



San Francisco Bay Area Rapid Transit

**Office of the Inspector General
Fiscal Year 2024 Annual Report
to the California State Legislature**

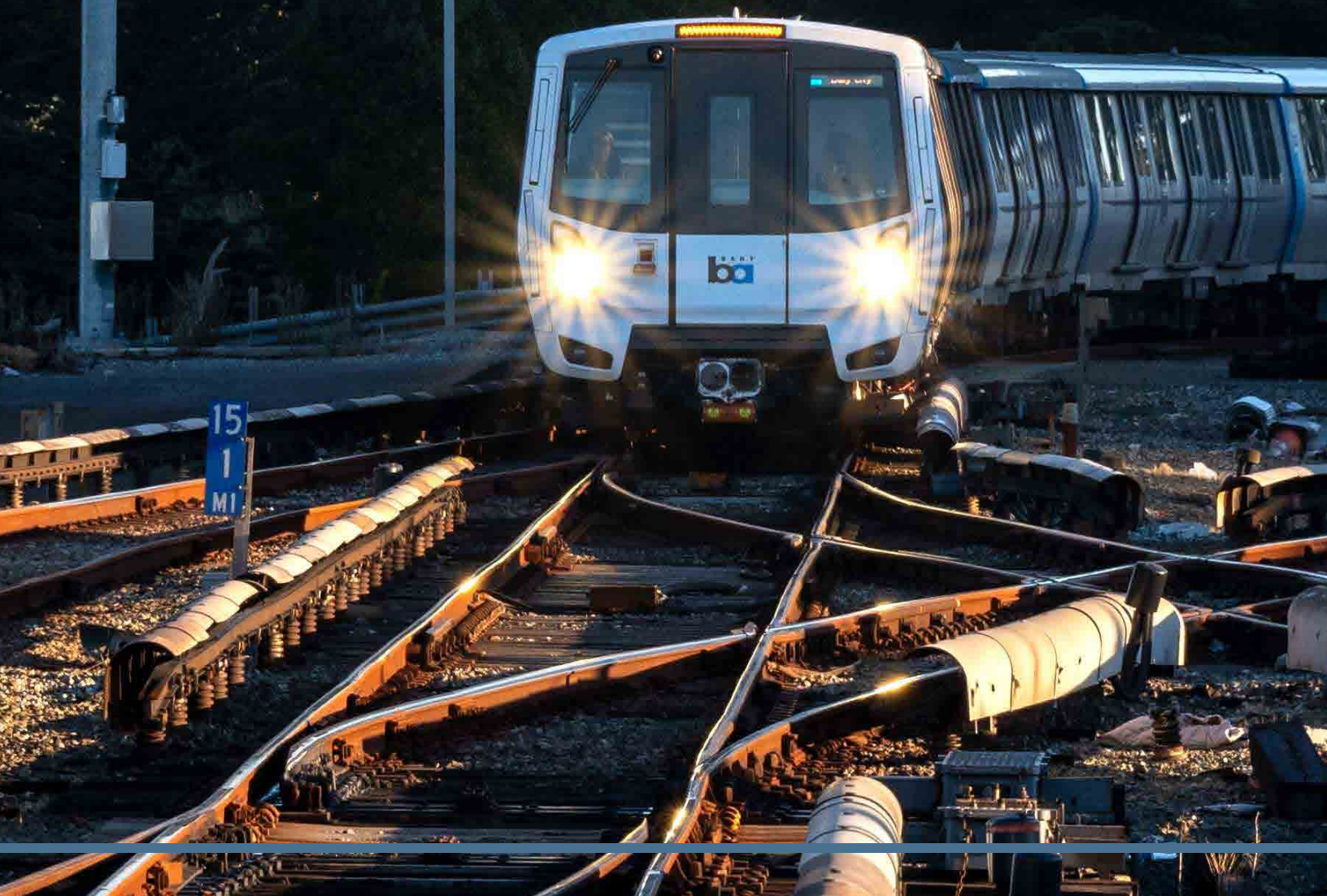


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MESSAGE FROM THE INSPECTOR GENERAL



I am still in awe of the opportunity to be your Inspector General. It has been 14 months, and I continue to feel immense gratitude in your trust in me to fulfill my duty to hold BART accountable to the public in delivering safe, clean, and reliable service, and being transparent in their use of public funds. I take great pride in serving the public's interest.

I am quite astonished with how much the OIG accomplished this year and how far along we came with our strategic goals. I proposed a draft OIG charter that strikes a balance between the legal rights of represented employees and the OIG's legal obligations. We successfully recovered nearly \$97,000 in theft, completed thirteen investigations and one audit, and kicked off four performance audits. We also launched our new website to make it easier to find information and learn about the OIG, added new workstations to accommodate our growing team, and best of all, hired three amazing individuals who brought a wealth of talent, experience, and knowledge to the OIG and who perfectly complement the existing team members. We are a small but mighty team of five.

One of our biggest accomplishments was completing a highly complex investigation into an allegation of fraud. With the services of Certified Fraud Examiners, we determined that three contractors knew or should have known that they submitted \$1.7M in improper invoices to the District. The investigation gave us a deep appreciation for the California False Claims Act (CFCA) and what a powerful tool it is for recovering money from those who fail in their fiduciary and contractual obligations to the District.

