

ACTIVITIES REPORT

October 2022 – December 2022

Office of the Inspector General

Fraud, Waste, and Abuse Investigations

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

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

Audits

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



Message from the Inspector General

I am grateful for so much this year: My peers who stood with me and helped me voice the needs of my office. BART management’s acceptance of most of my office’s recommendations and their efforts to implement them. The BART Board of Director’s acceptance of my office’s recommendation to implement a CFO structure – I am looking forward to the exciting changes that will bring. The public’s support and appreciation of my office and the work we have completed. And, most of all, the continued dedication and hard work of my staff. I remain in awe of their ability to get so much done with so little and am grateful of their continued support.

As I shared with you throughout the year, my office has faced and continues to face challenges. Yet there have been many accomplishments along the way and year end is the time to focus on the best the year had to offer. To recap a few 2022 highlights, my office completed 26 investigations since January, expanded its social media presence, created animated videos to communicate our work to the public and provide educational content, and routinely followed up on our recommendations to track implementation.

With 2022 at an end and 2023 on the horizon, I am preparing to step away from my role as your Inspector General. I have declined to take a second term but will continue in my efforts to develop the BART OIG and using its role to recommend changes for the betterment of the District as I complete my term. I look forward to you joining me in that journey. I wish you all a very Happy New Year. May it bring you good health and good fortune.

Harriet Richardson

Accomplishments & Efforts



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



- Presented our audit of the organizational structure of BART's financial operations to the BART Board of Directors on [November 17, 2022](#). The Board agreed to the recommendations to adopt a Chief Financial Officer (CFO) structure and create a committee to assist with implementing it.



- Continued work on 30 investigations, completed seven of them, and began work on five new allegations. We also made major headway on five complicated investigations that required a great deal of our time and attention. Those investigations are in pending status, meaning the reports are with BART management for their response.



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



- Reassessed the allegation types assigned to fraud, waste, or abuse cases to ensure the more significant issue is identified for trend analysis and that there is no crossover in suballegations.



- Presented to the Audit Committee on [November 15, 2022](#). We discussed our most recently completed investigations and our last quarter's activities report.



- Conducted follow up on our completed investigations to determine what action management has taken to address our recommendations. We also followed up on the cases we forwarded to management for issues outside of our purview to ensure that those complaints were addressed to the extent possible.



- Maintained our professional designations and compliance with our professional standards by obtaining continuing professional education credits.



- Established stronger relationships with our peers who help us navigate the complexities of communicating with outside agencies as needed to conduct our investigations.



- Outlined our educational material sharing the definition of fraud, waste, or abuse as defined in [Government Code 53087.6.\(f\)\(2\)](#) and how our work aligns with that definition.



