

ACTIVITIES REPORT

January 2023 – March 2023

Office of the Inspector General

Fraud, Waste, and Abuse Investigations

The OIG investigates indications of fraud, waste, or abuse regarding BART’s programs, operations, and suppliers. Employees, contractors, and citizens are encouraged to report their observations.

Every individual, regardless of religion, race, immigration or documentation status, or national origin, is safe to obtain assistance from the OIG.

Audits

The OIG conducts performance audits that contribute to public accountability and transparency by providing independent and objective analysis of the efficiency and effectiveness of BART programs, operations, and activities.



Message from the Assistant Inspector General

In March 2023, we said goodbye to Inspector General Harriet Richardson. We are sorry to see her go but happy that she is now able to start her well-deserved retirement. She was instrumental in developing the BART Office of the Inspector General and we are grateful for her leadership. It is no easy task to start a new oversight function such as an OIG, yet she rose to the challenge. Her in-depth knowledge and decades of experience served to ensure that the OIG was structured to achieve excellence in conducting audits and fraud, waste, or abuse investigations. The OIG foundation is strong and set to support the office for decades to come due to Ms. Richardson’s dedication and service. Thank you, Harriet. We wish you all the best!

While the OIG may not have an Inspector General at the moment, it is continuing to move forward in providing independent oversight. Principal Investigative Auditor, Jeffrey Dubsick and I are continuing to work on a number of ongoing investigations and have taken steps to move forward with the span of control audit. We hope to complete several investigative reports over the next three months and the audit in early fiscal year 2024. In the meantime, the BART Board of Directors is moving quickly to find a new Inspector General for the office. We expect that, in short time, that person will be on board.

Claudette Bimmeret

Accomplishments & Efforts



We continued with our commitment to do the work expected of an Office of Inspector General (OIG) and to accomplish the goals we set for our office. This last quarter, we:

- Continued work on the 24 fraud, waste, or abuse allegations we were investigating as of December 31, 2022, completing eight of them. We also started work on ten new allegations.



- Met with Performance and Budget staff to discuss our funding needs and potential to increase our budget to either fund the office at the level needed to accomplish our objectives, or, at a minimum, obtain a separate network and website for our office to further secure our independence.



- Completed an evaluation of our fraud, waste, or abuse allegations case load to determine how best to employ our resources and identify the cases that require immediate attention.



- Presented to the Audit Committee on [February 14, 2023](#). We discussed our most recently completed investigations – six in all – and our last quarter’s activities report.



- In coordination with the BART Office of External Affairs, we presented to the Board of Directors on [March 9, 2023](#), and [March 23, 2023](#). We discussed our position on [Senate Bill 827](#), the bill introduced by Senator Steve Glazer that clarifies our authority to conduct audits and investigations and our right to access records.



- Issued a request for quotes for auditing services to conduct our span of control audit. The audit will provide critical information to the BART Board of Directors and Executive Leadership by identifying opportunities for cost savings or avoidance.



- Conducted follow up on our completed investigations to determine what action management has taken to address our recommendations.

- Met with Human Resources to discuss providing information about our office to new employees during employee orientation or within the first year of employment. We also discussed complementing in-person orientation with educational videos that focus on new employee needs.

