

FINAL REPORT

**FISCAL YEAR 2022
TRIENNIAL REVIEW**

of

**San Francisco Bay Area Rapid Transit District
(BART)
Oakland, CA**

ID: 1957

Performed for:

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION
REGION 9**

Prepared By:

Calyptus Consulting Group, Inc.

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Table of Contents

I. Executive Summary	1
II. Review Background and Process	3
1. Background.....	3
2. Process	3
3. Metrics.....	4
III. Recipient Description	5
1. Organization	5
2. Award and Project Activity.....	7
IV. Results of the Review	10
1. Legal	10
2. Financial Management and Capacity.....	10
3. Technical Capacity – Award Management	17
4. Technical Capacity – Program Management & Subrecipient Oversight.....	20
5. Technical Capacity – Project Management.....	24
6. Transit Asset Management.....	24
7. Satisfactory Continuing Control.....	25
8. Maintenance.....	26
9. Procurement.....	26
10. Disadvantaged Business Enterprise (DBE).....	34
11. Title VI.....	34
12. Americans with Disabilities Act (ADA) – General.....	35
13. ADA – Complementary Paratransit.....	35
14. Equal Employment Opportunity.....	35
15. School Bus	35
16. Charter Bus	36
17. Drug Free Workplace Act.....	36
18. Drug and Alcohol Program	38
19. Section 5307 Program Requirements	38
20. Section 5310 Program Requirements	38
21. Section 5311 Program Requirements	39
22. Public Transportation Agency Safety Plan (PTASP).....	39
23. Cybersecurity.....	39
V. Summary of Findings.....	40

VI. Participants	43
VII. Appendices	47

I. Executive Summary

This report documents the Federal Transit Administration’s (FTA) Triennial Review of the San Francisco Bay Area Rapid Transit District (BART) of Oakland, California. The FTA wants to ensure that awards are administered in accordance with the requirements of federal public transportation law 49 U.S.C. Chapter 53. The review was performed by Calyptus Consulting Group, Inc. (Reviewer). During the virtual site visit, administrative and statutory requirements were discussed and documents were reviewed.

Due to the Coronavirus 2019 (COVID-19) Public Health Emergency, a virtual site visit was conducted for this Triennial Review. In addition, the review was expanded to address BART’s compliance with the administrative relief and flexibilities FTA granted and the requirements of the COVID-19 Relief funds received through the Coronavirus Aid, Relief, and Economic Security (CARES) Act; Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) of 2021; and American Rescue Plan (ARP) Act of 2021. BART was also requested to share if and/or how it suspended, deviated from, or significantly updated or altered its transit program due to the public health emergency.

The Triennial Review focused on BART’s compliance in 23 areas. Four (4) areas were not applicable. Deficiencies related to the COVID-19 Relief funds have been clearly identified as part of the deficiency description in the respective review area.

Deficiencies were found in the areas listed below.

Review Area	Deficiencies	
	Code	Description
Financial Management & Capacity (F)	F1-1	Lacking/missing required written financial management policies and procedures
	F4-1	ECHO documentation deficient
	F8-1	Ineligible operating expense calculation
Technical Capacity – Award Management (TC-AM)	TC-AM5-1*	Inactive award/untimely closeouts
Technical Capacity – Program Management (TC-PgM)	TC-PgM7-1*	Inadequate oversight of subrecipients
Satisfactory Continuing Control (SCC)	SCC8-3	Inadequate equipment records
Procurement (P)	P11-1	Missing FTA Clauses

Review Area	Deficiencies	
	Code	Description
Drug Free Workplace Act (DFWA)	DFWA1-1	No written DFWA policy

**Denotes a repeat finding*

Subsequent to the virtual site visit, BART provided corrective action responses to fully address the deficiencies noted in the Financial Management and Capacity and Satisfactory Continuing Control areas of this report. These deficiencies listed in the table above are closed.

II. Review Background and Process

1. Background

The United States Code, Chapter 53 of Title 49 (49 U.S.C. 5307(f)(2)) requires that “At least once every 3 years, the Secretary shall review and evaluate completely the performance of a recipient in carrying out the recipient’s program, specifically referring to compliance with statutory and administrative requirements...” This Triennial Review was performed in accordance with the FTA procedures (published in FTA Order 9010.1B, April 5, 1993).

The Triennial Review process includes a review of the recipient’s compliance in 23 areas. The basic requirements for each of these areas are summarized in Section IV.

This report presents the findings from the Triennial Review of BART. The review concentrated on procedures and practices employed since BART’s previous Triennial Review; however, coverage was extended to earlier periods as needed to assess the policies in place and the management of award funds. The specific documents reviewed and referenced in this report are available through the FTA’s regional office or the recipient’s office.

2. Process

The Triennial Review includes a pre-review assessment, a desk review and scoping meeting with the FTA regional office, and a virtual site visit. Due to the COVID-19 Public Health Emergency, a virtual site visit was conducted of each recipient. In addition, the review was expanded to address the recipient’s compliance with the administrative relief and flexibilities FTA granted and the requirements of the COVID-19 relief funds received through the CARES Act, CRRSAA of 2021, and ARP Act of 2021. Recipients were also requested to share if and/or how it suspended, deviated from, or significantly updated or altered its transit program due to the public health emergency.

The Fiscal Year (FY) 2022 process began with the regional office transmitting, a Recipient Information Request (RIR) to BART on November 23, 2021, indicating a review would be conducted. While BART prepared its response to the RIR, the regional office and review team conducted a desk review and scoping meeting on March 2, 2022. Necessary files retained by the regional office were sent to the Reviewer electronically. Following the desk review and scoping meeting, the Reviewer and the recipient corresponded and exchanged information and documentation in preparation for the virtual site visit. As a result of this review, an agenda package indicating the issues that would be discussed, records to be reviewed, and interviews to be conducted was then sent to BART on April 14, 2022. The virtual site visit occurred May 3-9, 2022.

The virtual site visit portion of the review began with an entrance conference, at which the purpose of the Triennial Review and the review process were discussed. The Reviewer conducted additional interviews and reviewed documentation to evidence BART’s compliance with FTA requirements.

Upon completion of the review, the FTA and the Reviewer provided a summary of findings to BART at an exit conference. Section VI of this report lists the individuals participating in the review.

3. Metrics

The metrics used to evaluate whether a recipient is meeting the requirements for each of the areas reviewed are:

- *Not Deficient*: An area is considered not deficient if, during the review, nothing came to light that would indicate the requirements within the area reviewed were not met.
- *Deficient*: An area is considered deficient if any of the requirements within the area reviewed were not met.
- *Not Applicable*: An area can be deemed not applicable if, after an initial assessment, the recipient does not conduct activities for which the requirements of the respective area would be applicable.

III. Recipient Description

1. Organization

The San Francisco Bay Area Rapid Transit District (BART) was created by the California State Legislature in 1957 and directly operates a heavy rail system in the San Francisco Bay Area. Voter approval in 1962 of a \$792 million general obligation bond issue in the counties of San Francisco, Alameda, and Contra Costa provided the funding and authorization to begin construction of the initial 71-mile system. The first segment of the system, serving 12 stations in the East Bay, opened in 1972. The most recent segment, an extension to Berryessa/North San Jose in Santa Clara County, opened in June 2020.

