



## SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT INDEPENDENT OFFICE OF THE INSPECTOR GENERAL

# LIMITED REPORT: BART CONTRACTORS MAY BE SUBJECT TO \$8.3M IN PENALTIES & DAMAGES

### INVESTIGATION RESULTS



Contractors submitted \$1.7M in invoices to BART for work that was not supported or verified in accordance with contract terms. Under the [California False Claims Act \(CFCA\)](#), the contractors may be liable for \$8.3M in penalties and damages payable to the District for presenting BART with requests for payment that they knew or should have known contained false claims or statements.

A confidential whistleblower reported that an employee working for a construction management firm was involved in a kickback scheme with a construction firm to defraud BART for false labor, hours, and equipment. After an in-depth data analysis and detailed examination of over three years of documents, Certified Fraud Examiners (CFE) opined that there is a “high potential” that the contractors “defrauded” BART. The CFE examination supports a viable civil action under the False Claims Act.

On August 2, 2023, the Office of the Inspector General (OIG) recommended to the District's General Counsel that the District bring civil action against the contractors. On October 12, 2023, two of the contractors jointly signed a tolling agreement that suspended the statute of limitations. The third contractor signed a tolling agreement on December 13, 2023, that is retroactively effective to September 2023. Both agreements expire on March 15, 2024, and may be extended. A tolling agreement is a common legal tool used to give all parties to a dispute time to negotiate settlement without being held to the statute of limitations that would otherwise apply. Seeking settlement prior to court action is a standard practice and one often preferred by courts prior to filings.

### RELEVANT LAW



The California False Claims Act (Government Code Sections 12650 – 12656) provides liability against anyone who “[k]nowingly presents or causes to be presented” false claims to a public entity. Case law defines “knowing” to include “deliberate ignorance” and “reckless disregard” of the truth. Failure to make simple inquiries that would uncover the false claims is, therefore, not a defense in a False Claims Act case.

### RECOMMENDATIONS IN BRIEF

To protect against those who fail to uphold their fiduciary duty to the public, BART should:


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

General Counsel’s and Executive Management’s responses to our recommendations will be included in a full report on this investigation. Timing of that report is dependent on the outcome of negotiations.


## TIMELINE



## SUSPENSION & DEBARMENT

 The District does not have a suspension and debarment process. Such a process would protect BART from fraud, waste, and abuse by using appropriate contracting tools to avoid doing business with contractors that fail to meet their contractual or fiduciary obligations to the District and public. Without such a process and due to competitive contracting requirements, BART is at risk of contracting with contractors that failed to perform under their contract or submitted false claims to the District.

## FULL REPORT

 To avoid damaging the outcome of potential litigation or interfering with legal matters, the OIG will issue a full report on its investigation 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, this limited report provides equal balance to both elements of consideration.

### OIG Disclosure Practices

The OIG provides the names of those involved in our investigations in only limited circumstances. This avoids violating privacy and confidentiality rights granted by law. The decision to provide names is made on a case-by-case basis and considers all elements of an investigation, including potential litigation. This practice does not prevent individuals from requesting documents under the California Public Records Act (CPRA). However, such disclosures may be restricted or limited by law.

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