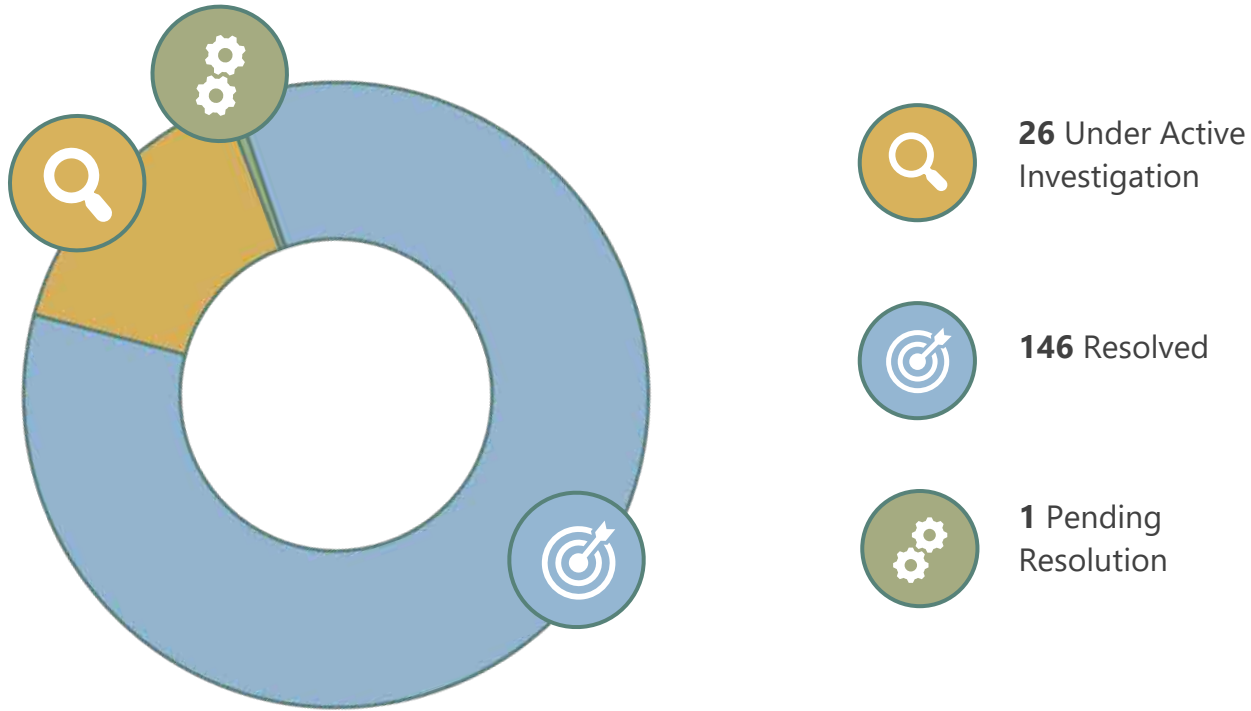


- Met with members of the Bay Area Council to discuss some of the challenges facing the District as well as our resource limitations and efforts to obtain more funding.

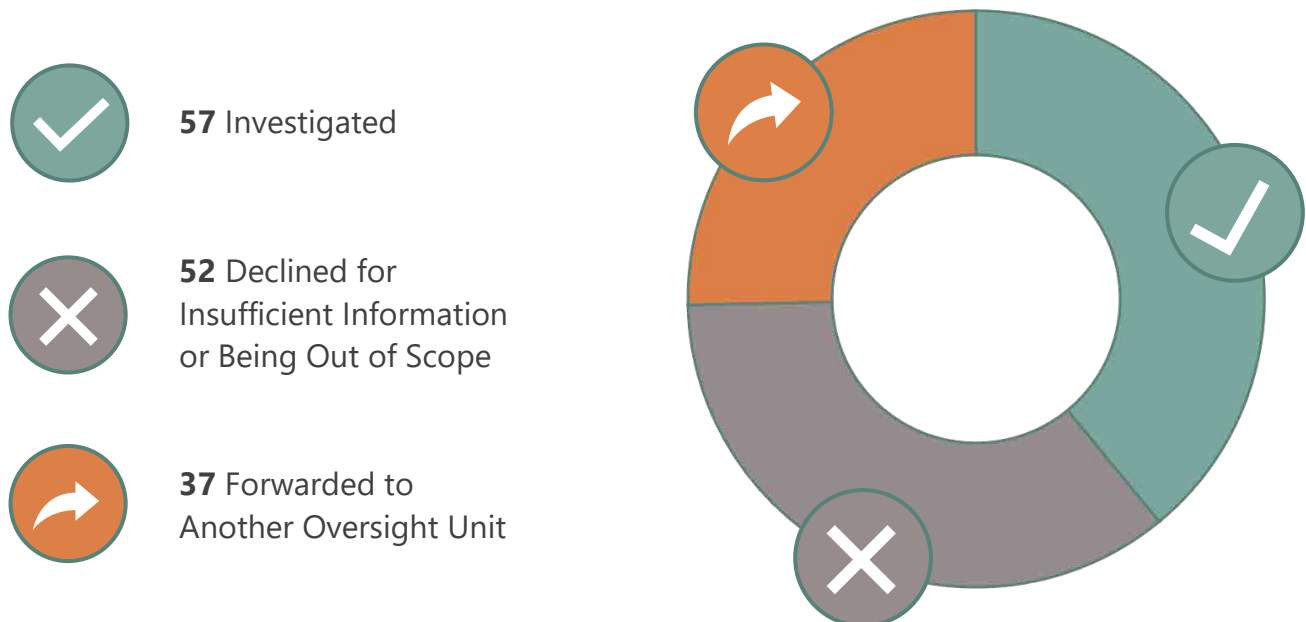
- Received and evaluated 13 new allegations of fraud, waste, or abuse:
 - Ten accepted: all under various stages of active investigation
 - One declined for lacking sufficient information
 - Two forwarded to Executive Leadership to address

