

Use of Existing Contract Acceptable but BART Double Paid for Some Delivery Services and Incurred Avoidable Customs Storage Fees

Office of the Inspector General



Investigation Results

BART properly authorized payments to a warehouse services contractor to obtain and deliver goods from customs. However, BART paid \$1,410 in avoidable airport storage fees while arranging for the warehouse contractor to retrieve the goods from customs. Additionally, the warehouse services contractor's use of a third party to handle customs processing meant those services were not rendered following BART subcontractor requirements. BART also paid both the seller and the warehouse services contractor to deliver the goods to Antioch, resulting in a payment of \$325 for services not rendered. In 2019, a shipment of spare parts for the eBART trains arrived at San Francisco International Airport and, per the terms of the purchase, BART was to handle the customs taxes. BART was unprepared to do so resulting in the parts being held in customs for six days. BART then used an existing warehouse services contractor to arrange for customs processing services. The contractor also obtained the parts and delivered them to a BART warehouse although the purchase terms required the seller to provide those delivery services. Because BART did not routinely purchase parts directly from an international supplier, it lacked procedures that describe a process for retrieval of goods through customs, and staff responsible for receiving those goods did not have routine experience in receiving them through customs.

Recommendations

1. Update the Procurement Manual with procedures for handling international shipments to clarify who is required to handle customs and to define BART's process for receiving goods from an international supplier. Ensure necessary staff are familiar with and understand the procedures.
2. Recoup \$325 from Stadler Bussnang for services agreed to in the delivery terms but not rendered.
3. Amend the contract with Transpak to ensure it covers customs brokerage services and the potential use of a third party to handle those services.



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Providing independent oversight of the District's use of revenue.

Background and Investigation



BART's practice is to require the seller to handle all aspects of shipping and transportation of goods to a BART facility. To achieve this, BART uses FOB Destination on its purchasing forms for purchases made within the United States. BART does not generally place international orders. Any such orders would take place under a contract whereby the contractor is responsible for working out the terms of international shipping and transportation, including customs, with the supplier. BART does not take on that risk or responsibility.

In 2019, BART placed an international order directly with Stadler Bussnang (Stadler) in Zurich for spare parts for the eBART trains and agreed to the standardized international delivery term, DAP (Delivered at Place). DAP means an international seller owns the goods and all risks until final delivery and handles all aspects of shipping and transportation, excluding customs (import duties, fees, and taxes). Except for customs, DAP is similar to FOB.

When the spare train parts arrived at the San Francisco International Airport (SFO), BART was not prepared to handle the customs clearance process. Therefore, the parts were held in customs for six days at a fee of \$235 per day, for a total of \$1,410. To obtain the parts and stop incurring customs storage fees, BART used its existing warehouse services contractor, Transpak, to obtain the goods from SFO and truck the goods from the airport to a BART warehouse in Antioch. Transpak used the services of Star International Customs Broker and Freight Forwarder Inc. (Star International) to handle the customs clearance process on BART's behalf.



The Office of the Inspector General received a complaint alleging that BART's use of its existing contractor to handle and obtain goods from customs was outside the contract scope of services and, therefore, payment to the contractor for those services unauthorized.

Key Findings



BART's existing warehouse services contract with Transpak has a broad scope of work. The contract specifically says that Transpak shall perform all services requested by BART that "include, but are not limited to, ..." on-call warehouse services related to picking-up and tendering materials. Transpak had the ability to obtain goods from customs but required the use of a third party, Star International, to handle the customs clearance process. Therefore, it was acceptable for BART to use its existing contract with Transpak to retrieve the goods from customs and pay Transpak for those services. However, the use of Star International as a noncontracted third party meant their services were not rendered following BART requirements regarding the use of subcontractors.

BART personnel took action to obtain the parts from customs and cease incurring customs storage fees. In that process, however, BART paid Transpak \$245 to deliver the parts to Antioch even though BART also paid Stadler \$325 for those transportation services. While Stadler was not required to handle the customs costs, the DAP shipping terms did require Stadler to deliver the parts to Antioch. BART has not yet recovered the costs from Stadler for services it also paid Transpak to complete. However, when the OIG notified Stadler that they did not fulfill the delivery terms, they said they would refund BART the \$325 for the services not rendered.

Because BART did not routinely place direct orders with suppliers for international shipments, it lacked procedures regarding the customs clearance process. Further, staff who are responsible for receiving those goods did not have the routine experience with the customs process and international shipping terms. Since the spare parts were for the eBART trains, it is possible that direct international orders may be necessary in the future and staff will require procedural guidance for those orders.

To handle customs, organizations that receive international goods have the option of using a customs broker, which was a recommendation of one BART employee. However, BART did not routinely and consistently place orders directly with international suppliers and, therefore, did not have a contract with a customs broker. There is no legal requirement for an organization to use a customs broker.

BART OFFICE OF THE GENERAL MANAGER RESPONSE TO OIG FINDINGS & RECOMMENDATIONS

Report Title: Use of Existing Contract Acceptable but BART Double Paid for Some Delivery Services and Incurred Avoidable Customs Storage Fees

Management Response: The event that precipitated this review took place in 2019. The customs clearance and inbound processing of this shipment was handled as an exception by Procurement Staff. Procurement Staff determined at the time of the event, that the services of an “outside”, Licensed Customs Broker would be required to execute the customs clearance process. This is standard commercial practice when an organization does not have a Licensed Customs Broker on staff. Hence, Trans Pak was engaged to facilitate and perform this process. This shipment arrived in San Francisco on 13 October 2019 and was released from Customs on 22 October 2019. During this 9 day period Procurement Staff worked with Trans Pak to supply the required shipping documentation; and, obtain quotations from Trans Pak for the clearance services to be provided. Procurement Staff have reviewed the OIG Findings and Recommendations and have provided responses to each recommendation as documented below.

1	Recommendation:	Update the Procurement Manual with procedures for handling international shipments to clarify who is required to handle customs and to define BART’s process for receiving goods from an international supplier. Ensure necessary staff are familiar with and understand the procedures.
	Responsible Department:	Procurement-Purchasing Manager /Legal
	Implementation Date:	30 September 2021
	Corrective Action Plan:	Establish acceptable International Commercial Terms for both Domestic and International orders to be used by the District on Purchase Orders. Update the Procurement Manual to identify and define the use case for each identified International Commercial Term.
2	Recommendation:	Recoup \$325 from Stadler Bussnang for services agreed to in the delivery terms but not rendered.
	Responsible Department:	Procurement-Purchasing Manager
	Implementation Date:	16 July 2021
	Corrective Action Plan:	Contact Stadler Bussnang to recoup \$325 delivery charge
3	Recommendation:	Amend the contract with Trans Pak to ensure it covers customs brokerage services and the potential use of a third party to handle those services.
	Responsible Department:	Procurement-Logistics Manager/Contracts Manager
	Implementation Date:	30 July 2021
	Corrective Action Plan:	Amend the contract with Trans Pak to ensure it covers customs brokerage services and the potential use of a third party to handle those services.