400	Marble Finisher	3,500	Steamfitter, Pipefitter	7,500
Cement Mason	4,200	Marble Mason/Setter	4,200	Surveyor	8,000
Electrician-Commercial	8,000	Mason Finisher	2,400	Tile Finisher	2,100
Electrician-Residential	4,800	Pointer Cleaner Caulker	4,200	Tile Layer	4,500
		Stone Mason	4,200		

Exhibit B

EXHIBIT B:  
\_\_\_\_\_ [Insert Month] HEADCOUNT OF APPRENTICESHIP GRADUATES

Name of Skilled Journeyperson	Last 4 Digits of Social Security	Graduate of Apprenticeship Program? (Yes/No)	Name of Apprenticeship Program or Meets § 2601, Subdivision (d)(3) Exception	Graduation Documentation on file? (Yes/No)

Name of Skilled Journeyperson	Last 4 Digits of Social Security	Graduate of Apprenticeship Program? (Yes/No)	Name of Apprenticeship Program or Meets § 2601, Subdivision (d)(3) Exception	Graduation Documentation on File? (Yes/No)

\*\* See attached plan to achieve substantial compliance per PCC § 2602 if Subcontractor falls short of required percentage of participation.



Exhibit C

EXHIBIT C:

[Insert Month] HOURS WORKED OF APPRENTICESHIP GRADUATES

Name of Skilled Journeyperson	Last 4 Digits of Social Security	Graduate of Apprenticeship Program? (Yes/No)	Name of Apprenticeship Program or Meets § 2601, Subdivision (d)(3) Exception	Graduation Documentation on file? (Yes/No)	Total Hours Worked

Name of Skilled Journeyperson	Last 4 Digits of Social Security	Graduate of Apprenticeship Program? (Yes/No)	Name of Apprenticeship Program or Meets § 2601, Subdivision (d)(3) Exception	Graduation Documentation on File? (Yes/No)	Total Hours Worked

\*\* See attached plan to achieve substantial compliance per PCC § 2602 if Subcontractor falls short of required percentage of participation.

# Documents to Prove Graduation

- ⬢ Diploma or certificate from the Apprenticeship Program
- ⬢ DOL Certificate (for out-of-state program)
- ⬢ Affidavit or declaration from the graduate or from a Program representative
- ⬢ DIR Apprenticeship Status Website  
[www.dir.ca.gov/das/appcertpw/AppCertSearch.asp](http://www.dir.ca.gov/das/appcertpw/AppCertSearch.asp)

*\* A Journeyman Card is not sufficient!*

## LEGAL DISCLAIMER

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