Investigations at a Glance

173 Total Complaints Received

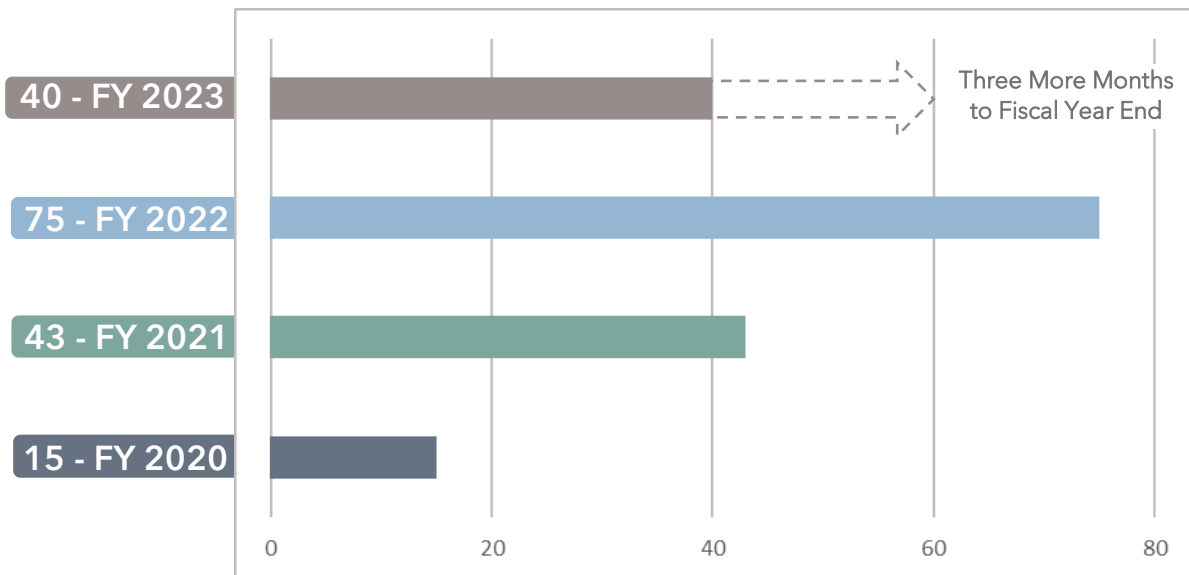


146 Total Cases Resolved



Investigations at a Glance

Total Annual Complaints Received by Fiscal Year



OIG on track to receive 50-60 whistleblower complaints by the end of the fiscal year.

Most Common Allegations

Compliance

We received **37 (21%)** complaints alleging noncompliance. Unfair competition and policy and procedural noncompliance are the most common suballegations.

We received **28 (16%)** complaints alleging unprofessional conduct. Harassment and inappropriate behavior are the most common suballegations.

Unprofessional Conduct



Fraud

We received **38 (22%)** complaints alleging fraud or misappropriation. Timesheet and contracting fraud are the most common suballegations.

We received **15 (9%)** complaints alleging a conflict of interest. Financial interest in a contract is the most common suballegation.

Conflict of Interest

Note: Conflict-of-interest allegations were previously listed under both Unprofessional Conduct and Compliance due to how our case management system categorizes allegations and suballegations. Now that we have sufficient trend data, we have broken out this information so there is no crossover as of September 30, 2022.

Major Activities

Investigations & Audits

We were actively investigating 26 allegations of fraud, waste, or abuse as of March 31, 2023. That includes 16 investigations carried over from last quarter and 10 new allegations of fraud, waste, or abuse. We completed eight investigations last quarter and have one investigation pending resolution, which means we submitted our report to BART Executive Leadership and are awaiting their response. We have been in close communication with the office responsible for implementing our recommendations as they wish to ensure that the appropriate action is taken to address our finding. We appreciate their effort to address the recommendations. We are scheduled to receive their responses mid-April and expect to release the report in May 2023.



We released six investigative reports last quarter and presented them to the Audit Committee on [February 14, 2023](#). Our [reports](#) addressed homeless outreach, project administration costs, disadvantaged business enterprise opportunities, Link21 expenditure reporting, time theft, and conflict-of-interest violations. We developed animated videos to communicate those investigation results and have seen that they are getting a fair number of views. That is a

good indication that the public is receiving the information we are reporting, which is critical for ensuring transparency as required of an independent oversight function such as the OIG.

We issued a request for quotes to obtain auditing services for our span of control audit. We have been working on that audit for several months, doing some preliminary work to understand the District's organizational layers. However, our time on investigations and other responsibilities slowed that process. Since we now have a vacancy in our office, we are using salary savings to fund a contract with an outside consultant to conduct the audit. The objective of the audit is to compare BART's span of control to best practices and determine if organizational changes can lead to cost savings or avoidance and enhance operating efficiency.

New Legislation

On February 17, 2023, Senator Steve Glazer introduced [Senate Bill 827](#). The bill is intended to bring the OIG's legislative authority into alignment with that of other transit oversight offices, such as Caltrans and the Los Angeles County Metropolitan Transportation Authority. On [March 9, 2023](#), and [March 23, 2023](#), in a joint effort with the Office of External Affairs, we presented to the BART Board of Directors and addressed their concern that the bill would make it a misdemeanor crime to obstruct the OIG, punishable by up to six months in jail, a fine of up to \$1,000, or both. We also discussed their request to include language in the bill that addresses potential conflicts between our office and other District audit and oversight functions. At the March 23rd meeting, the Board of Directors voted unanimously to support the bill if amended. While we support the bill as introduced because it is standard language for an OIG, we are open to discussing changes that would address the Board's concerns and having those conversations with the Board and Senator Glazer's office.

Major Activities



Follow-up Process

We obtained updates from BART Executive Leadership on their progress implementing our recommendations. Over the last three months, they continued to address the recommendations that were not yet implemented as of December 31, 2022. They also made some headway on our recommendations from the [investigative reports](#) we issued on February 3, 2023. [Appendix I](#) provides detail on Executive Leadership’s progress. Because five of our open recommendations are over or nearly a year old, we will be reaching out to Executive Leadership to identify what barriers may be delaying implementation outside of staffing vacancies and competing priorities. We will provide information on what we learn in our year-end annual report in July.

Table: Reports with Recommendations Open Over or Nearly One Year

| Report | Number of Open Recommendations | Days Open |
|---|--------------------------------|-----------|
| No Evidence of Fraud but Employees Would Benefit from Training on Their Fiduciary Responsibilities | 1 | 595 |
| Summary of Time Theft Investigations | 2 | 357 |
| Potential Conflict of Interest May Require Voiding a \$40 Million Construction Management Contract and Not Paying \$5.4 Million of Invoices | 2 | 357 |

See [Appendix I](#) for Details

The BART Board of Director’s also took steps to address recommendations from the [Performance Audit of the Organizational Structure of BART’s Financial Operations](#). They established an ad hoc special committee to discuss options and make recommendations for implementing a Chief Financial Officer (CFO) structure. The committee will soon be meeting and start the initial steps for implementing a CFO structure at the District.