BART is governed by a nine-member publicly elected Board of Directors, each representing the voters of one of BART's electoral districts. BART's general manager, general counsel, controller/treasurer, district secretary, and independent police auditor are board-appointed officers and report directly to the Board of Directors. BART also has an independent Inspector General authorized in Bay Area Regional Measure 3, which voters approved on June 5, 2018.

The system serves the three counties that constitute the District plus portions of San Mateo and Santa Clara counties. The BART District population is 3.7 million persons. The system consists of five routes serving 50 stations over 131 route-miles of track. Four of the routes operate through the Transbay Tube under San Francisco Bay. One route, Richmond-Berryessa, serves the East Bay only.

BART's 50 stations comprise of the following types: 16 subway, 15 elevated, and 19 at-grade. Four stations in downtown San Francisco are served by the San Francisco Municipal Transportation Agency's Metro (Muni) trains. One station in Millbrae is served by Caltrain, and one station in North San Jose is served by Valley Transportation Authority (VTA) light rail. BART trains operate from 5:00 a.m. to 12:00 a.m. on weekdays, 6:00 a.m. to 12:00 a.m. on Saturdays, and 8:00 a.m. to 12:00 a.m. on Sundays and major holidays.

BART to the Oakland International Airport (OAK) is an automated guideway transit system operated by BART between its Coliseum station and the Oakland International Airport station. The system opened for revenue service in November 2014 and is integrated into BART's fare system. This 3-mile line operates with 12 FTA-funded cars with no drivers. It is operated from the OAK Maintenance Facility on Hegenberger Road in Oakland.

BART to Antioch extends the system from the Pittsburg/Bay Point station to Antioch and is accessed via a transfer platform just east of the Pittsburg/Bay Point Station. The system opened for revenue service in May 2018 and is integrated into BART's fare system. This 10-mile line operates with 8 Diesel Multiple Unit (DMU) coupled cars fueled by renewable diesel that serve two stations (Pittsburg Center and Antioch) beyond the Pittsburg/Bay Point station.

Fares, which are distance-based, range from \$2.10 to \$17.00. The region's Clipper card (the all-in-one Bay Area transit card administered by the Metropolitan Transportation Commission) offer discounts ranging from 6.25 percent to 62.5 percent. Persons 65 years and older, persons with

disabilities, and Medicare cardholders are eligible for a discount of 62.5 percent; and youth between the ages of 5 and 18 are eligible for a discount of 50 percent. BART participates in the Clipper START pilot program that provides single-ride transit fare discounts (20% on BART) for eligible low-income individuals in the San Francisco Bay Area.

BART is currently taking delivery of 775 new cars, known as the Fleet of the Future, to replace its original fleet of 669 cars. Inactive legacy cars are being decommissioned at a similar rate to that of new car deliveries. As of January 2022, BART's revenue fleet consisted of 531 legacy (known as A, B, and C) and 286 new Fleet of the Future (known as D and E) cars for a total fleet of 817 cars. By July 2022, BART estimates the revenue fleet will consist of 472 legacy and 387 new Fleet of the Future cars for a total fleet of 859 cars. All cars are FTA funded.

In 2019, BART acquired a newly renovated building to use as its new headquarters and relocated to the building in July 2021. The new 245,000 square foot, ten-story administrative offices are located at 2150 Webster Street in Oakland, California.

Cars are stored and maintained at the Richmond, Concord, Hayward, and Daly City yards. Light maintenance is performed at all yards. Heavy maintenance is performed at the Hayward facility and wayside maintenance operates out of the Oakland Shops. All facilities have an FTA interest.

In 1994, BART and the Alameda Contra-Costa Transit District (AC Transit) executed a joint exercise of powers agreement establishing the East Bay Paratransit Consortium to provide ADA complementary paratransit service in their joint service area. The consortium solicits and oversees the services of a broker that coordinates the delivery of ADA complementary paratransit service. TransDev is the consortium's operating contractor and it subcontracts with service providers. Fares are distance-based and range from \$4.00 to \$10.00. BART also has entered into agreements for paratransit services with the City and County of San Francisco, Eastern Contra Costa Transit Authority, Central Contra Costa Transit Authority, and Livermore/Amador Valley Transit District. The San Mateo County Transit District and Valley Transportation Authority provide paratransit services in their service areas that meet BART's obligation in San Mateo and Santa Clara counties.

2. Award and Project Activity

Below is a list of BART's 27 open awards at the time of the review.

Federal Award Identification Number	Award Amount	Year Executed	Award Name
CA-04-0043	\$10,853,812	2008	Various Projects in BART Service Area
CA-04-0126	\$3,951,335	2009	Bus Projects- ERC, Richmond, Ala, Oak
CA-95-X145	\$8,192,703	2011	FY 11 - Flex Funds for 24th and W D
CA-04-0212	\$5,172,500	2013	MacArthur Intermodal / Real Time Signage
CA-95-X271	\$7,188,373	2014	Richmond/24th St and Car Repair
CA-95-X301	\$12,338,331	2014	Track Extension/PM/Berkeley Improvements
CA-90-Z276	\$4,501,942	2015	FY 15 - PM and Access Improvements
CA-2016-077	\$14,326,599	2016	FY 15 - Formula and SOGR Capital Improvements
CA-2017-029	\$124,232,628	2017	FY 16 - Formula and SOGR Capital Improvements
CA-2018-013	\$32,592,556	2018	FY 2016 TIGER Grant - Gateway to Oakland Uptown (Go Uptown)
CA-2018-036	\$72,689,087	2018	Rail Cars (New and Modified), Fare Collection Modernization and Concord Wheel Truing Facility
CA-2018-084	\$73,419,341	2018	FY 17 - Formula and SOGR Capital Improvements
CA-2019-029	\$15,000,000	2019	Embarcadero Station New Platform Elevator
CA-2019-126	\$98,753,836	2019	FY 18 - Formula and SOGR Capital Improvements
CA-2020-086	\$170,584,443	2020	FY 19 - Formula and SOGR Capital Improvements
CA-2020-247	\$164,248,896	2020	FY 20 - Formula and SOGR Capital Improvements
CA-2020-222	\$3,610,000	2020	Pilot Program for Transit Oriented Development Planning
CA-2020-268	\$1,582,000	2020	Transit Oriented Development Planning

Federal Award Identification Number	Award Amount	Year Executed	Award Name
CA-2021-065	\$437,500	2021	Transit Oriented Development Planning - Jobs Attraction Strategy (2020)
CA-2021-163	\$264,939,306	2021	FY21 Formula Funds & SGR Capital Program
CA-2021-223	\$87,075,134	2021	ARP Act Transbay Corridor Core Capacity Project - Supplemental CIG Funds
CA-2020-047	\$2,618,645,147	2021	Transbay Corridor Core Capacity Project - FFGA
CA-2021-020	\$378,137,541	2021	Coronavirus Response and Relief Appropriations Act of 2021 (CRRSAA) Funds
CA-2021-068	\$6,754,237	2021	Coronavirus Response and Relief Appropriations Act of 2021 (CRRSAA) Funds - Rail Car Procurement
CA-2021-016	\$8,750,000	2021	FY 2020 Elevator Renovation Program
CA-2021-189	\$582,323,952	2021	ARP Section 5307 BART Transit Operating Assistance
CA-2022-065	\$270,789,500	2022	ARP Additional BART Operating Assistance

BART received supplemental funds for operating assistance in awards number CA-2021-020 and CA-2020-084 (award closed at the time of the review). This is BART’s first time receiving operating assistance from the FTA.