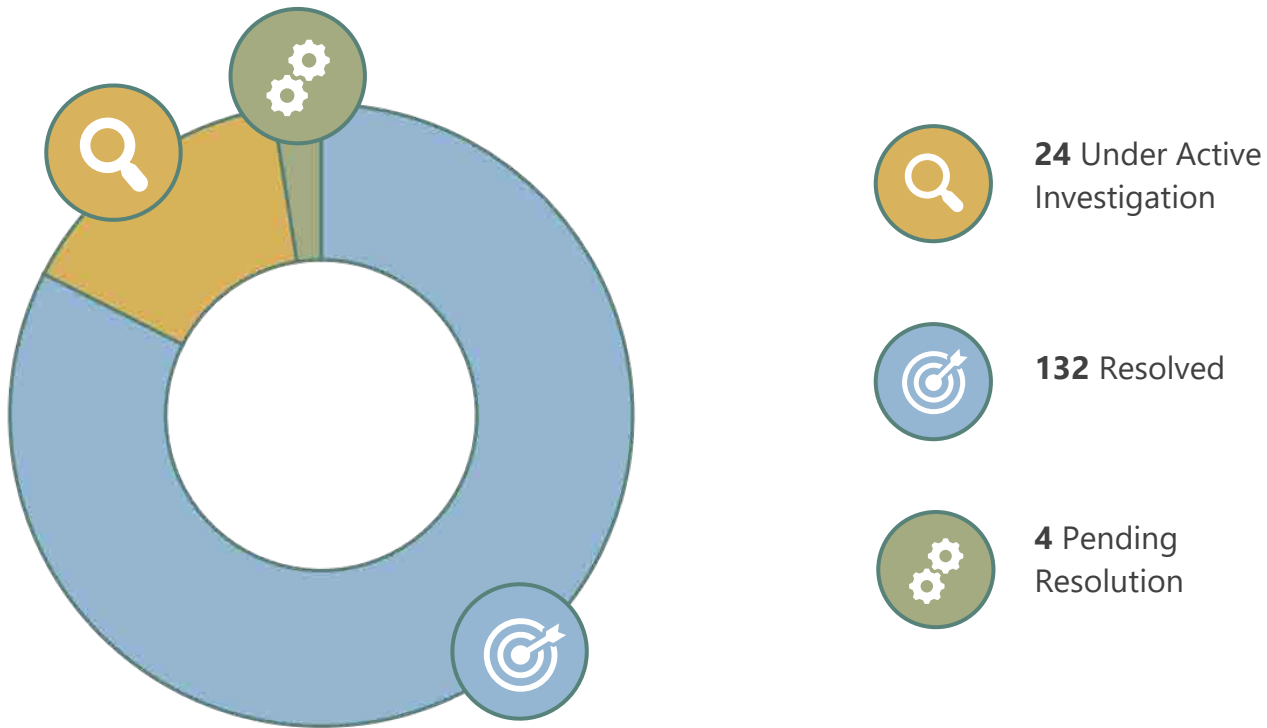
- Celebrated a staff accomplishment: our Assistant Inspector General was appointed to Vice President of the [Association of Inspectors General](#) Western States Chapter Board.



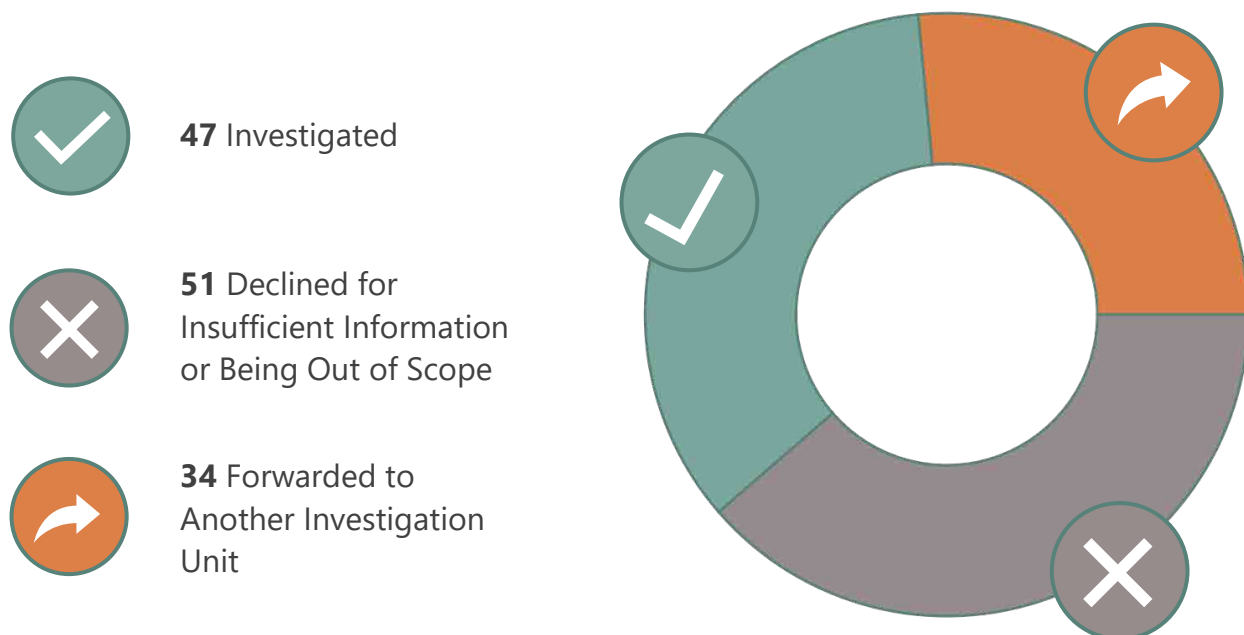
- Received and evaluated 15 new allegations of fraud, waste, or abuse:
 - Six accepted as investigations: all under various stages of active investigation
 - Five declined for being outside our scope of services or providing insufficient information
 - Four forwarded to BART management for investigation