Looking Ahead

Additional Funding Possible



Big news! BART and the Metropolitan Transportation Commission (MTC) have identified \$1.7 million in ongoing funding that could be added to our current budget of \$1 million as soon as fiscal year 2024. This includes \$600,000 from BART’s operating budget plus \$1.1 million from Regional Measure 3 funding. That is a 170 percent increase bringing our annual budget to \$2.7 million. BART and MTC will seek final approval for the funding increase from the Bay Area Toll Authority sometime in late spring, and from the BART Board of Directors in June.

If approved, this will mean big changes for the OIG. While it is too soon to take actionable steps for those changes, we are prepared to do so and will be meeting with BART officials to layout plans for doing so as soon as possible. We are quite excited about what the budget increase means for us and grateful to all those who worked to get to this point including MTC Executive Director Andrew Fremier and BART General Manager Bob Powers who co-developed the budget proposal for the OIG. We are also grateful for the Board of Directors who have advocated on our behalf to increase our annual budget. And, of course, we are immensely grateful for former Inspector General Harriet Richardson for continuously communicating our need for additional funding. It was a tremendous and appreciated effort by all.

The proposed budget increase would allow us to add four new positions to our team. We would have enough staff to create a performance audit unit and an investigations unit and have an administrative analyst to handle administrative responsibilities for the office. This would give us the ability to complete more investigations and audits from our FY 22-24 Audit Plan. It will also allow us to develop a private network to better ensure confidentiality over our files; purchase analytics software for deep-dive data analysis; and develop our own website to better organize our published reports. We will be busy in fiscal year 2024 laying out the groundwork to make those changes a reality as we also manage our current workload. It is a challenge we look forward to.

Budget Increase Roadmap to Success



**Office of the
Inspector General**



**Claudette Biemeret
Assistant Inspector General**



510-464-6141



cbiemer@bart.gov

**Providing Independent
Oversight of the District's
Use of Revenue**

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



**24/7 Fraud, Waste, & Abuse
Whistleblower Hotline**



www.bart.gov/OIGhotline



510-464-6100



Appendix I: Recommendation Follow Up

Please refer to Appendix II in the OIG FY22 Annual Report to the State Legislature for management’s updates provided in the prior fiscal year: [Report](#)

| NO EVIDENCE OF FRAUD BUT EMPLOYEES WOULD BENEFIT FROM TRAINING ON THEIR FIDUCIARY RESPONSIBILITIES (8/13/21) | | | | |
|---|---|------------------------------|---------------------|--|
| Recommendation | Original Management Response | Status | Implementation Date | Management Updates |
| <p>Develop training and guidance to assist BART employees in fulfilling their fiduciary responsibility in reviewing and approving invoices. Include examples that demonstrate common invoice errors and methods by which vendors might attempt to or could submit false information. Require personnel to complete the training before they are inserted into the PeopleSoft invoice approval workflow. Training need not be in person and can be achieved through online tutorials and videos.</p> | <p>Management concurs with the recommendation. AP will coordinate with HR, OCIO, and IA to develop a training plan that will provide guidance and assistance to BART employees on how to conduct and perform a proper review of invoices. Currently OCIO conducts ‘Purchase Requisitions and Receiving’ and ‘Creating and Approving Expense Reports’ training on a quarterly and ‘as needed/requested’ basis, both including approval processes. Due to shelter-in-place, the frequency of training has diminished. OCIO will return to scheduled training as soon as possible. All the current training materials are also posted and available in Employee Connect.</p> <p>Performance & Innovation (P&I) performed an Accounts Payable Improvement Initiative in FY21 that resulted in the development of invoice process desk guides for AP staff. Both the online and P&I training materials focus on the PeopleSoft process and not necessarily on fraud detection. IA will work with AP to conduct fraud awareness training, and training materials will be enhanced to include fraud awareness and prevention techniques to detect fraud and fraud red flags.</p> <p>To prevent instances of inappropriate segregation of duties, the OCIO will check the system configuration in PeopleSoft to determine if there is a way to prevent or</p> | <p>Partially Implemented</p> | <p>July 2023</p> | <p><u>3/24/23</u> Staff is making some progress for the two outstanding items. The identification of specific roles is being aligned with job descriptions across departments.</p> <p><u>12/29/22</u> Staff is making some progress for the two outstanding items but have focused attention to higher-priority work.</p> <p><u>9/27/22</u> 2) Fraud Awareness training materials are under review. Will likely distribute via Pathlore.</p> <p>3) Awaiting meetings with OCIO to apply roles to similar job classifications.</p> |