I look forward to continuing our good work and delivering on my commitment to weed out fraud, waste, and abuse and to complete deep-dive performance audits that will aid BART in meeting its goals and objectives.

With gratitude,

WHAT WE DO



We investigate indications of fraud, waste, or abuse regarding BART's programs, operations, and suppliers; and conduct performance audits that contribute to public accountability and transparency. We do this by providing independent and objective analysis of the efficiency and effectiveness of BART programs, operations, and activities. All our work supports those two objectives, either directly or indirectly.

VALUE ADDED



We play a critical role in providing independent oversight of BART programs, activities, and operations so that the public can feel assured that their tax dollars and ridership fees are used in the manner intended. We add leverage to BART's limited resources by investing our time into finding ways to make the District more effective, efficient, and equitable.

OIG CORE VALUES



Whistleblower Complaints

FY24 Highlights

We investigated fraud, waste, or abuse allegations made against contractors, employees, and vendors. Our major accomplishments in this area and the most significant issues we investigated during the 2024 fiscal year include:

25 Closed Investigations: We completed 25 investigations that addressed allegations of fraud, conflicts of interest, pay and hiring disparities, and policy violations.









59 New Complaints: We received and evaluated 59 new whistleblower complaints, resulting in us opening 32 investigations into allegations of fraud, waste, or abuse.

\$1.7M in False Claims: We determined that three contractors may be liable for \$8.3M in penalties and damages because they knew or should have known that \$1.7M in invoices that they submitted to BART were not properly supported or verified in accordance with contract terms. The District is actively addressing our recommendation to seek settlement or take civil action under the [California False Claims Act](#).

\$84.9k in Restitution: Our time-theft investigations led to \$84k in restitution from three employees who were at their personal residences or otherwise away from the District during much or portions of their paid duty hours. Despite this, they collected their base salary and extra earnings such as overtime. The District's General Counsel secured \$44.9k, \$22.2k, and \$17.8k in restitution from the employees. A fourth employee who we found to have also committed time theft is being prosecuted by the San Mateo District Attorney's Office. District General Counsel will seek either civil or criminal restitution depending on the outcome of the case.

\$11.9k Settlement: We determined a contractor billed BART for services that they did not render or that did not conform to the contract requirements. District General Counsel sought a \$11,900 settlement from the contractor for the false claims.

Case Statistics All Years

	complaints received	245
	under investigation	20
	investigated	96
	forwarded	54
	declined	75
	substantiated	40
	not/unsubstantiated	39
	inconclusive	17

Trends

Based on the 245 whistleblower complaints received by the OIG from fiscal years 2020 to 2024.



Fraud

We received **61 (25%)** allegations of fraud or misappropriation.

Timesheet and contracting fraud are the most common suballegations.

32	<u>investigated</u>	15	<u>substantiated</u>
9	<u>under investigation</u>	14	<u>not/unsubstantiated</u>
20	<u>forwarded/declined</u>	3	<u>inconclusive</u>



Compliance

We received **49 (20%)** allegations of noncompliance. Unfair competition and noncompliance with policies and procedures are the most common suballegations.

27	<u>investigated</u>	13	<u>substantiated</u>
4	<u>under investigation</u>	12	<u>not/unsubstantiated</u>
18	<u>forwarded/declined</u>	2	<u>inconclusive</u>



Unprofessional Conduct

We received **33 (13%)** complaints alleging unprofessional conduct.

Harassment and inappropriate behavior are the most common suballegations.

6	<u>investigated*</u>	5	<u>substantiated</u>
1	<u>under investigation</u>	1	<u>inconclusive</u>
26	<u>forwarded/declined</u>		

*We investigate unprofessional conduct only when it is not a personnel matter that falls under Human Resources' purview or an Equal Employment Opportunity matter that falls under the Office of Civil Rights' purview.



Conflict of Interest

We received **18 (7%)** complaints alleging a conflict of interest.

Financial interest in a contract is the most common suballegation.

14	<u>investigated</u>	7	<u>substantiated</u>
1	<u>under investigation</u>	5	<u>not/unsubstantiated</u>
3	<u>forwarded/declined</u>	2	<u>inconclusive</u>

Improvements

Corrective Actions

Tracking Progress: We obtained updates from BART Executive Management on their progress implementing our investigative recommendations. They implemented 16 recommendations in fiscal year 2024, including 7 of the 19 recommendations we issued during the fiscal year. Appendix II provides detail on our recommendations and Executive Management’s progress to address fraud and false claims, hold contractors accountable, improve contracting compliance, avoid conflicts of interest, and strengthen timekeeping controls.

Suspension & Debarment: This year we recommended BART adopt a suspension and debarment process to avoid doing business with non-responsible contractors, such as those we identified in our false-claims investigations. Implementing a suspension and debarment process will give BART the needed administrative tools that it currently does not have to prevent fraud, waste, and abuse by excluding contractors who may have engaged in criminal or other improper conduct, or who demonstrated serious poor performance from contracting with the District. BART agreed and management has been working with General Counsel to define a process best suited for BART. This is a significant step in protecting the public from those who fail in their obligations in the use of public funds.