Projects Completed

In the past few years, BART completed the following noteworthy projects:

- BART to Silicon Valley Extension – Phase 1
- El Cerrito Plaza Station Modernization

Ongoing Projects

BART is currently implementing the following noteworthy projects:

- Hayward Maintenance Complex
- Next Generation Fare Gates
- Core Capacity Program
- New Rail Cars
- Station Modernization

- System Reinvestment

Future Projects

BART plans to pursue the following noteworthy projects in the next three to five years:

- Transit Oriented Developments - Please refer to BART TOD 10 Year Workplan at the following link: 00.1 [BART TOD_Workplan_FINAL_Spreads_200814 Reduced.pdf](#)
- BART to Silicon Valley Extension – Phase 2

IV. Results of the Review

1. Legal

Basic Requirement: The recipient must promptly notify the FTA of legal matters and additionally notify the U.S. Department of Transportation (US DOT) Office of Inspector General (OIG) of any instances relating to false claims under the False Claims Act or fraud. Recipients must comply with restrictions on lobbying requirements.

Finding: During this Triennial Review of BART, no deficiencies were found with the FTA requirements for Legal.

2. Financial Management and Capacity

Basic Requirement: The recipient must have financial policies and procedures; an organizational structure that defines, assigns and delegates fiduciary authority; and financial management systems in place to manage, match, and charge only allowable costs to the award. The recipient must conduct required Single Audits, as required by 2 CFR part 200, and provide financial oversight of subrecipients.

Finding: During this Triennial Review of BART, three (3) deficiencies were found with the FTA requirements for Financial Management and Capacity.

Deficiency Description #1: Lacking/missing required written financial management policies and procedures (F1-1)

The Treasury Guidelines and Accounts Payable Guidelines and Procedures do not include cash management procedures required by 2 CFR 200. An updated BART Accounts Receivables Cash Receipts policy was submitted May 9, 2022, specifying:

7.2.7 Generally, the District requests and receives funding from FTA on reimbursement basis. However, in case funds were received from FTA in advance, the District must ensure that such advance must be disbursed within three business days, in accordance with FTA Circular 5010.1E Chapter VI (2)(3)(b)(7) Cash Management.

BART submitted updated *Billing, Accounts Receivables, and Cash Receipts Applications Guidelines and Procedures* including the required disbursement of funds requirement. The BART Accounting Manager confirmed that as part of the District's training policy, this policy was provided and explained to key staff.

2 CFR Part 200.302 Financial management

(a) Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds.

(b) The financial management system of each non-Federal entity must provide for the following (see also §§200.334, 200.335, 200.336, and 200.337):

(4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes.

(6) Written procedures to implement the requirements of §200.305.

(7) Written procedures for determining the allowability of costs in accordance with Subpart E—Cost Principles of this part and the terms and conditions of the Federal award.

2 CFR Part 200.303 Internal controls

The non-Federal entity must:

(a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(b) Comply with the U.S. Constitution, Federal statutes, regulations, and the terms and conditions of the Federal awards.

(c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.

(d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

(e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

2 CFR Part 200.305 Federal Payment

(a) For states, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR part 205 and Treasury Financial Manual (TFM) 4A-2000, “Overall Disbursing Rules for All Federal Agencies”

(b) For non-Federal entities other than states, payment methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also

§200.302(b)(6). *Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved standard government wide information collection requests to request payment.*

2 CFR Part 200.403 Factors affecting allowability of costs

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.*
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.*
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.*
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.*
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.*
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306(b).*
- (g) Be adequately documented. See also §§200.300 through 200.309 of this part.*
- (h) Cost must be incurred during the approved budget period. The Federal awarding agency is authorized, at its discretion, to waive prior written approvals to carry forward unobligated balances to subsequent budget periods pursuant to §200.308(e)(3).*

FTA Circular 5010.1E Award Management Requirements Chapter VI (2) Internal Controls

(f) Standards of Internal Control and Audit Resolutions.

(1) General

- a) Recipient management policies that govern implementation of the Award must be clearly stated, understood throughout the organization, and conformed to applicable legislative and administrative requirements.*
- b) The recipient's formal organization structure must clearly define, assign, and delegate appropriate authority for all duties.*

- c) Responsibility for duties and functions must be segregated within the organization to ensure that adequate internal checks and balances exist. Recipients should pay particular attention to authorization, performance, recording, inventory control, and review functions to reduce the opportunity for unauthorized or fraudulent acts.*
- d) A system of organizational planning should exist to determine financial, property, and personnel resource needs.*
- e) Written operating procedures must exist and be simply stated, yet meet the recipient's operating, legal, and regulatory requirements. In developing its procedures, the recipient should consider such factors as feasibility, cost, risk of loss or error, and availability of suitable personnel; other important considerations are the prevention of illegal or unauthorized transactions or acts.*
- f) The recipient's information system must reliably provide needed operating and financial data for decision-making and performance review.*
- g) The recipient must provide proper supervision and performance must be subject to review of an effective internal audit program.*
- h) All personnel must be properly qualified for their assigned responsibilities, duties, and functions; education, training, experience, competence, and integrity should be considered in assigning work; all must be held fully accountable for the proper discharge of their assignments.*
- i) Expenditures must be controlled so that construction, equipment, other property, and services are acquired and received as contracted for (as to quality, quantity, price, and time of delivery); authorizations for expenditures must conform to applicable statutes, regulations, and policies.*
- j) All real property, equipment, expendables, and funds must be safeguarded to prevent misuse, misappropriation, waste, or unwarranted deterioration or destruction.*

Corrective Action(s) and Schedule: By August 17, 2022, BART must submit to the FTA Region 9 office:

- 1) The finalized and approved Accounts Receivables Cash Receipts policy that includes the required disbursement of funds requirement
- 2) Documentation that demonstrates staff has been trained on the new policies and procedures.

Following the review, BART submitted updated *Billing, Accounts Receivables, and Cash Receipts Applications Guidelines and Procedures* including the required disbursement of funds requirement and evidence of key staff training. **This deficiency is closed.**

Deficiency Description #2: ECHO documentation deficient (F4-1)

Documentation to support ECHO drawdown No. 5 for the amount of \$48,882 did not indicate the purpose of the payment under Award CA-04-012, Intermodal Terminal Phase II (Project No. CA-04-0126). Further, support documentation identified \$112, 860 of project funding as being in-kind match. However, no further information was provided to explain the in-kind match source.

Following the review, BART clarified that there is no in-kind match. This term is used in the BART financial system to indicate costs that are covered by the subrecipient separate from BART. In order to capture the local match, the BART financial system logs these as an in-kind match rather than local match.

Documentation to support ECHO drawdown No, 16 for the amount of \$26,000,000 for rail car procurement lacked information as to what BART had received for the \$26,000,000. Typically, railcar procurement contracts contain some form of payment schedule or purchase order that identifies each bid line item of the contract. With respect to this ECHO draw, providing a reference to the contractual bid line item, payment schedule, contractual clause, or some form of explanation of expenses that totaled the drawdown request would be sufficient documentation to support the ECHO draw.

Following the review, BART provided information on the payments made versus the payment schedule, as well as the copies of the backup invoices. Additionally, BART provided supporting documentation that links the charges to the various FTA projects/cost codes.

Files provided to support ECHO drawdown for the amount of \$16,426,529 included several pages of expenditures. A control sheet contained a listing of eight projects with corresponding funds available from FTA and local sources. However, the amounts assigned to each project did not match the individual project totals within the grant award. Therefore, it was difficult to determine what expenditures were being claimed against grant award projects.