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|--|---|--------|---------------------|--|
| Recommendation | Original Management Response | Status | Implementation Date | Management Updates |
| | <p>not allow subcontractors and contractors from being inserted as a fiscal approver of invoices. In cases where it is necessary to obtain concurrence from the contractor or subcontractor due to the nature of the work they were engaged to perform, the system will be configured to allow them to be inserted only as 'reviewer'. IA will also add a review of invoice approval policies and procedures to its master audit plan.</p> <p>Approval by District staff knowledgeable about the charges being billed will always be required. It should be noted that BART AP staff would be required to adhere to existing procedures for fiscal approval, regardless of 3rd party reviewers.</p> | | | <p>OIG Note: Management identified three steps to address our recommendation. They have already successfully implemented step one; therefore, this update addresses only steps two and three.</p> |

| POTENTIAL CONFLICT OF INTEREST MAY REQUIRE VOIDING A \$40 MILLION CONSTRUCTION MANAGEMENT CONTRACT AND NOT PAYING \$5.4 MILLION OF INVOICES (4/8/22) | | | | |
|---|--|------------------------------|-----------------------------|---|
| Recommendations | Original Management Response | Status | Implementation Dates | Management Updates |
| <p>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, including when and to whom to report them, and that they incorporate appropriate provisions of both federal and state conflict-of-interest prohibitions.</p> | <p>Management is reviewing Contractor and Employee Codes of Conduct, Conflict of Interest Code (COIC), and procurement (RFP/bid/proposal evaluation) and contract documents to ensure that they reflect current federal and state conflict of interest rules/codes. Additionally, management will review to ensure that all BART codes and policies are internally consistent and align with each other.</p> | <p>Partially Implemented</p> | <p>July 2023</p> | <p><u>3/24/23</u> In progress. Reviewing BART policies and procedures in addition to federal and state statutes to ensure updates coverage various aspects of conflict-of-interest.</p> <p><u>12/29/22</u> In progress. Management will use the revised RFP language and contractor template as a guide to make terminology consistent among the various codes of conduct.</p> <p><u>9/27/22</u> Management is evaluating the various codes of conduct against recommendations from the FTA Triennial Review.</p> |
| <p>Revise the Proposal Evaluation and Award Confidentiality and Conflict of Interest Certification as necessary to align it with the updated Employee Code of Conduct (see Recommendation 3) and expand its use of to include all staff who are involved in any way in the procurement and contract administration process for a project. The timing of when an</p> | <p>See Recommendation #3. In addition, BART management will review, update, and enhance the existing internal Conflict of Interest Certification processes to include additional staff who are involved in procurement and contract administration. The design is currently underway to include an annual position-based certification and a project/agreement/contract-specific certification of conflict of interest. This</p> | <p>Partially Implemented</p> | <p>July 2023</p> | <p><u>3/24/23</u> Management is looking at the best technical approach to identify staff who are involved in a procurement and contract administration. The Office of the Chief Information Officer is assessing options for gathering data and making available to check against specific contracts.</p> |

| POTENTIAL CONFLICT OF INTEREST MAY REQUIRE VOIDING A \$40 MILLION CONSTRUCTION MANAGEMENT CONTRACT AND NOT PAYING \$5.4 MILLION OF INVOICES (4/8/22) | | | | |
|--|--|--------|----------------------|---|
| Recommendations | Original Management Response | Status | Implementation Dates | Management Updates |
| employee signs the form should align with when their participation in the process is to begin. | new multi-layered system of certifications would provide BART with more robust controls surrounding Conflict of Interest certifications and achieve the required Federal-level standard (per FTA Circular 4220.1F) of including the administration of contracts. | | | <p><u>12/29/22</u></p> <p>Management is working with Administration (Procurement and Human Resources), General Counsel, Office of the Chief Information Officer, and Program Management to develop a comprehensive effective process that reflects the recommendations. Processes are in development and technology solutions are being discussed. Progress has been made on aligning terminology among various codes of conduct.</p> <p><u>9/27/22</u></p> <p>Management is working with Administration (Procurement and Human Resources), General Counsel, Office of the Chief Information Officer, and Program Management to develop a comprehensive effective process that reflects the recommendations. Processes are in development and technology solutions are being discussed. Progress has been slowed by resource constraints.</p> |

| SUMMARY OF THEFT OF TIME INVESTIGATIONS (4/8/22) | | | | |
|---|---|------------------------------|-----------------------------|---|
| Recommendations | Original Management Response | Status | Implementation Dates | Management Updates |
| <p>To allow for proper oversight of timekeeping, BART should require supervisors to enter the information that SEIU employees are required to provide when conducting union business - location, area of the activity, estimated time needed, and specific nature of the union business involved - into the timekeeping comment field, when they manually clock out SEIU union representatives who leave their worksites during their work shifts to conduct union business. This is in addition to ensuring supervisors enter the appropriate union code into the timekeeping system when they make time adjustments to account for union business time.</p> | <p>We are currently working with payroll to increase the input of information on fields explaining the nature of the business. The persons inputting time will be required to fill all applicable fields for a person to be paid Union Business. That pay code will require the inputter to fill in all fields with information for the payroll to be accepted by the system, if the required fields are not filled in properly the employee in question will have an error status. Which will trigger a secondary review of the persons payroll.</p> | <p>Partially Implemented</p> | <p>June 2023</p> | <p><u>3/24/23</u> Several applicable Time Reporting Codes (TRCs) have been identified. Foreworkers will augment the TRCs, which include the date and amount of time used, with specifics regarding area of the activity and time leaving and returning to work, if applicable. The nature of the union business will be covered by the TRC description. The next step is to formulate the reporting items and train and orient staff in how to use them.</p> <p><u>12/29/22</u> We have discussed the use of our current TRCs for Union Business with the Union (SEIU). They are understanding of the need to be more specific in the use of TRCs. Next steps are to create any remaining needed TRCs and train Departments and Foreworkers on proper TRC use for Union Business.</p> <p><u>9/27/22</u> Labor Relations, OCIO and TAAD (timekeeping) have met regarding the identifying and potential expanding the Union Business Time Reporting Codes (TRCs) to ensure that supervisors and managers use the correct Union Business code to identify the purpose of the</p> |