Investigations at a Glance

160 Total Complaints Received

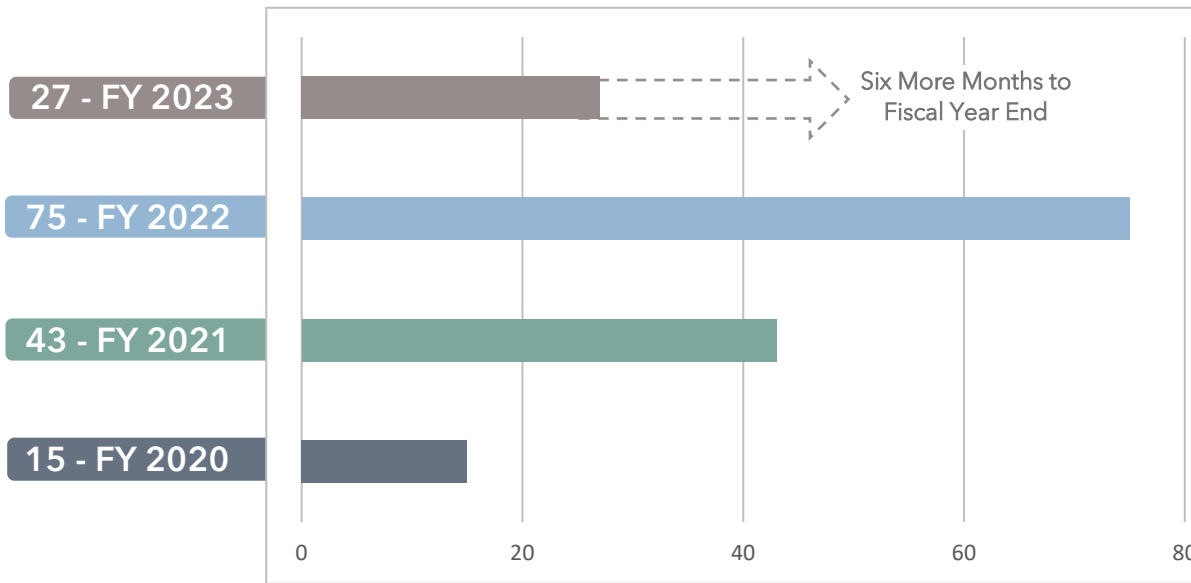


132 Total Cases Resolved



Investigations at a Glance

Total Annual Complaints Received by Fiscal Year




Whistleblower complaints reported to the OIG are increasing annually - 27 received so far in FY 2023

Most Common Allegations

Compliance

We received **34 (21%)** complaints alleging noncompliance. Unfair competition and policy and procedural noncompliance are the most common suballegations.

We received **25 (20%)** complaints alleging unprofessional conduct. Harassment and inappropriate behavior are the most common suballegations.

Unprofessional Conduct

Fraud

We received **32 (16%)** complaints alleging fraud or misappropriation. Timesheet and contracting fraud are the most common suballegations.

We received **13 (8%)** complaints alleging a conflict of interest. Financial interest in a contract is the most common suballegation.