Following the review, BART provided additional justification and supporting backup to track the amounts for this drawdown against the award amount.

2 CFR Part 200.302 (b)(4) Financial Management

The financial management system of each non-Federal entity must provide for the following... (4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes. See §200.303.

2 CFR Part 200.303 Internal Controls

The non-Federal entity must (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government”, issued by the Comptroller General

of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission.

2 CFR Part 200.306 Cost sharing or matching

(b) For all Federal awards, any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, must be accepted as part of the non-Federal entity’s cost sharing or matching when such contributions meet all of the following criteria:

- (1) Are verifiable from the non-Federal entity’s records;*
- (2) Are not included as contributions for any other Federal award;*
- (3) Are necessary and reasonable for accomplishment of project or program objectives;*
- (4) Are allowable under Subpart E of this part;*
- (5) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;*
- (6) Are provided for in the approved budget when required by the Federal awarding agency; and*
- (7) Conform to other provisions of this part, as applicable.*

FTA Circular 5010.1E Chapter VI (2) (f) (3) (b) (7) Cash Management

...Payment received from FTA must be disbursed within three business days...

FTA Circular 5010.1E Chapter VI (9) Payment Procedures (d) Policy for ECHO Payments (2)

Reporting large disbursements to the appropriate FTA regional office in advance of the transaction settlement date. The recipient must provide a minimum notice of two business days for a disbursement totaling \$50 million or more, and a minimum notice of five days when a disbursement of more than \$500 million is anticipated. When specific information has not been finalized, the recipient must inform the FTA Regional Office of approximate amount(s) and approximate deposit date(s). The FTA Headquarters Accounting Payable Division should be notified by the Regional Office due to the requirement that FTA must provide the Treasury 48 hour’s notification prior to drawdown of Federal assistance exceeding \$50 million.

FTA Master Agreement Section 10 (c)

Amounts Owed to the Federal Government. The Recipient agrees to return to the Federal Government any excess Federal payments it receives for disallowed costs, and the Federal Government’s proportionate part of any amounts it recovers from third parties or other sources,

including refunds due and amounts recovered from third parties or other sources, interest assessed, penalties, and administrative charges.

Corrective Action(s) and Schedule: By August 17, 2022, BART must submit to the FTA Region 9 office:

- 1) Procedures for documenting ECHO draws to address the information missing from the reviews of the ECHO drawdowns.
- 2) Documentation to demonstrate that appropriate staff have been trained on the new policies and procedures.

Following the review, BART provided supporting and backup documentation as explanation for the discrepancies and questioned costs identified through the file review. **This deficiency is closed.**

Deficiency Description #3: Ineligible operating expense calculation (F8-1)

During the site visit, a discussion was held regarding the ECHO drawdown, for the amount of \$96,060,805 for CARES Act operating expenses. BART informed the review the team that while compiling operating expenses, BART had inadvertently included ineligible costs associated with a lobbying contract. During the site visit, the reviewers stated that BART, in keeping with the documentation requirements for ECHO draws, must document the file as to the ineligible charges found and include information as to what action BART took to address the ineligible expense including reimbursement of any funds due to FTA.

After the exit conference, BART provided a spreadsheet that highlighted the ineligible costs. On June 1, 2022, BART submitted a memo of the procedure for Operating Reimbursement and Adjustments along with a memo describing how lobbying costs were included in the operating drawdown and how the system has been adjusted to prevent this from happening in the future. BART completed the March 2022 drawdown on June 8, 2022. Supporting documentation was provided for this drawdown indicating that the lobbying costs were removed to offset these ineligible expenses.

FTA Circular 9030.1E, Ch. IV, Section 4. Operating Assistance

FTA provides funding to eligible recipients for costs incurred in the operation of public transportation service. In general, operating expenses are those costs necessary to operate, maintain, and manage a public transportation system. Operating expenses usually include such costs as driver salaries, fuel, and items having a useful life of less than one year.

FTA Circular 9030.1E, Ch. III, Section 8c. Use of Program Income as Local Share

...In a grant application requesting operating assistance, the applicant must deduct farebox revenues from operating costs to arrive at the net project cost of an operating assistance project. See Appendix C, "Operating Assistance Projects," of this circular for assistance in calculating the net project cost of a grant requesting operating assistance...

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Corrective Action(s) and Schedule: By August 17, 2022, BART must finalize the subsequent operating assistance ECHO drawdown request showing the offsetting of all ineligible expenses claimed and provide a copy to the FTA Region 9 office.

BART developed operating drawdown procedures addressing ineligible costs, including lobbying. BART also completed an ECHO drawdown reflecting the offsetting of all ineligible expenses claimed. **This deficiency is closed.**

3. Technical Capacity – Award Management

Basic Requirement: The recipient must report progress of projects in awards to the Federal Transit Administration (FTA) and close awards timely.

Finding: During this Triennial Review of BART, one (1) deficiency was found with the FTA requirements for Technical Capacity – Award Management.

Deficiency Description: Inactive award/untimely closeouts (TC-AM5-1)

BART has two (2) active grants with no disbursements for the past 12 months. Both awards involve two (2) projects for the City of Oakland as a subrecipient. Progress reports for both grants documented a history of delays associated with executing agreements, NEPA requirements, staffing changes, and project scope changes:

- 1) Grant CA-04-0043-00, *Various Projects in BART Service Area (5309, Awarded 2008)*, The last disbursement was February 29, 2020.
- 2) Grant CA-04-0126-00, *Bus Projects- ERC, Richmnd, Ala, Oak (5309, Awarded 2009)*. The last disbursement was October 9, 2019.

This is a repeat finding from the 2015 and 2018 Triennial Review.

The FTA places a priority on closing out awards for which activity has ceased. The FTA identifies awards that should be potentially closed out as those that are 100 percent disbursed or those that were obligated more than three years before and have not had a disbursement within the past 12 months.

2 CFR 200.344 Closeout

The Federal awarding agency or pass-through entity will close out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. If the non-Federal entity fails to complete the requirements, the Federal awarding agency or pass-through entity will proceed to close out the Federal award with the information available. This section specifies the actions the non-Federal entity and Federal awarding agency or pass-through entity must take to complete this process at the end of the period of performance.

(a) The recipient must submit, no later than 120 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. A subrecipient must submit to the pass-through entity, no later than 90 calendar days (or an earlier date as agreed upon by the pass-through entity and subrecipient) after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity may approve extensions when requested and justified by the non-Federal entity, as applicable.

(b) Unless the Federal awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all financial obligations incurred under the Federal award no later than 120 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.

(c) The Federal awarding agency or pass-through entity must make prompt payments to the non-Federal entity for costs meeting the requirements in Subpart E of this part under the Federal award being closed out.

(d) The non-Federal entity must promptly refund any balances of unobligated cash that the Federal awarding agency or pass-through entity paid in advance or paid and that are not authorized to be retained by the non-Federal entity for use in other projects. See OMB Circular A-129 and see §200.346, for requirements regarding unreturned amounts that become delinquent debts.

(e) Consistent with the terms and conditions of the Federal award, the Federal awarding agency or pass-through entity must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The non-Federal entity must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§200.310 through 200.316 and 200.330.

(g) When a recipient or subrecipient completes all closeout requirements, the Federal awarding agency or pass-through entity must promptly complete all closeout actions for Federal awards. The Federal awarding agency must make every effort to complete closeout actions no later than one year after the end of the period of performance unless otherwise directed by authorizing statutes. Closeout actions include Federal awarding agency actions in the grants management and payment systems.