| SUMMARY OF THEFT OF TIME INVESTIGATIONS (4/8/22) | | | | |
|--|--|------------------------------|-----------------------------|---|
| Recommendations | Original Management Response | Status | Implementation Dates | Management Updates |
| | | | | <p>Union Business time per the contract and then require a comment on the Union Business time code entry to identify further information as to the location or reason for the Union business. This will allow TAAD to accurately record the Union Business time pursuant to the contractual requirements. Labor Relations, OCIO and TAAD are in the process of developing an implementation plan for this transition.</p> |
| <p>To allow for proper oversight of timekeeping, BART should require utility workers assigned to graffiti car cleaning shifts to use the TCD machines to clock out of their shifts at the yards at which they are conducting the cleaning, regardless of which yard they are regularly assigned to work.</p> | <p>Assistant Chief Leo Pica has investigated this issue and the following direction in process will be reinforced. A worker should clock in at their headquartered location and clock out when their shift is completed, and they are released. If this cannot be accomplished due to travel or change of start location, the Foreworker in charge of graffiti remediation will manually enter the time of the crew.</p> | <p>Partially Implemented</p> | <p>June 2023</p> | <p><u>3/24/23</u></p> <p>Management and labor have agreed on a proposed plan to better address graffiti cleaning on/in cars that also addresses the time reporting issue. A few details remain to be resolved before the plan is implemented.</p> <p><u>12/29/22</u></p> <p>Labor proposed a method of assignment that the District reviewed. District is formulating a counterproposal regarding the use of staff to ensure that employees participating in graffiti cleaning will be traceable by their location and time on the job.</p> |

| SUMMARY OF THEFT OF TIME INVESTIGATIONS (4/8/22) | | | | |
|--|------------------------------|--------|----------------------|---|
| Recommendations | Original Management Response | Status | Implementation Dates | Management Updates |
| | | | | <u>9/27/22</u> Management and the labor unions are working together on a proposed zone system and rotating schedules so staff would not need to return to their bid location. Furthermore, management is reviewing policies and procedures, and planning to implement an inventory control and tracking system to better respond to train car graffiti issues. |

| WORKPLAN SELECTION PROCESS GIVES APPEARANCE THAT FAVORED FIRMS COULD RECEIVE AN UNFAIR ADVANTAGE (7/8/22) | | | | |
|---|---|------------------------------|-----------------------------|---|
| Recommendation | Original Management Response | Status | Implementation Dates | Management Updates |
| <p>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. Some options include a rotational basis that results in firms receiving work in a sequence or having all firms with on call contracts submit workplan proposals for evaluation. Regardless of the option chosen, the process should minimize the risk that favoritism is the driver or gives the appearance of being the driver behind the selection. The guidelines should include a requirement to consider overhead rates in the selection decision and to document the rationale for the selection for future reference.</p> | <p>While BART’s workplan selection process is designed to ensure maximum transparency, support accountability, and provide financial value to BART, management will review and document the process by which workplan recipients are selected. The documented process will be reviewed by the District’s Performance & Audit and Agreement Management teams, which will assess if opportunities for favoritism currently exist, identify where improvements to transparency can be made, and determine if other methods (including those identified by the OIG) are advantageous and appropriate for BART. In addition, the District will also commence posting a chart quarterly on its website summarizing the remaining capacity available on all on-call contracts.</p> | <p>Partially Implemented</p> | <p>August 2023</p> | <p><u>3/24/23</u> Management has posted a Quarterly Status of On-Call Agreements and link to related workplans on bart.gov to improve transparency. Management is reviewing the workplan selection process with Program Management staff to determine potential changes to the process to make it more efficient and transparent. https://www.bart.gov/about/business Management is also reviewing the workplan process to determine vulnerabilities that could lead to favoritism and will propose related mitigation measures if vulnerabilities are found. Corrective actions related to addressing other conflict-of-interest recommendations will help identify changes to the workplan selection process, as applicable.</p> <p><u>12/29/22</u> Process is still under review as there is a new Program Management manager.</p> <p><u>9/27/22</u> Workplan selection process is under review.</p> |