Conflict of Interest



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

Major Activities

Investigations & Audits

We were actively investigating 24 allegations of fraud, waste, or abuse as of December 31, 2022. We completed seven investigations last quarter and received fifteen new allegations, five of which are among those currently under investigation. We made significant progress on four complex investigations that required a tremendous amount of our resources. Those investigations are pending resolution, meaning we submitted our reports to BART management and are awaiting their response. We are scheduled to receive those in mid-January and expect to release the reports in February 2023, along with two other reports discussing investigations we completed this quarter but have not released due to timing of the Audit Committee. Considering the seven investigations we completed last quarter and the four that are pending resolution, we more than achieved the goal we set for ourselves in September to wrap up seven investigations by year end.

We released two investigative reports last quarter and presented them to the Audit Committee on [November 15, 2022](#). Our first report addressed an allegation of inconsistent administration of employee discipline and the second an allegation of abuse of overtime. We found both allegations to be unsubstantiated, demonstrating that our work does not always result in proving wrongdoing. It is common for people to submit complaints to our office that we determine lack merit even though they were submitted in good faith, meaning the complainant believed their allegation to be true. A misconception of our office is that we set out to prove allegations as true, but what we really do is look for evidence that could either prove or disprove an allegation.

Due to the standard allegation categories that our case management system uses, suballegations may be listed under more than one prime allegation. Now that we have a sufficient caseload in the system, we broke out information to remove crossovers and provide clearer trend data. Additionally, allegations are assigned during case intake and as our investigations evolve, we sometimes learn that the actual issue is different than what was reported to us or that there is another, more significant concern associated with the complaint. We evaluated our cases and reassigned allegations as necessary to align with our findings and more serious issues.



Along with our consultant, [Sjoberg Evashenk Consulting \(SEC\)](#), we presented our financial structure [audit](#) to the BART Board of Directors on [November 17, 2022](#). SEC found that BART's structure is unique among peer transit agencies in that it bifurcates financial management responsibilities between two independent Board appointees. They recommended that BART

modify its organizational structure to allow for the creation of a Chief Financial Officer (CFO) within the span of control of the General Manager. The Board of Directors accepted the recommendation and agreed to create a committee to assist with implementation. It will take time to implement and see the effects of this major change, but there will be significant long-term benefits in doing so. A CFO structure will assist BART with its continuous improvement efforts and better position the District to be more flexible and responsive to changes in transit and the economy, and make the most of its revenues.

Major Activities



Follow-up Processes

We obtained updates from BART management on their progress toward implementing our recommendations. We are pleased to report that they continued to take action and moved forward with recommendations aimed at ensuring conflicts of interest are identified during the contracting process. [Appendix I](#) provides detail on management’s progress on implementing open recommendations since December 31, 2022.

We also conducted follow up on the allegations we forwarded to management. We only had one such allegation to follow up on this last quarter, which we had forwarded the Office of Civil Rights (OCR) in November 2021. Unfortunately, we have not received a sufficient response from the OCR regarding their actions to address the allegation. We have been told only that the case moved from active to closed status. Our preference is to have some level of detail that allows us to know what the investigation consisted of so that, if necessary, we can communicate in confidence with the complainant about how their complaint was addressed.

1090 Violations

A great deal of our attention this last quarter went toward addressing allegations of Government Code § 1090 violations. The code prohibits a public official’s or their family members’ financial interest in contracts made in the public official’s official capacity. In our exhaustive research, we verified that the penalties for violations include voiding the contract and disgorging the contractor of any monies received under the contract. Not taking this type of action gives employees, contractors, and the public the perception that BART does not take conflict-of-interest violations seriously. As such, when our investigations substantiate a § 1090 violation, we will continue to recommend that BART void the involved contract and seek disgorgement so that the District may send a strong message that it holds people accountable for Government Code § 1090 violations. In doing so, BART is better able to ensure the public that its contracts were made in the public’s best interest.