(h) If the non-Federal entity does not submit all reports in accordance with this section and the terms and conditions of the Federal Award, the Federal awarding agency must proceed to close out with the information available within one year of the period of performance end date.

(i) If the non-Federal entity does not submit all reports in accordance with this section within one year of the period of performance end date, the Federal awarding agency must report the non-Federal entity's material failure to comply with the terms and conditions of the award with the OMB-designated integrity and performance system (currently FAPIIS). Federal awarding agencies may also pursue other enforcement actions per §200.339.

FTA Circular 5010.1E, Chapter III: Administration of the Award

1. *AWARD CLOSEOUT. Closeout, in general, is the term used to signify the process by which the recipient and FTA agree that all activities approved for the Award have been completed and/or the federal assistance awarded has been expended for eligible costs. Recipients are required to close an Award 90 days after the end of the period of performance. FTA, or the recipient, may initiate the closeout process. Closeout, by either party, does not preclude FTA's ability to seek repayment or other remedies for a recipient's breach of the terms and conditions of the Grant or Cooperative Agreement.*

a. *Closeout by Recipient. The recipient is responsible to initiate closeout of the Award, within 90 days after the end of the period of performance, or after all approved activities are completed and/or the applicable federal assistance has been expended for all eligible costs. Any deviation from the approved Award must be documented in the closeout amendment...*

FTA Circular 9040.1G, Chapter V Program Management and Administrative Requirements

1. *CLOSEOUT. States should initiate project closeout with subrecipients within ninety days after all funds are expended and all work activities for the project are completed. The states should similarly initiate program of project closeout with FTA within ninety days after all work activities for the program of projects are completed. A final federal financial report (SF 424), final budget, and final program of projects must be submitted electronically via the FTA electronic award management system at the time of closeout.*

FTA expects grants awarded for a specific program of projects to be completed within a reasonable, specified time frame, generally two to three years. If small amounts of funds remain in an inactive grant, the state should request that the funds be deobligated and the project closed out. If the deobligated funds are still within their period of availability, FTA can reobligate the funds in a new grant to the state along with other currently available funds. Otherwise, the deobligated funds lapse and are reapportioned by FTA among all the states in a subsequent year.

FTA Circular 9070.1G, Chapter VI Program Management and Administrative Requirements

2. *CLOSEOUT. Recipients should initiate project closeout with subrecipients within ninety days after all funds are expended and all work activities for the project are completed. Recipients should similarly initiate POP closeout with FTA within ninety days after all work activities for the POP are completed. A final Federal Financial Report, final budget, and final*

POP must be submitted electronically via the electronic grant management system at the time of closeout.

FTA expects grants awarded for a specific POP to be completed within a reasonable, specified time frame, generally not to exceed two to three years. Although this circular provides recipients with a great deal of flexibility in developing and subsequently revising programs of projects, it is not FTA's intent that grants be continually revised or amended in ways that will excessively prolong the life of the grant, and consequently result in a large number of active Section 5310 grants. If small amounts of funds remain in an inactive grant, the recipient should request that the funds be deobligated and the project closed out. If the deobligated funds are still within their period of availability, FTA can reobligate the funds in a new grant to the recipient along with other currently available funds. Otherwise the deobligated funds lapse and are reapportioned by FTA among states and UZAs in a subsequent year.

Corrective Action(s) and Schedule: By August 17, 2022, BART must develop and submit to the FTA Region 9 office:

- 1) An award closeout plan addressing the status of delayed projects and scope changes made to the earmark-funded Bay Trail project to determine if funds need to be deobligated indefinitely or have become ineligible under the grant agreement. This should include a schedule for drawdowns for each applicable award.
- 2) Procedures (including responsibilities and tracking) for award management to ensure that it initiates closeout of the Award in accordance with FTA Circular 5010.1E, Chapter III: Administration of the Award and 2 CFR 200.344 – Closeout (a).

4. Technical Capacity – Program Management & Subrecipient Oversight

Basic Requirement: States must document and follow a public involvement process for the development of the long-range statewide transportation plan and State Transportation Improvement Program (STIP). Designated recipients of Sections 5310, 5311, and 5339 funds must develop and submit a State Management/ Program Management Plan to the FTA for approval. Recipients must enter into an agreement with each subrecipient, obtain required certifications from subrecipients, report in the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) on subawards, and ensure subrecipients comply with the terms of the award.

Finding: During this Triennial Review of BART, one (1) deficiency was found with the FTA requirements for Technical Capacity – Program Management & Subrecipient Oversight.

Deficiency Description: Inadequate oversight of subrecipients (TC-PgM7-1)

The 2018 Triennial Review identified deficiencies with BART's oversight of its subrecipients. For corrective action, BART established comprehensive risk evaluation and monitoring procedures. For the purpose of this review, BART was requested to provide examples of its oversight monitoring efforts. When asked about examples of monitoring during the site visit, staff indicated that consistent documentation was not available.

Discussions with staff noted that over the past three years, BART experienced a significant number of staff vacancies due to the early retirement program that was implemented as a cost-cutting measure. BART incurred additional vacancies as a result of COVID-19. As of the date of this report, BART continues its efforts to fill various vacant positions.

The issue of monitoring compliance with federal requirements is a continuing, critical theme throughout the Comprehensive Review. In each review area, the Comprehensive Review examines the specific mechanisms for monitoring compliance with the federal requirements.

This review identified five (5) compliance areas where inadequate oversight of subrecipients was found:

- 1) Lobbying certification not received prior to execution of subrecipient agreement
- 2) No verification that subrecipient was not excluded or disqualified
- 3) Failure to obtain OMB Standard Form LLL/quarterly updates from subrecipients
- 4) Inactive grants due to delayed subrecipient projects
- 5) Documentation and record keeping of implementing the subrecipient monitoring procedures developed in 2018

During the review, it was also determined that the City of Oakland project may have gone beyond the original scope. Subrecipient oversight procedures do not address reviewing project changes per the associated award. The City of Oakland award contained 5309 bus funds in SAFETEA-LU that were earmarked by Congress and require legislation to amend the earmark for project activities outside the scope of the project description.

A basis of BART's 2022 executed subrecipient agreement with the City of Oakland was to establish procedures for the pass-through of \$750,669 from Grants CA-04-0043-00 and CA-04-0126-00 to the City of Oakland to fund the City's defined project scope:

Project to construct a 0.5-mile multi-use path for bicyclists and pedestrians from 69th Avenue to Seminary Avenue, along San Leandro Street in Oakland, Alameda County, which is a portion of the East Bay Greenway environmentally cleared (both CEQA and NEPA) on March 22, 2018, and the second constructible segment of the BART to Bay Trail Project

A review of projects and project funding in Grants CA-04-0043-00 and CA-04-0126-00 identified the derivation of \$750,669 as follows:

Grant CA-04-0043 provides \$171,321 Earmark Code E2006 BUSP-137 and \$180,576 Earmark Code E2007-BUSP-095 for: *Oakland, CA Construct Bay Trail between Coliseum BART station and Martin Luther King, Jr. Regional Shoreline*

Grant CA-04-0126-00 provides \$547,521 Earmark Code E2009-129 for: *Oakland, CA Construct Bay Trail between Coliseum BART station and Martin Luther King, Jr. Regional Shoreline.*

2 CFR 200.332 Requirement for pass-through entities

All pass-through entities must:

(b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:

(1) The subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F of this part, and the extent to which the same or similar subaward has been audited as a major program;

(3) Whether the subrecipient has new personnel or new or substantially changed systems; and

(4) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).