Aged Recommendations: Three recommendations remain open that were issued more than two years ago. Two that are intended to prevent conflicts of interest and one to prevent and detect accounts payable fraud. BART has made some improvements in these areas to mitigate risks, which helps alleviate the concern that the recommendations remain open. However, we stressed to management that it is in BART’s best interest to finalize these recommendations by management’s current expected implementation period of September 2024.

Recommendations

all years

#	total recommendations	94
+	accepted	85
×	not accepted	9
✓	implemented	64
⚙️	in progress	21

fiscal year 2024

#	recommendations	19
+	accepted	19
✓	implemented	7
⚙️	in progress	12

Performance Audit Highlights

Major Progress

Span of Control: We issued our span of control audit in April 2024, which evaluated the number of management layers within the District and identified areas where organizational change will allow for improved communication, streamlined operations, and faster decision making. Tap International, Inc. (Tap) conducted the audit on our behalf, concluding that BART would benefit from a span-of-control analysis and made five recommendations to help achieve that. Management accepted the recommendations, and we are tracking their progress with them.

Audit Kickoffs: In alignment with our [FY24-26 Audit Plan](#), we kicked off four audits during the fiscal year, all geared to find ways to help the District control or avoid costs. Our overtime, construction contract change order, and Link21 audits got off to a late start, as it took us longer to navigate the process for obtaining consultant services than we anticipated. By the end of the fiscal year, however, the consultants were making some headway on those audits, and we anticipate sharing those results by the end of this calendar year. The OIG team started a workers' compensation audit after we received multiple whistleblower tips alleging workers' compensation fraud. Due to our robust scope for that audit, we expect to share the result early next calendar year.

Audits Underway



overtime use



Link21 spending



workers' compensation



construction contract change orders

Upcoming Audits



asset management



employee compensation & reporting

Performance audits assist in improving program performance and operations, reducing costs, facilitating decision making, initiating corrective action, and being accountable and transparent to the public and those charged with governance.

Implementation Progress

Huge Accomplishment

BART Act Amended: We are pleased to share that the District successfully amended the BART Act to allow for the creation of a Chief Financial Officer (CFO) structure. Our [audit](#) of BART's financial organization resulted in a recommendation to adopt a CFO structure. To make that change, the [BART Act](#) had to be amended to remove the requirement for the BART controller and treasurer to be Board Appointed Officials. BART sponsored [Assembly Bill 2325](#), which Governor Gavin Newsom approved on July 15, 2024. According to BART Executive Leadership, the District is actively recruiting for a CFO.

Sjoberg Evashenk Consulting, Inc. conducted the audit for us and determined that a CFO structure will help improve financial accountability and transparency by unifying financial-related functions to provide the flexibility, agility, and innovation required of BART to navigate its challenges ahead. The CFO role is intended to move BART beyond basic accounting, finance, control, reporting, and compliance tasks to roles that create value by taking a strategic approach to improving BART's program and operational performance.

Recommendations

#	total recommendations	7
+	accepted	7
✓	implemented	2
⚙️	in progress	5






OIG Costs

Transparent Spending

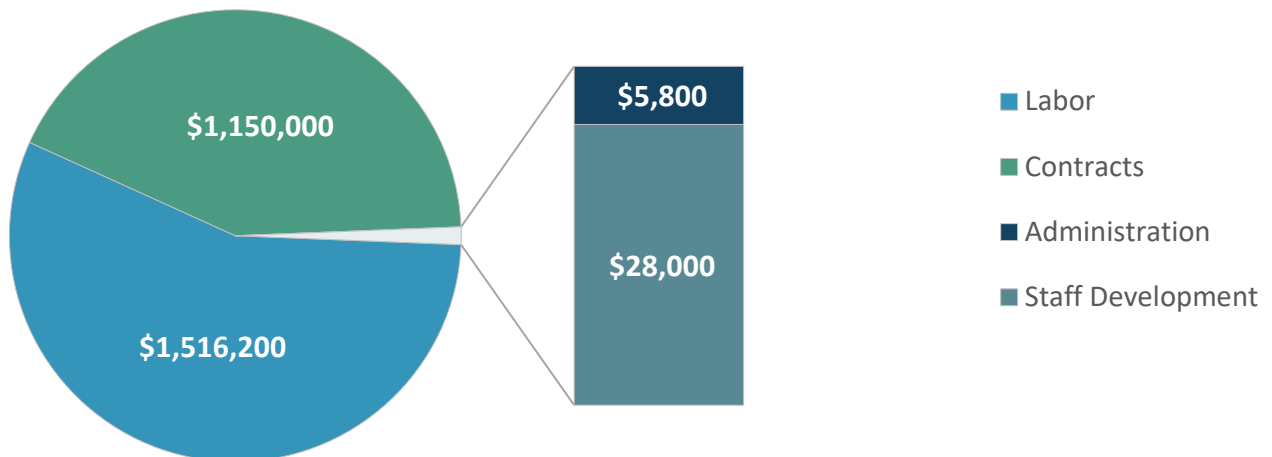
OIG Use of Public Funds: It is vital that the public is kept informed of how we use their funding. As of June 30, 2024, we expended approximately \$1.7M of our \$2.7M budget. Our two largest costs were labor at \$1.1M and professional services at \$507k. We used just over \$50k to renovate our office to accommodate our growing team and to welcome those who come to us for help, as well as to support staff development through continuing education and memberships with professional organizations that provide audit, investigation, and advocacy resources exclusive to members.