| CAUTION IS NEEDED TO AVOID CONFLICT OF INTEREST VIOLATIONS (2/7/23) | | | | |
|---|--|------------------------------|--|--|
| Recommendation | Original Management Response | Status | Implementation Dates | Management Updates |
| <p>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.</p> | <p>BART management will update its Contractor Code of Conduct and Employee Code of Conduct to reflect the following:</p> <p>Definitions:</p> <p>BART employees who are/were required, or should be required, to submit a Form 700 are subject to a 12-month post-employment contracting prohibition, except for retired annuitant employment contracts, as described below.</p> <p>Former BART employees who participated in any way in a procurement or in the issuance of a work plan under a contract are considered to have participated in the making of the respective contract or work plan.</p> <p>Former BART employees that participated in the making of a contract or work plan cannot contract with BART (directly or indirectly as a subcontractor) on the specific contract or work plan for the life of the contract or work plan.</p> <p>Former BART employees that were required to, or should have been required to, submit a Form 700 cannot contract with BART (directly or indirectly as a subcontractor) for 12 months after terminating BART employment, regardless of whether the former BART employee participated in the making of that contract, except that retirees may enter into retired annuitant employment contracts with BART, subject to CalPERS restrictions on employment after retirement.</p> | <p>Partially Implemented</p> | <p>Memo/meeting/e mail address: March 2023; RFP language and forms: April 2023</p> | <p><u>3/24/23</u></p> <p>Management is working with Procurement and the General Counsel's office to determine the best method for implementing its proposed recommendations while maintaining confidentiality of sensitive information during the Request for Proposal (RFP) process. Bidding firms will be required to identify if a conflict-of-interest (COI) exists or may exist among its team as part of submitting a proposal. Identified conflicts will be evaluated during the proposal review process. Teams (prime and subcontractors) selected for the contract will be required to each submit a more detailed District Contractor Conflict of Interest Declaration that will be evaluated during contract negotiations.</p> <p>Management issued a memo to all employees that outlines COI policies that will align with updated contractor and employee codes of conduct. The Infrastructure Delivery executive office held an introductory meeting with staff to review the Conflict of Interest memo and to discuss process and procedures for working with consultants/contractors. Smaller in-person meetings will follow.</p> |

| CAUTION IS NEEDED TO AVOID CONFLICT OF INTEREST VIOLATIONS (2/7/23) | | | | |
|---|---|--------|----------------------|--|
| Recommendation | Original Management Response | Status | Implementation Dates | Management Updates |
| | <p>Former BART employees who were not required to submit a Form 700, or not a maker of a specific contract, have no restrictions from contracting with BART (subject to other laws/ rules/ regulations).</p> <p>Prime contractors or subcontractors will be required to disclose relationships with former BART employees through the District Contractor Conflict of Interest Declaration for 5 years after the employee's termination date from BART (C. Prior Employment: Employment in the past five years (5) or sixty (60) months of a District Official by Contractor.).</p> | | | <p>Management created an email address, ConflictOfInterest@bart.gov to contact Internal Audit and the District's Ethics Officer for inquiries about COI.</p> |

| OVERLOOKED OPPORTUNITY TO HELP DEVELOP DBEs (2/7/23) | | | | |
|---|---|---------------|-----------------------------|---|
| Recommendation | Original Management Response | Status | Implementation Dates | Management Updates |
| <p>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 requiring the addition and confirms that:</p> <p>a. There was no practical solution to assist their existing DBEs in obtaining the specialty skills or resources necessary for the addition and be given the opportunity to object because they have those skills or resources.</p> <p>b. Their existing subconsultants were given written notification of a subconsultant addition with a clear explanation of the specialized skill or resource needed.</p> <p>c. The addition is not at the direction, request, or suggestion of BART or its employees.</p> | <p>Management will review, update, and enhance as necessary and practical its policies and processes for adding subconsultants to on-call contracts. Management will develop a standard justification form for requesting to add subconsultants to on-call contracts that will be routed to, reviewed by, and require approval of the Project Manager, Contract Administrator, Procurement department and OCR, plus additional departments/offices as necessary. Final approval will be required from the General Manager’s office.</p> <p>A request for additional subconsultants will be initiated by the prime contractor. The request will be required to justify the needed “specialized skills” and resources, including clearly noting why the skills and resources are required and any licenses or certifications required to perform the work, if applicable. The prime contractor, with concurrence from BART’s Contract Administrator, will need to provide a reasonable nexus to the existing contract scope and clearly specify the change in scope or project complexity that results in the need for specialized skills and resources.</p> <p>The prime consultant will be required to certify that existing approved subconsultants do not possess the skills and resources to perform the specialized work in a timely manner so as not to delay capital project and agreement work.</p> <p>The review process will be designed to ensure that additional subconsultant work will not substitute for work that potentially could be performed by approved subconsultants, many of which are SBEs/DBEs. Prime consultants will still need to meet the DBE/SBE goals of the contract even if additional subconsultants are added.</p> | In Progress | June 2023 | <p><u>3/24/23</u></p> <p>Management is reviewing the proper location on bart.gov to place the new form for adding subconsultants and the best mechanism for routing the form. The form is being designed and an accompanying memo will be prepared upon final design of the form.</p> |

| OVERLOOKED OPPORTUNITY TO HELP DEVELOP DBEs (2/7/23) | | | | |
|---|---|---------------|-----------------------------|---|
| Recommendation | Original Management Response | Status | Implementation Dates | Management Updates |
| Update the Procurement Manual to prohibit BART staff from directing, requesting, or suggesting that a prime contractor add a specific subconsultant to their contracts. | BART’s Procurement Manual and contracting guidelines will be updated to explicitly state that BART officials shall not direct or request a prime contractor to add a specific subcontractor to an on-call contract. BART staff will be prohibited from initiating a recommendation or suggestion of a specific additional subconsultant unless a prime contractor makes such a request from BART staff in writing. Prime consultants will be encouraged to identify potential additional subconsultants possessing specialized skills from OCR’s list of certified SBEs/DBEs and will not be precluded from soliciting suggestions or advice from BART staff. | In Progress | April 2023 | <u>3/24/23</u> The Procurement Manual will be updated with language consistent with the memo that will accompany the online form. Proposed Procurement Manual language is in development. |