(c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in §200.208.

(d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and written confirmation from the subrecipient, highlighting the status of actions planned or taken to address Single Audit findings related to the particular subaward.

(3) Issuing a management decision for applicable audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521.

(4) The pass-through entity is responsible for resolving audit findings specifically related to the subaward and not responsible for resolving crosscutting findings. If a subrecipient has a current Single Audit report posted in the Federal Audit Clearinghouse and has not otherwise been excluded from receipt of Federal funding (e.g., has been debarred or suspended), the pass-through entity may rely on the subrecipient's cognizant audit agency or cognizant oversight agency to perform audit follow-up and make management decisions related to cross-cutting findings in accordance with section §200.513(a)(3)(vii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing subrecipients with training and technical assistance on program-related matters; and

(2) Performing on-site reviews of the subrecipient's program operations;

(3) Arranging for agreed-upon-procedures engagements as described in §200.425.

(f) Verify that every subrecipient is audited as required by Subpart F of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501.

(g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

(h) Consider taking enforcement action against noncompliant subrecipients as described in §200.339 of this part and in program regulations.

FTA Circular 5010.1E, Chapter II, Section 3. Roles and Responsibilities of the Management of Awards

Recipients are responsible for the day-to-day management of their Awards that provide assistance for eligible activities or projects.

a. Recipient Role. In addition to FTA's responsibility to monitor FTA Awards and the federally assisted projects thereunder, recipients must monitor federally assisted activities to ensure compliance with applicable Federal requirements. This includes the administration and management of the Award in compliance with Federal regulations, the Grant or Cooperative Agreement, and applicable FTA circulars. A recipient is also responsible for Federal assistance that "passes through" to a subrecipient...

Corrective Action(s) and Schedule: By August 17, 2022, BART must submit to the FTA Region 9 office:

- 1) Revised procedures for evaluating subrecipient risk and a comprehensive program for monitoring subrecipients including:
 - a. Maintaining comprehensive consistent records of implementing subrecipient oversight.
 - b. Evaluating subrecipient risk associated with any project changes while awards are ongoing.
 - c. Mechanisms to ensure subrecipients perform per the requirements of the federal award in accordance with federal statutes, regulations and the terms and conditions of the federal award and per the terms and conditions concerning closeout of the subaward.
- 2) Documentation of implementation of oversight activities related to the anticipated FY 2022 subawards.
- 3) Confirmation that the scope changes associated with the anticipated FY 2022 subaward to the City of Oakland are allowable under the award agreements.

5. Technical Capacity – Project Management

Basic Requirement: The recipient must be able to implement the Federal Transit Administration (FTA)-funded projects in accordance with the award application, the FTA Master Agreement, and applicable laws and regulations using sound management practices.

Finding: During this Triennial Review of BART, no deficiencies were found with the FTA requirements for Technical Capacity – Project Management.

6. Transit Asset Management

Basic Requirement: Recipients must comply with 49 CFR part 625 to ensure public transportation providers develop and implement transit asset management (TAM) plans.

Finding: During this Triennial Review of BART, no deficiencies were found with the FTA requirements for Transit Asset Management.

7. Satisfactory Continuing Control

Basic Requirement: The recipient must ensure that Federal Transit Administration (FTA)-funded property will remain available to be used for its originally authorized purpose throughout its useful life until disposition.

Finding: During this Triennial Review of BART, one (1) deficiency was found with the FTA requirements for Satisfactory and Continuing Control.

Deficiency Description Inadequate equipment records (SCC8-3)

BART submitted a revised equipment inventory list that includes all required elements. However, the ‘Additions to Equipment’ Excel document does not include the full inventory of individual assets. Line items include the following, indicating this is not at the asset-level:

- Station Comm System
- Previously Capitalized
- Study to Replace SFO AT20GF000
- Station Based Equipment

Additionally, the equipment inventory does not include disposition data, including date of disposal, sale price, or method used to determine fair market value. A separate Asset Disposals worksheet was submitted listing Net Proceeds. This does not appear to address insurance proceeds related to stolen Train Control Network Switches.

Following the review, a complete inventory of assets was provided including all data elements. BART also certified that there were no insurance proceeds from the stolen assets.

2 CFR 200.313 Equipment

(b) General. A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.

(d) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.

Corrective Action(s) and Schedule: By August 17, 2022, BART must submit to the FTA Region 9 office updated equipment records which include all the required information for each asset. BART must also submit information related to disposal or insurance proceeds for FTA consideration as applicable.

Following the review, a complete inventory of assets was provided including all data elements. BART also certified that there were no insurance proceeds from the stolen Train Control Network Switches. **This deficiency is closed.**

8. Maintenance

Basic Requirement: Recipients must keep federally-funded vehicles, equipment, and facilities in good operating condition. Recipients must keep Americans with Disabilities Act (ADA) accessibility features on all vehicles, equipment, and facilities in good operating order.

Finding: During this Triennial Review of BART, no deficiencies were found with the FTA requirements for Maintenance.

9. Procurement

Basic Requirement: The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, and conform to applicable Federal law and the standards identified in 2 CFR Part 200. State recipients can use the state's overall policies and procedures. When applied to Federal procurements, those policies and procedures must still be compliant with all Federal requirements as applied to non-state recipients. The flexibility afforded by 2 CFR Part 200 should not be misconstrued as absolving a state from Federal requirements. For example, the FTA does not require each State DOT to have policies and procedures separate from the state education department.

Finding: During this Triennial Review of BART, one (1) deficiency was found with the FTA requirements for Procurement.

Deficiency Description: Missing FTA Clauses (P11-1)

During the virtual site visit to BART, eight (8) purchase orders and six (6) contracts were reviewed, including: one (1) sole source for transit vehicles, three (3) invitation for bids (IFB) for fire alarm system, battery systems, and trackwork, and two (2) requests for proposals (RFP) for train control modernization and professional services.

Contract #	1	2	3	4	5	6
Goods/Services Procured	Transit Vehicles	Fire Alarm Replacement System	Train Control Room Battery Systems Replacement	Design Support During Construction	Maintenance Project Phase 2	Professional Services
Date	11/15/2018	6/26/2019	5/14/2020	5/14/2020	10/22/2020	5/13/2021
Dollar Value	\$1,053,111,250	\$5,076,298	\$4,642,815	NTE \$45M	\$11,989,984	\$170,000,000
Type	Rolling Stock	Professional Services	Professional Services	Professional Services	Goods and Materials	Professional Services
Method	Sole Source	IFB	IFB	RFP	IFB	RFP
New Start or Small Start	No	No	No	No	No	No
Awarded by Contractors or Subrecipients	No	No	No	No	No	No
Change Order	No	No	No	Yes	No	No
DBE Goal	No	No	No	No	No	No
Protest	No	No	No	No	No	No
Deficiencies	P11-1	P11-1	P11-1	P11-1	P11-1	P11-1

The above listed contracts did not include the Notice to FTA and U.S. DOT Inspector General of information related to fraud, waste, abuse, or other legal matters as required by the FTA Master Agreement. BART is in process of amending procurements to include the required Notice to FTA and U.S. DOT IG as well as the Telecommunications clause.