Next Years Numbers: Our fiscal year 2025 budget is much the same as our fiscal year 2024 budget. We expect to spend approximately \$1.5M on labor and \$1.2M on nonlabor. The majority – \$1.15M – of our nonlabor budget is planned for professional service contracts to help us accomplish our audit and fraud examination goals.

FY24 Expenditures

	employee pay & benefits	\$1,101,031
	professional service contracts	\$507,069
	new workstations	\$21,245
	continuing education	\$16,344
	office administration	\$10,217
	memberships	\$2,780

OIG Budget Goals Fiscal Year 2025



Office Activities

Objectives Achieved

strategies & efforts



Issued our [FY24-26 Audit Plan](#) and [FY24-28 Strategic Plan](#) in September 2023, laying the groundwork for what is to come over the next few years.



Hired three talented, self-motivated, and skilled employees whose wealth of experience and knowledge perfectly complements the OIG team.



Launched our new website in February 2024. The new design embodies what we envisioned with a more modern look and feel to engage BART stakeholders.



Installed new workspaces in our office to accommodate our growing team and provide space for our consultants when they work onsite.



Distributed marketing and educational materials and increased our use of videos and social media to bolster our engagement with the public.

OIG Charter: We moved forward on completing an OIG charter that clarifies the duties and responsibilities of an effective and independent Office of Inspector General. In response to the Board of Directors' request, we met with union leaders to discuss their concerns about their members' representation rights. Our charter ensures the OIG upholds the legal rights of represented employees while also remaining compliant with the law applicable to the OIG and to our professional standards. There are five areas that remain contested by labor groups, with the most significant being their requests for the OIG to inform them of our investigatory interviews and to give them our findings without allowing their members to first choose what information they would like shared. Those actions would prevent the OIG from maintaining its independence and impair the confidentiality of investigations, thus calling into question the integrity of our investigations, which could harm BART, employees, and the public. We will be discussing the charter with the Audit Committee on August 1, 2024. Additional information is on our website: [OIG Charter Discussion](#).

Professional Standards: The [Principles and Standards for Offices of Inspectors General](#) and [Generally Accepted Government Auditing Standards](#) were updated this year. These professional standards define the independence and quality management standards we adhere to when conducting investigations and audits. They ensure BART and the public that we conduct our work with integrity, independence, objectivity, confidentiality, competence, and professionalism. To continue those assurances, we amended our procedures to align with the updated standards. We will continue to assess their effectiveness and make further amendments as necessary to ensure the highest level of quality in our work.

Successes & Changes

Achievements

certifications, training, & praise



We are thrilled to share that Deputy Inspector General Zurvohn Maloof earned a Certified Inspector General designation and Investigative Auditor Jorge Oseguera earned a certified Inspector General Investigator designation.



OIG team members attended training events to advance their knowledge in auditing, investigation, and fraud examination techniques, and to earn continuing professional education credits as required by our professional standards.



The [Association of Inspectors General \(AIG\)](#) said that our proposed charter “demonstrates a commitment to performing independent, objective, transparent and evidence-based audits and investigations,” assuring us that it achieves its purpose.



Read the AIG’s letter recommending the adoption of the OIG charter: [AIG Recommendation](#)

Looking Ahead: A priority for our office is to continually assess risks that threaten our ability to achieve our goals. In doing so, we determined that changes to our staffing structure are necessary to address the common themes in the investigations we conduct and to comply with our professional standards. Therefore, in lieu of two senior investigative auditors, we determined that we would be best served with one senior investigative auditor and either an attorney position or a construction specialist investigator.

- **Attorney:** Our professional standards require that we have access to independent counsel. Because BART has a General Counsel that represents the District and its officers, we have been exploring potential options such as contracting with outside counsel to assist with conflicts of interests between the OIG and BART, and employing a legal research specialist who aids in conducting audits and investigations.
- **Construction Specialist:** Many of our more significant investigations involve construction contracts, which often require understanding technical and scientific components of large-scale construction projects. Having a construction specialist join the OIG team would provide expansive support to navigate these difficult investigations as well as help inform audits.

We are evaluating which staffing strategy will best serve the OIG within our current budget. We anticipate that the strategy we choose will be a mix of what we discuss here and that we will begin implementing that strategy in fiscal year 2026.

Providing Independent Oversight of the District's Use of Revenue

Stop Fraud, Waste, & Abuse
Report What You See to the OIG



24/7 Fraud, Waste, & Abuse
Whistleblower Hotline



www.bart.gov/oighotline



510-464-6100

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REPORTS

You can read this and all the Office of the Inspector General's reports on our website at www.bart.gov/oig.

Appendix I: Definitions

Common Terms Used by the BART Office of the Inspector General

Abuse: Behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary, including misuse of authority or position for personal interests.

Allegation: A claim or assertion that someone has done something illegal, wrong, or inappropriate. Also referred to as a complaint.

Complaint: A claim or assertion that someone has done something illegal, wrong, or inappropriate. Also referred to as an allegation.

Declined: Allegation lacked sufficient information to investigate or was too broad for a fraud, waste, or abuse investigation.

Economical: An organization's administration of its programs, functions, or activities with honesty, integrity, and impartiality and in a manner that advances the collective interest of the public rather than private gain.

Effective: An organization's ability to achieve its intended goals and objectives.