| BART EMPLOYEE COLLECTED PAY AND BENEFITS FOR TIME NOT WORKED (2/7/23) | | | | |
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| Recommendation | Original Management Response | Status | Implementation Dates | Management Updates |
| Seek restitution from the former employee for an amount to be determined by BART management. | <p>Management will review all options for recovering wages (e.g., base, shift differential, overtime, holiday) and related benefits (e.g., sick leave and vacation accruals) fraudulently obtained by the employee.</p> <p>Management is dismayed at this egregious instance of fraud. Management will cooperate with any ensuing criminal and civil investigations.</p> | Partially Implemented | Ongoing; Options TBD | <p><u>3/24/23</u></p> <p>Investigation of the fraudulent behavior has commenced. Options for restitution are contingent upon the results of the investigation.</p> |
| Coordinate with CalPERS to make the appropriate years-of-service adjustment for the employee’s retirement calculation. | Management will provide the information necessary for CalPERS to determine if adjustments to pension benefits, including service years, are required. Management will inform CalPERS of any subsequent actions that may affect the employee’s retirement benefits. Retirement benefit adjustments will be at the discretion of CalPERS per its policies and the District’s policies and contract with CalPERS. | Partially Implemented | Contingent on results of investigation; appropriate actions TBD | <p><u>3/24/23</u></p> <p>Management is awaiting information regarding the potential for criminal charges to determine the next steps with respect to CalPERS adjustments.</p> |
| Investigate the time adjustments the manager made on behalf of the employee to determine if any District policies and procedures were violated, and if so, discipline the manager in accordance with their respective collective bargaining agreement. | <p>Management will conduct a thorough investigation regarding the practices of the supervisor/manager who adjusted and approved timesheets to determine if the supervisor/manager was complicit in the fraud. Appropriate action will be taken per the laws, policies, and the associated Collective Bargaining Agreement depending on the outcome of the investigation.</p> <p>To help prevent a similar situation from occurring, timekeeping policies and procedures will be analyzed for proper controls no matter the outcome of the investigation, including emphasizing to supervisors/managers the importance of properly approving time and developing management reports that will identify anomalies in overtime and days worked consecutively.</p> | Partially Implemented | Investigation is ongoing; appropriate actions TBD. | <p><u>3/24/23</u></p> <p>Investigation of supervisor is on-going, multiple parties have been interviewed and results of the investigation and any related recommendation regarding potential discipline, if any, will be made in the coming weeks.</p> |

| LINK21 EXPENDITURES MISSING FROM PUBLIC REPORTS (2/7/23) | | | | |
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| Recommendation | Original Management Response | Status | Implementation Dates | Management Updates |
| 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. | Link21 will produce a quarterly financial report to be shared with the public on bart.gov (sample is provided as part of this response). The proposed report format and structure is similar to the report recommended by the OIG, with clarifying changes. Clarifications are related to the use of the terms “Expenditures” and “Payments [to date]”. What is categorized as expenditures in the OIG report recommendations are the Contract Authority amounts that have been negotiated for the scope of the work plans. The amounts listed as payments are the maximum committed amounts to be paid through approved work plans - rather than payments to date. The proposed quarterly report also includes the Funding Allocations, which represents the total Link21 monies currently available to the Program. | In Progress | Link21 report January 2023; updated report April 2023. | <u>3/24/23</u> Management has developed a Link21 quarterly financial report based on its original response. Management reported to the BART Board of Directors on February 9, 2023, that it is developing financial reports that including expenditures that will be made available. The Link21 quarterly financial report will be updated with expenditure data when it becomes available. |
| Have the Link21 financial reports based on Recommendation 1 added to the Link21 website to provide a consolidated location for BART Stakeholders to review the details of the work done along with costs to date. | The proposed quarterly financial report mentioned for Recommendation 1 will be added to BART website with other similar reports in location TBD. A link to the report will be added the Link21program.org website. | Implemented | January 2023 | <u>3/24/23</u> Management has posted the quarterly financial report, based on its original response to Recommendation 1, on bart.gov. https://link21program.org/en/about/financial-information |

| \$56,000 IN PROJECT ADMINISTRATION COSTS WERE AVOIDABLE (2/7/23) | | | | |
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| Recommendation | Original Management Response | Status | Implementation Dates | Management Updates |
| <p>Require Procurement to 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.</p> | <p>To guide the proper course of action when similar situations arise, management will develop a decision tree and specifications for choosing among a standard procurement, emergency procurement, or adding a subconsultant to an existing on-call agreement.</p> <p>Management has addressed many items related to adding subconsultants to existing on-call contracts through its response to the OIG’s investigation entitled Overlooked Opportunity to Help Develop DBEs, in which management will require a reasonable nexus to the existing on-call contract scope and proper justification for adding subconsultants.</p> | <p>In Progress</p> | <p>May 2023</p> | <p><u>3/24/23</u></p> <p>Management is reviewing state laws and BART's annual budget resolution regarding the use emergency procurements. That review will help drive the decisions regarding the use of emergency procurements.</p> |