BART submitted a revised boilerplate contract for Federal Construction Contract DBE Only Goal FED-ITB-CONST DBE-SBE V10152021 including the required Notice to FTA and U.S. DOT Inspector General. The Telecommunications clause should be included as well. The Procurement Manual revisions are underway.

An updated procurement contract template was submitted following the review with the required clauses. The Procurement Manual is currently being updated to also include these requirements. The next Request for Proposals is anticipated to be released by August 17, 2022.

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials—A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

FTA Master Agreement (28), Section 16.d.

Required Clauses in Third Party Contracts. In addition to other applicable provisions of federal law, regulations, requirements, and guidance, all third party contracts made by the Recipient under the Federal award must contain provisions covering the following, as applicable:

(1) Simplified Acquisition Threshold. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)

(2) Termination. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be effected and the basis for settlement.

(3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order No. 11246, “Equal Employment Opportunity,” 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935, 3 C.F.R. 1964–1965 Comp., p. 339), as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” (32 Fed. Reg. 14,303) and implementing regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(4) Davis-Bacon Act, as amended (40 U.S.C. §§ 3141 – 3148). When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141 – 3144, and 3146 – 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act

provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of a public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.

(5) Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 – 3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(6) Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(7) Clean Air Act (42 U.S.C. §§ 7401 – 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 – 1388), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 – 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 – 1388). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(8) Debarment and Suspension (Executive Orders 12549 and 12689). A covered transaction (see 2 C.F.R. §§ 180.220 and 1200.220) must not be entered into with any party listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (31 U.S.C. § 6101 note, 51 Fed. Reg. 6370,) and 12689 (31 U.S.C. § 6101 note, 54 Fed. Reg. 34131), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Recipient agrees to include, and require each Third Party Participant to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:

(i) Complies with federal debarment and suspension requirements; and

(ii) Reviews the SAM at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200.

(9) Restrictions on Lobbying (31 U.S.C. § 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the certification required by 49 CFR Part 20. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

(10) Solid Wastes. A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

FTA Master Agreement (28) Section 39(b).

Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

(3) Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or

civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

Corrective Actions and Schedule: By October 7, 2022, BART must submit to the FTA Region 9 office:

- 1) Revised procurement procedures that address inclusion of all FTA-required third party contract clauses through use of a clause checklist or other mechanism to include the Notice to FTA and DOT IG and the telecommunication clause.
- 2) Documentation that the required process was implemented for the next procurement.

10. Disadvantaged Business Enterprise (DBE)

Basic Requirement: Recipients must comply with 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US Department of Transportation (US DOT)-assisted contracts. Recipients also must create a level playing field on which DBEs can compete fairly for US DOT-assisted contracts.

Finding: During this Triennial Review of BART, no deficiencies were found with the US DOT requirements for DBE.

11. Title VI

Basic Requirement: The recipient must ensure that no person shall, on the grounds of race, color, or national origin, be excluded from participating in, or be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance without regard to whether specific projects or services are federally funded. The recipient must ensure that all transit services and related benefits are distributed in an equitable manner.

Finding: During this Triennial Review of BART, no deficiencies were found with the FTA requirements for Title VI.

12. Americans with Disabilities Act (ADA) – General

Basic Requirement: Titles II and III of the Americans with Disabilities Act of 1990 provide that no entity shall discriminate against an individual with a disability in connection with the provision of transportation service. The law sets forth specific requirements for vehicle and facility accessibility and the provision of service, including complementary paratransit service.

Finding: During this Triennial Review of BART, no deficiencies were found with the US DOT requirements for ADA – General.

13. ADA – Complementary Paratransit

Basic Requirement: Under 49 CFR 37.121(a), each public entity operating a fixed-route system shall provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed-route system. “Comparability” is determined by 49 CFR 37.123-37.133. Requirements for complementary paratransit do not apply to commuter bus, commuter rail, or intercity rail systems.

Finding: During this Triennial Review of BART, no deficiencies were found with the US DOT requirements for ADA – Complementary Paratransit.

14. Equal Employment Opportunity

Basic Requirement: The recipient must ensure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, age or disability be excluded from participating in, or denied the benefits of, or be subject to discrimination in employment under any project, program or activity receiving Federal financial assistance under the Federal transit laws.

Finding: During this Triennial Review of BART, no deficiencies were found with the FTA requirements for Equal Employment Opportunity.

15. School Bus

Basic Requirement: Recipients are prohibited from providing school bus service in competition with private school bus operators unless the service qualifies and is approved by the Federal Transit Administration (FTA) Administrator under an allowable exemption. Federally-funded equipment or facilities cannot be used to provide exclusive school bus service.

Finding: During this Triennial Review of BART, the FTA requirements for School Bus were found to be not applicable.

16. Charter Bus

Basic Requirement: Recipients are prohibited from using the FTA-funded equipment and facilities to provide charter service that unfairly competes with private charter operators. Recipient may operate charter only when the service meets a specified exception defined in rule.

Finding: During this Triennial Review of BART, the FTA requirements for Charter Bus were found to be not applicable.

17. Drug Free Workplace Act

Basic Requirement: Recipients are required to maintain a drug free workplace for all award-related employees; report any convictions occurring in the workplace timely; and have an ongoing drug free awareness program.

Finding: During this Triennial Review of BART, one (1) deficiency was found with the FTA requirements for Drug-Free Workplace Act.

Deficiency Description: No written DFWA policy (DFWA1-1)

BART did not provide a written policy that states:

1. The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace is prohibited
2. Employees must abide by the terms of the policy statement as a condition of employment
3. If convicted of a drug statute violation that occurred in the workplace, employees are to report it to the employer in writing no later than five calendar days after such a conviction

41 U.S.C. 8103. Drug free workplace requirements for Federal grant recipients

(a) In General.—

(1) Persons other than individuals.—A person other than an individual shall not receive a grant from a Federal agency unless the person agrees to provide a drug-free workplace by—

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of the prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i) the dangers of drug abuse in the workplace;

(ii) the grantee's policy of maintaining a drug-free workplace;

- (iii) *available drug counseling, rehabilitation, and employee assistance programs; and*
- (iv) *the penalties that may be imposed on employees for drug abuse violations;*
- (C) *making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by subparagraph (A);*
- (D) *notifying the employee in the statement required by subparagraph (A) that as a condition of employment in the grant the employee will—*
 - (i) *abide by the terms of the statement; and*
 - (ii) *notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction;*
- (E) *notifying the granting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of a conviction;*
- (F) *imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by section 8104 of this title; and*
- (G) *making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A) to (F).*

49 CFR 32.205 What must I include in my drug free workplace statement?

You must publish a statement that—

- (a) *Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;*
- (b) *Specifies the actions that you will take against employees for violating that prohibition; and*
- (c) *Lets each employee know that, as a condition of employment under any award, he or she:*
 - (1) *Will abide by the terms of the statement; and*
 - (2) *Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.*

49 CFR 32.210 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in §32.205 be given to each employee who will be engaged in the performance of any Federal award.

Corrective Action(s) and Schedule: By October 7, 2022, BART must submit to the FTA Region 9 office a written DFWA policy that has been approved and communicated to BART staff.

18. Drug and Alcohol Program

Basic Requirement: Recipients receiving Section 5307, 5309, 5311, or 5339 funds that have safety-sensitive employees must have a drug and alcohol testing program in place for such employees.

Finding: During this Triennial Review of BART, no deficiencies were found with the FTA requirements for Drug and Alcohol Program.