Efficient: An organization's ability to get the most value from its available resources.

Equitable: An organization's consistency in serving members of the public, distributing public services, and implementing public policy in a manner that promotes fairness, justice, and equality.

Forwarded: Allegation outside the OIG's area of influence and oversight and sent to the correct oversight function.

Fraud: In broad terms, an act that is intended to swindle someone or an organization. It is the intentional misrepresentation of the facts for monetary or personal gain.

Inconclusive: No evidence to support that the allegation of fraud, waste, or abuse, or noncompliance did or did not occur.

Insufficient: Not enough evidence proving that it is more than probable that a fraud, waste, or abuse allegation did occur, or to support audit findings and conclusions.

Not Substantiated: Insufficient evidence to support that an allegation of fraud, waste, or abuse, or noncompliance did or did not occur.

Out of Scope: Outside of the OIG's parameters for conducting fraud, waste, or abuse, or noncompliance investigations or audits.

Performance Audit: Objective analysis, findings, and conclusions that assist with improving program performance and operations, reducing costs, facilitating decision making, initiating corrective action, and contributing to accountability.

Scope: The boundary of the audit or investigation tied directly to the objective or allegation, or area over which an oversight body has jurisdiction or influence as stated by law or policy.

Substantiated: Sufficient evidence supported that the allegation of fraud, waste, or abuse, or noncompliance did occur.

Common Terms Used by the BART Office of the Inspector General

Sufficient: Enough evidence proving that it is more than probable that a fraud, waste, or abuse allegation did occur, or the quantity of evidence to support the audit findings and conclusions related to the audit objectives.

Unsubstantiated: Sufficient evidence supported that the allegation of fraud, waste, or abuse, or noncompliance did not occur.

Waste: Using or spending resources carelessly, extravagantly, or to no purpose.

Appendix II: Recommendation Progress

BART Executive Management’s Progress on Open Recommendations

Provides information on only the status of recommendations not yet implemented as of December 31, 2023, and only the most current reported corrective actions. Refer to prior period annual and activities [reports](#) for older information. *Some recommendations have been edited for brevity.*

No Evidence of Fraud but Employees Would Benefit from Training on Their Fiduciary Responsibilities (8/13/21)

Open Recommendation Update

Status

- 2 Develop training and guidance to assist BART employees in fulfilling their fiduciary responsibility in reviewing and approving invoices.

Executive Management Response

Management has implemented the main recommendations, which was to prepare/update desk guides for Accounts Payable staff and put controls in place that prevent non-BART (contract) staff from performing financial approvals. The remaining item, online overall fraud training, has been developed but is being refined for clarity and length. As originally noted, BART already offers two online training courses that address potential fraud: ‘Purchase Requisitions and Receiving’ and ‘Creating and Approving Expense Reports’. Internal Audit plans to complete overall fraud training course material by the end on summer 2024.

In Progress
Expected
Implementation:
Summer 2024

Potential Conflict of Interest May Require Voiding a \$40 Million Construction Management Contract and Not Paying \$5.4 Million of Invoices (4/8/22)

Open Recommendations Update

Status

3 Review and update the Contractor and Employee Codes of Conduct to ensure discussions of conflicts of interest are clear and consistent for both contractors and employees.

Executive Management Response

An update of the Employee Code of Conduct and related Employee Conflict of Interest Declaration are under review.

In Progress
Expected
Implementation:
September 2024

6 Revise the Proposal Evaluation and Award Confidentiality and Conflict of Interest Certification as necessary to align it with the updated Employee Code of Conduct and expand its use to include all staff who are involved in any way in the procurement and contract administration process for a project.

Executive Management Response

The Proposal Evaluation and Award Confidentiality and Conflict of Interest Certification will be revised once the Employee Code of Conduct is updated (see Recommendation 1). Staff is reviewing the positions that need to be included in the certification.

In Progress
Expected
Implementation:
September 2024

Note: The District implemented an updated Contractor Code of Conduct and modified Exhibit 4 “Statement of Qualifications and Business References” of the District’s standard Request for Proposals language to include a conflict-of-interest attestation that directs proposers to a new District Contractor Conflict of Interest Declaration form on BART’s website should they have an actual or perceived conflict-of-interest.

Open Recommendation Update

Status

- 1 Implement written workplan selection guidelines that create more transparency and support accountability in how firms are chosen to perform work under their on-call contracts.

Executive Management Response

The Professional Service Agreements team has developed a draft rubric for assigning work to contractors based on New York City policy and coaching from Harvard (Kennedy School of Business Procurement Excellence Networks Lab). Soft roll out of draft and starting 5/9/2024. The Professional Service Agreements team has requested feedback from participants – including prime consultants and project managers and will continue to refine draft rubric and process based on the feedback. A draft version of the rubric has been provided to the OIG. The draft has been circulated amongst Office of Infrastructure Delivery management, but not thoroughly discussed.

In Progress
Expected
Implementation:
September 2024

Caution is Needed to Avoid Conflict of Interest Violations (2/3/23)

Open Recommendation Update

Status

- 4 Update the District Contractor Code of Conduct and Employee Code of Conduct to ban former employees from entering into new contracts with the District for a minimum of one year post District employment.

Executive Management Response

An updated Employee Code of Conduct and related Employee Conflict of Interest Declaration are under review.