Looking Ahead

Change in Leadership



The OIG is in for some big changes. Inspector General Harriet Richardson's appointment ends in August 2023, and she will not be seeking another term. As the first BART Inspector General, Ms. Richardson has been instrumental in setting the foundation on which the office is built and paving the road for the work to be done for decades to come. Replacing her will not be easy. She brought a wealth of knowledge and experience to the OIG that is not rivaled by many. Though that is true, the District must find someone to fill the Inspector General position and has begun a recruitment process. The process is in its early stages with much work to be still to be done to ensure a wide net is cast to find qualified applicants.

Employee Outreach



For some time now we have wanted to be involved in BART's employee orientation process so that we may share with new employees who we are and what we do and ensure they understand that we are a resource for them. Being a part of orientation is a great opportunity to discuss how to file a whistleblower complaint with our office and to establish a personal connection with new recruits. The COVID-19 pandemic put our goal on hold, but we will soon be working to make it a reality. BART's new Human Resources Director said that revamping new employee orientation is one of her focus areas and we will be reaching out to her to see how we can be part of that change. We would also like to coordinate our efforts with BART's Independent Police Auditor and Office of Civil Rights, which already present during the new employee orientation, so that new employees get a clear picture on what kind of complaints we handle versus complaints handled by other BART oversight functions.

Educational Materials

We expect to be able to release our new educational video that shares the definition of fraud, waste, or abuse as described in [Government Code 53087.6.\(f\)\(2\)](#) by March. The video will show why we take on the investigations that we do even when it may not seem as though the allegations we look into are under our purview. This will help clarify why we investigate allegations that some believe should be forwarded to other oversight functions.



**Office of the
Inspector General**



**Harriet Richardson
Inspector General**



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

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



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



www.bart.gov/OIGhotline



510-464-6100



Appendix I: Recommendation Follow Up

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

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

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	<p>not allow subcontractors and contractors from being inserted as a fiscal approver of invoices. In cases where it is necessary to obtain concurrence from the contractor or subcontractor due to the nature of the work they were engaged to perform, the system will be configured to allow them to be inserted only as 'reviewer'. IA will also add a review of invoice approval policies and procedures to its master audit plan.</p> <p>Approval by District staff knowledgeable about the charges being billed will always be required. It should be noted that BART AP staff would be required to adhere to existing procedures for fiscal approval, regardless of 3rd party reviewers.</p>			

POTENTIAL CONFLICT OF INTEREST MAY REQUIRE VOIDING A \$40 MILLION CONSTRUCTION MANAGEMENT CONTRACT AND NOT PAYING \$5.4 MILLION OF INVOICES (4/8/22)

Recommendations	Original Management Response	Status	Implementation Dates	Management Updates
<p>Review and update the Contractor and Employee Codes of Conduct to ensure discussions of conflicts of interest are clear and consistent for both contractors and employees, including when and to whom to report them, and that they incorporate appropriate provisions of both federal and state conflict-of-interest prohibitions.</p>	<p>Management is reviewing Contractor and Employee Codes of Conduct, Conflict of Interest Code (COIC), and procurement (RFP/bid/proposal evaluation) and contract documents to ensure that they reflect current federal and state conflict of interest rules/codes. Additionally, management will review to ensure that all BART codes and policies are internally consistent and align with each other.</p>	<p>Partially Implemented</p>	<p>March 2023</p>	<p><u>12/29/22</u> In progress. Management will use the revised RFP language and contractor template as a guide to make terminology consistent among the various codes of conduct.</p> <p><u>9/27/22</u> Management is evaluating the various codes of conduct against recommendations from the FTA Triennial Review.</p>
<p>Revise boilerplate language in RFP and other bid documents to consolidate information on conflict-of-interest prohibitions, appropriate federal and state references, BART’s Contractor Code of Conduct reference, and reporting requirements in a single location.</p>	<p>See Recommendation #3</p>	<p>Implemented</p>	<p>December 2022</p>	<p><u>12/29/22</u> RFP language has been updated for clarity and to refer to the new conflict of interest template (see Recommendation #5). Placement of RFP language made at the discretion and recommendations by Procurement and Legal departments.</p> <p><u>9/27/22</u> Draft contract language is under review. Consolidation of information will be considered by Procurement and General Counsel. Management will work with BART’s General Counsel’s office to best determine how to implement these recommendations.</p>