19. Section 5307 Program Requirements

Basic Requirement: The recipient must participate in the transportation planning process in accordance with Federal Transit Administration (FTA) requirements and the metropolitan and statewide planning regulations.

Recipients shall develop, publish, afford an opportunity for a public hearing on, and submit for approval, a program of projects (POP).

Recipients are expected to have a written, locally developed process for soliciting and considering public comment before raising a fare or carrying out a major transportation service reduction.

For fixed-route service supported with Section 5307 assistance, fares charged seniors, persons with disabilities or an individual presenting a Medicare card during off peak hours will not be more than one half the peak hour fares.

Finding: During this Triennial Review of BART, no deficiencies were found with the FTA requirements for Section 5307 Program Requirements.

20. Section 5310 Program Requirements

Basic Requirement: Recipients must expend Section 5310 funds on eligible projects that meet the specific needs of seniors and individuals with disabilities. Projects selected for funding must be included in a locally developed, coordinated public transit-human services transportation plan. Recipients must approve all subrecipient leases of Section 5310-funded vehicles. Leases of Section 5310-funded vehicles must include required terms and conditions. Either the recipient or subrecipient must hold title to the leased vehicles.

Finding: This section only applies to recipients that receive Section 5310 funds directly from the FTA; therefore, the related requirements are not applicable to the review of BART.

21. Section 5311 Program Requirements

Basic Requirement: States must expend Section 5311 funds on eligible projects to support rural public transportation services and intercity bus transportation.

Finding: This section only applies to recipients that receive Section 5311 funds directly from FTA; therefore, the related requirements are not applicable to the review of BART.

22. Public Transportation Agency Safety Plan (PTASP)

Basic Requirement: Recipients must comply with the Public Transportation Agency Safety Plan (PTASP) regulation (49 CFR Part 673) to ensure public transportation providers develop and implement an Agency Safety Plan (ASP).

Finding: During this Triennial Review of BART, no deficiencies were found with the FTA requirements for Public Transportation Agency Safety Plan Requirements.

23. Cybersecurity

Basic Requirement: Recipients that operate rail fixed guideway public transportation systems must certify compliance with the requirements for establishing a cybersecurity process under 49 U.S.C. § 5323(v), a new subsection added by the National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, § 7613 (Dec. 20, 2019).

Finding: During this Triennial Review of BART, no deficiencies were found with the FTA requirements for Cybersecurity Requirements.

V. Summary of Findings

Review Area	Finding	Deficiency Code(s)	Corrective Action(s)	Response Due Date(s)	Date Closed
1. Legal	ND				
2. Financial Management and Capacity	D	F1-1: Lacking/missing required written financial management policies and procedures	BART must submit to the FTA Region 9 office: 1) The finalized and approved Accounts Receivables Cash Receipts policy 3) Documentation that demonstrates staff has been trained on the new policies and procedures. Following the review, BART submitted updated <i>Billing, Accounts Receivables, and Cash Receipts Applications Guidelines and Procedures</i> including the required disbursement of funds requirement and evidence of key staff training. This deficiency is closed.	August 17, 2022	June 2, 2022
		F4-1: ECHO documentation deficient	BART must submit to the FTA Region 9 office: 1) Procedures for documenting ECHO draws to address the information missing from the reviews of the ECHO drawdowns. 2) Documentation to demonstrate that appropriate staff have been trained on new policies and procedures. Following the review, BART provided supporting and backup documentation as explanation for the discrepancies and questioned costs identified through the file review. This deficiency is closed.	August 17, 2022	June 14, 2022
		F8-1: Ineligible operating expense calculation	BART must finalize the subsequent operating assistance ECHO drawdown request showing the offsetting of all ineligible expenses claimed and provide a copy to the FTA Region 9 office. BART developed operating drawdown procedures addressing ineligible costs, including lobbying. BART also completed an ECHO drawdown reflecting the offsetting of all ineligible expenses claimed. This deficiency is closed.	August 17, 2022	June 16, 2022
3. Technical Capacity – Award Management	D	TC-AM5-1: Inactive award/untimely closeouts	BART must develop and submit to the FTA Region 9 office: 1) An award closeout plan addressing the status of delayed projects and scope changes made to earmark-funded Bay Trail project to determine if funds need to be deobligated indefinitely or have become ineligible under the Grant Agreement. 2) Procedures (including responsibilities and tracking) for award management to ensure that it initiates closeout of the Award in accordance with FTA Circular 5010.1E, Chapter III: Administration of the Award and 2 CFR 200.344 – Closeout (a).	August 17, 2022	

Review Area	Finding	Deficiency Code(s)	Corrective Action(s)	Response Due Date(s)	Date Closed
4. Technical Capacity – Program Management and Subrecipient Oversight	D	TC-PgM7-1: Inadequate oversight of subrecipients	BART must submit to the FTA Region 9 office: 1) Revised procedures for evaluating subrecipient risk and a comprehensive program for monitoring subrecipients including: a. Maintaining comprehensive consistent records of implementing subrecipient oversight b. Evaluating subrecipient risk associated with any project changes while awards are ongoing c. Mechanisms to ensure subrecipients perform per the requirements of the federal award in accordance with federal statutes, regulations and the terms and conditions of the federal award and per the terms and conditions concerning closeout of the subaward. 2) Documentation of implementation of oversight activities related to the anticipated FY 2022 subawards. 3) Confirmation that the scope changes associated with the anticipated FY 2022 subaward to the City of Oakland are allowable under the award agreements.	August 17, 2022	
5. Technical Capacity – Project Management	ND				
6. Transit Asset Management	ND				
7. Satisfactory Continuing Control	D	SCC8-3: Inadequate equipment records	BART must submit to the FTA Region 9 office updated equipment records which include all the required information at each asset. Following the review, a complete inventory of assets was provided including all data elements. BART also certified that there were no insurance proceeds from the stolen assets. This deficiency is closed.	August 17, 2022	June 16, 2022
8. Maintenance	ND				
9. Procurement	D	P11-1: Missing FTA Clauses	BART must submit to the FTA Region 9 office: 1) Revised procurement procedures that address inclusion of all FTA-required third party contract clauses through use of a clause checklist or other mechanism to include the notice to FTA and the telecommunication clauses. 2) Documentation that the required process was implemented for the next procurement.	October 7, 2022	
10. Disadvantaged Business Enterprise	ND				
11. Title VI	ND				

Review Area	Finding	Deficiency Code(s)	Corrective Action(s)	Response Due Date(s)	Date Closed
12. Americans with Disabilities Act (ADA) – General	ND				
13. ADA – Complementary Paratransit	ND				
14. Equal Employment Opportunity	ND				
15. School Bus	NA				
16. Charter Bus	NA				
17. Drug-Free Workplace	D	DFWA1-1: No written DFWA policy	BART must submit to the FTA Region 9 office a written DFWA policy that has been approved and communicated to BART staff.	October 7, 2022	
18. Drug and Alcohol Program	ND				
19. Section 5307 Program Requirements	ND				
20. Section 5310 Program Requirements	NA				
21. Section 5311 Program Requirements	NA				
22. Public Transportation Agency Safety Plan	ND				
23. Cybersecurity	ND				

The metrics used to evaluate whether a recipient is meeting the requirements for each of the areas reviewed are: Deficient (D)/Not Deficient (ND)/Not Applicable (NA)

VI. Participants

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VII. Appendices

No appendices are included in this report.