In Progress
Expected
Implementation:
September 2024

Note: The District implemented an updated Contractor Code of Conduct and modified Exhibit 4 “Statement of Qualifications and Business References” of the District’s standard Request for Proposals language to include a conflict-of-interest attestation that directs proposers to a new District Contractor Conflict of Interest Declaration form on BART’s website should they have an actual or perceived conflict-of-interest.

Open Recommendations Update

Status

- 1 Create a standardized form that prime contractors must complete and submit to the OCR that justifies their proposed subconsultant addition by clearly identifying the special skills or resources required.

Executive Management Response

In progress, pending completion of other high-priority work.

In Progress
Expected
Implementation:
September 2024

- 2 Update the Procurement Manual to prohibit BART staff from directing, requesting, or suggesting that a prime contractor add a specific subconsultant to their contracts.

Executive Management Response

Professional Services Agreement staff continues to develop draft policies and procedures for adding subcontractors to existing project teams, including determining the best location(s) and format(s) to convey the message that BART staff is to NOT direct, request, or suggest that a prime contractor should add a specific subconsultant to their contracts, which may include the Procurement Manual. Management is considering drafting a memo to project staff in addition to language for the relevant manuals. In addition, the proposed updated Employee Code of Conduct will contain similar language.

In Progress
Expected
Implementation:
October 2024

BART Employee Collected Pay and Benefits for Time Not Worked (2/3/23)

Open Recommendations Update

Status

- 1 Seek restitution from the former employee for an amount to be determined by BART management.

Executive Management Response

The employee is making monthly restitution payments through a diversion program referred by the District Attorney.

Implemented
June 2024

Link21 Expenditures Missing from Public Reports (2/3/23)

Open Recommendations Update

Status

- 1 Provide regular public financial reports showing contractor, scope of work, expenditures to date, and award amount for Link21 and other large-scale program and project contracts.

Executive Management Response

The Link21 Quarterly Financial Report now includes "Total Expended to Date" amounts by contract category and is posted on bart.gov (<https://link21program.org/en/about/financial-information>).

Implemented
March 2024

\$56,000 in Project Administration Costs Were Avoidable (2/3/23)

Open Recommendation Update

Status

- 1 Ensure that the scope of services for all on-call contract workplans is in alignment with the contract scope of services and work with the requestor to identify and use a more appropriate procurement process when work outside the scope of work is being requested.

Executive Management Response

Management continues to explore available emergency/urgent procurement methods to determine how they apply to the situation that prompted the recommendation.

In Progress

Expected

Implementation:

December 2025

Open Recommendations Update	Status
<p>1 Ensure the nine employees in the protected classes are compensated in a manner reflective of their experience, education, and other applicable bona fide factors.</p> <p>Executive Management Response</p> <p>After completion of a salary analysis for the classification, salary adjustments were approved and processed effective 5/29/2024.</p>	<p>Implemented May 2024</p>
<p>3 Ensure all internal and external applicants understand that they may negotiate their starting salary and that doing so will not jeopardize their offer, but that the District is not required to accept their requests.</p> <p>Executive Management Response</p> <p>All job postings for Non-Represented and AFSCME classifications (i.e., where there is discretion in the setting of starting salaries) contain language which states that initial salary offers are negotiable between a minimum rate and a control point within the salary grade, commensurate with education and experience.</p>	<p>Implemented June 2024</p>
<p>4 Ensure managers involved with recruitment understand the District’s provision to allow applicants to negotiate starting salaries.</p> <p>Executive Management Response</p> <p>Hiring managers are provided with draft copies of job postings prior to the recruitment and are informed of the negotiable salary range associated with the position.</p>	<p>Implemented June 2024</p>
<p>5 Limit non-represented employee temporary upgrades to six months or until a recruitment is completed to fill a vacancy.</p> <p>Executive Management Response</p> <p>Temp Upgrades, which are assignments approved by Human Resources in which employees are paid for work performed in a higher classification, are administered in a manner that is consistent with CalPERS rules and regulations. Initial temp upgrade assignments cannot exceed 6 months. However, extensions to Temp Upgrade assignments, in certain situations, are allowable under CalPERS rules. Where appropriate, those extensions may be considered for approval.</p>	<p>Implemented June 2024</p>
<p>7 Complete a Districtwide pay equity audit.</p> <p>Executive Management Response</p> <p>The Office of Civil Rights (Sr. Manager of Workforce Policy & Compliance) procured the services of an outside contractor, who completed a federally mandated Office of Federal Contract Compliance Programs (OFCCP) audit of all BART employees on June 13, 2024. HR</p>	<p>In Progress</p>

Inconsistent Compensation & Hiring Practices Perpetuate Pay Disparities (6/20/23)

Open Recommendations Update

Status

staff have reviewed a copy of the summary report and met with OCR and the contractor on July 23, 2024, to discuss the findings. The report will be finalized upon HR staff's review of the report, which will be completed in September 2024.

Expected
Implementation:
September 2024

- 8 Ensure that the improvements identified in these recommendations are reflected in standard operating procedures.

Executive Management Response

Standard Operating Procedures for the Salary Analysis process were originally finalized on 2/15/2022. The latest revision to this procedure was made on 4/15/2024. This procedure reflects the recommendations herein.

Implemented
April 2024

- 9 Update the Non-Rep Handbook to be reflective of current employment terms and conditions for non-represented employees.

Executive Management Response

BART is in the process of updating its Non-Rep Handbook in its entirety that will include updated and necessary language regarding employment terms and conditions.

In Progress
Expected
Implementation:
December 2024

More Time Theft Cases – Cause for Concern (3/18/24)

Open Recommendations Update

Status

- 1 Seek civil restitution from the current employees for an amount to be determined by management.

Executive Management Response

BART has obtained settlements with two former employees, and a third former employee is making monthly restitution payments through a diversion program referred by the District Attorney.

Implemented
June 2024

- 2 Work with the General Counsel’s Office to seek \$9,003.80 in restitution from former employee. Determine if the District should seek more if admitted to theft prior to the period covered in our investigation.

Executive Management Response

A criminal case is being prosecuted by the San Mateo County DA. BART has estimated damages and if convicted the prosecutor can pursue restitution for the District.

In Progress
Implementation
To Be Determined

- 3 Coordinate with CalPERS to make the appropriate years-of-service adjustments for the former employee’s retirement calculation, pending results of prosecution.

Executive Management Response

One case is being prosecuted. Adjustment of the employee’s pension benefit is permitted only upon conviction or admitted guilt of specified crimes. The District will follow-up with CalPERS depending on the outcome of the case.

In Progress
Implementation
To Be Determined

- 4 In accordance with the appropriate Collective Bargaining Agreement, address the employee violations of District Operations Rules and Procedures.

Executive Management Response

All persons involved with the time theft cases have resigned from the District.

Implemented
March 2024

- 5 Implement procedures that require supervisors and managers to use processes that give them reasonable assurance that the time they are approving for employees is accurate.

Executive Management Response

The Maintenance department issued a Standard Operating Procedure (SOP) to “Align check-in/check-out process with the District’s expectations of accuracy, location validation, documentation and work schedule adherence.” The procedure includes beginning and end of shift check-ins and check-outs that must take place on District property, plus random crew site visits during shifts.

Implemented
February 2024

Summary of Nepotism Investigations (3/18/24)

Open Recommendations Update

Status

- 5 Formally document known familial relationships between District employees and provide the information to Human Resources and to the General Manager, Deputy General Manager, or Assistant General Manager as appropriate based on the organizational work area of the involved employees.

Executive Management Response

The current status of the familial relationship policy is still in the meet and confer stage. Management has met twice with Union representatives and passed a proposed policy and is awaiting from the Union.

In Progress
Expected
Implementation
September 2024

- 6 Establish and formally document mitigating controls that ensure familial relationships between BART employees will not result in one relative supervising the other or having control over the other's work area.

Executive Management Response

The current status of the familial relationship policy is still in the meet and confer stage. Management has met twice with Union representatives and passed a proposed policy and is awaiting from the Union.

In Progress
Expected
Implementation
September 2024

Open Recommendations Update

Status

- 1 Establish procedures to verify during the product evaluation process that a product has a current UL or ETL safety certification when contract specifications require a product to meet certain safety requirements.

Executive Management Response

Infrastructure Delivery has completed reviews of the existing evaluation process / practice for submitted proposed products.

Based on the reviews, the following enhancement actions are being taken:

- 1. Share Lessons Learned and reinforce expectations with project staff involved in product evaluations (at Quality, Project Manager (PM) and Resident Engineer (RE) forum)
- 2. Update DQMP Checklist
- 3. Update Resident Engineer’s (RE) Manual

Item 1 will be covered at the upcoming forums (July 2024: PM & RE Forums; August 2024: Quality Forum); Item 2 and Item 3 will be formally incorporated into the next revisions, currently targeted for release by the end of FY25 (June 2025).

In Progress
Expected
Implementation
June 2025

- 2 When soliciting for construction that includes installing a product that is not currently available on the open market, do two separate solicitations. The first solicitation should be to design and obtain BART’s approval of the product based on the contract specifications using a negotiated procurement method allowed under the Public Contract Code. BART should purchase the approved product directly to avoid incurring additional mark-up costs by the contractor who will install the product. The second solicitation should be for the project construction with a requirement to use the product approved by BART in the first solicitation.

Executive Management Response

While improvement opportunities are being considered, BART continues to work with the Procurement department and General Counsel’s Office to validate the appropriate contracting mechanism.

In Progress
Expected
Implementation
September 2024

Open Recommendations Update

Status

3 Provide a timeline to the BART Board of Directors for when the work will be performed and how, i.e., BART staff or contract, along with updated estimated costs that correspond to that timeline.

Executive Management Response

The work is in progress and the lights are being installed by BART personnel. The lights will be installed in tunnels throughout the system, not just on the M-Line. The work is being sequenced depending on when staff can access the tunnel areas where the lights will be installed. The OIG will be informed when all of the lights have been installed so the Audit Committee can be informed.

In Progress
Expected
Implementation
August 2025

Open Recommendations Update

Status

- 1 Develop standard operating procedures that clarify the District’s requirements for tech memos and drawings, including the meaning of prepared and checked by as discussed in this investigatory report, and that require the completion of a BART Engineering Change Order to ensure drawings are recorded to BART’s official records.

Executive Management Response

This action has been completed for all project deliverables, including Tech Memos and drawings, in the recent revision of the Design Quality Management Plan (DQMP), which is expected to be issued by July 2024. The DQMP explicitly states the definitions, requirements, and roles and responsibilities for different contributors of the deliverables, including Originator, Checker, Discipline Reviewer, Interdisciplinary Reviewer, and Stakeholder Reviewer, and the requirements of following BART Engineering Change Orders (BECO).

In Progress
Expected
Implementation
July 2024

- 2 Record the technical drawings associated with this investigation to BART’s official records.

Executive Management Response

Projects that have used the technical drawings associated with this investigation for design/construction are being checked to confirm the drawings are in the official project files.

In Progress
Expected
Implementation
September 2024

Open Recommendations Update

- 1 Obtain settlement from the contractors.
- 2 File civil action against the firms if they fail to settle in good faith.
- 3 Establish a suspension and debarment process.

Note: The OIG is tracking progress with these recommendations and can confirm that General Counsel and the General Manager are addressing them. This includes working to implement a suspension and debarment process, which Executive Management plans to discuss at a future Audit Committee meeting. The OIG will provide General Counsel's and Executive Management's responses to our recommendations with our full investigative report. The OIG will issue the full report when either settlement with all parties is reached, or litigation is complete. In making that decision, the OIG weighed the need for public transparency against the possibility of interfering with legal matters and determined that, in the interim, a limited report provided equal balance to both elements of consideration.

Open Recommendations Update

Status

- 1 Modify the organizational structure of BART to allow for the creation of a Chief Financial Officer within the span of control of the General Manager.

Executive Management Response

On June 24, 2024, BART's sponsored bill, Assembly Bill (AB) 2325 (Lee), passed out of the Assembly (68-0) on a vote to concur in Senate amendments. The bill revises BART's financial structure by removing the Controller and Treasurer as specifically designated positions subject to appointment and removal by the Board of Directors.

Implemented
July 2024

Open Recommendations Update

Status

1 To ensure the success of strategies that promote cost-effective communication and collaboration, the Human Resources Director should develop processes to ensure that the HRIS includes an up-to-date dataset of reporting relationships among BART employees, including the lower organizational layers.

Executive Management Response

Human Resources/Classification & Compensation (HR/Class & Comp) will develop a memo to be sent to all managers with instructions for how to review and update their organization charts through making requests to HRIS. Managers will be asked to pay particular attention to who each employee reports to. HR will work with OCIO and Internal Communications to publicize the memo and have it automatically sent to all managers on a quarterly basis.

In Progress
Expected
Implementation
August /
September 2024

2 The BART General Manager should set expectations that executive offices maintain up-to-date organization charts that include contractors and contracted work, making transparent where accountability and the workload for reporting and oversight activities resides.

Executive Management Response

The response to recommendation #1 should improve the accuracy of HRIS data that will drive the organizational charts. Management will continue to evaluate NEOGOV as a potential system for generating organizational charts in a timely manner. Early experiments with NEOGOV have resulted in some shortcomings regarding org. charts pertaining to vacant positions. Furthermore, HRIS does not include contractor positions so resulting org. charts from NEOGOV will not reflect contractors. Management will use a different means for noting that a department or position may oversee contractor positions.

In Progress
Expected
Implementation
August /
September 2024

3 The BART General Manager should establish guidance and/or criteria on the factors that executives should follow when assessing their organizational frameworks and making changes to spans of control to improve organizational health or performance. The guidance for making changes to span of control should include:

- Considering risk mitigation for areas of moderate to high operational, financial, service delivery, internal control, or reputational risk;
- Widening span of control ratios where a supervisor has only one or no direct reports (including at the Executive or Director level);
- Promoting equity in spans of control among employees holding the same position classification;
- Acknowledging the level of accountability for contracted work and its effect on spans of control;

In Progress
Expected
Implementation
Fall 2024

Open Recommendations Update

Status

- Considering the administrative workload of supervisors that may facilitate the need for narrower spans of control, such as timesheet review and preparation of performance evaluations.

Executive Management Response

HR/Class-Comp is developing guidelines for all managers that outline when span of control should be applied (e.g., during position reallocation) and how to use span of control effectively, including in situations where narrow spans of control may be justified (see recommendation #5).

In Progress
Expected
Implementation
Fall 2024

- 4 The BART General Manager should adopt span of control as a management tool and require its use under the following conditions:

- When considering promotions and defining career development pathways,
- To ensure alignment with executive office goals,
- When identifying opportunities for collaboration and cross-training, and
- When there are opportunities to make operational enhancements in lieu of adding positions.

Executive Management Response

HR/Class-Comp is developing guidelines for all managers that outline when span of control should be applied (e.g., during position reallocation) and how to use span of control effectively, including in situations where narrow spans of control may be justified (see recommendation #5).

In Progress
Expected
Implementation
Fall 2024

- 5 The BART General Manager should establish policies stipulating the conditions supporting span of control ratios of one supervisor to one employee.

Executive Management Response

Management takes narrow spans of controls seriously and has and will continue to review situations involving narrow spans of control. The span of control guidelines in development will specify that managers should ensure that staff are working within their job descriptions (i.e., that managers and supervisors have subordinate staff to manage and supervise). The guidelines will also outline when narrow spans of control may or may not be justified.

In Progress
Expected
Implementation
Fall 2024