POTENTIAL CONFLICT OF INTEREST MAY REQUIRE VOIDING A \$40 MILLION CONSTRUCTION MANAGEMENT CONTRACT AND NOT PAYING \$5.4 MILLION OF INVOICES (4/8/22)

Recommendations	Original Management Response	Status	Implementation Dates	Management Updates
<p>Create a template that contractors are required to use to disclose potential personal, financial, and contractual conflicts of interest. Include a preamble on the template that refers bidders to the consolidated conflict-of-interest information in the bid documents and a statement that bidders are required to sign indicating that they have read and understand the disclosure requirements.</p>	<p>BART will include a separate Conflict of Interest disclosure form in each contract for contractors to specifically disclose and attest to any potential conflict of interest.</p>	<p>Implemented</p>	<p>December 2022</p>	<p><u>12/29/22</u> Template/form has been developed. Prime contractors will fill-out and sign form as part of submittal process. Subcontractors will be required to sign form upon Notice Of Award (NOA). The two-step process will reduce the burden on subcontractors, which can be numerous on a large project and many of which are small businesses, from having to spend time on the form in case their team is not awarded the contract.</p> <p><u>9/27/22</u> Form is under review and will be inserted into the standard contract template.</p>
<p>Revise the Proposal Evaluation and Award Confidentiality and Conflict of Interest Certification as necessary to align it with the updated Employee Code of Conduct (see Recommendation 3) and expand its use of to include all staff who are involved in any way in the procurement and contract administration process for a project. The timing of when an employee signs the form should</p>	<p>See Recommendation #3. In addition, BART management will review, update, and enhance the existing internal Conflict of Interest Certification processes to include additional staff who are involved in procurement and contract administration. The design is currently underway to include an annual position-based certification and a project/agreement/contract-specific certification of conflict of interest. This new multi-layered system of certifications would provide BART with</p>	<p>Partially Implemented</p>	<p>March 2023</p>	<p><u>12/29/22</u> Management is working with Administration (Procurement and Human Resources), General Counsel, Office of the Chief Information Officer, and Program Management to develop a comprehensive effective process that reflects the recommendations. Processes are in development and technology solutions are being discussed. Progress has been made on</p>

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

SUMMARY OF THEFT OF TIME INVESTIGATIONS (4/8/22)				
Recommendations	Original Management Response	Status	Implementation Dates	Management Updates
<p>To allow for proper oversight of timekeeping, BART should require supervisors to enter the information that SEIU employees are required to provide when conducting union business - location, area of the activity, estimated time needed, and specific nature of the union business involved - into the timekeeping comment field, when they manually clock out SEIU union representatives who leave their worksites during their work shifts to conduct union business. This is in addition to ensuring supervisors enter the appropriate union code into the timekeeping system when they make time adjustments to account for union business time.</p>	<p>We are currently working with payroll to increase the input of information on fields explaining the nature of the business. The persons inputting time will be required to fill all applicable fields for a person to be paid Union Business. That pay code will require the inputter to fill in all fields with information for the payroll to be accepted by the system, if the required fields are not filled in properly the employee in question will have an error status. Which will trigger a secondary review of the persons payroll.</p>	<p>In Progress</p>	<p>June 2023</p>	<p><u>12/29/22</u></p> <p>We have discussed the use of our current TRCs for Union Business with the Union (SEIU). They are understanding of the need to be more specific in the use of TRCs. Next steps are to create any remaining needed TRCs and train Departments and Foreworkers on proper TRC use for Union Business.</p> <p><u>9/27/22</u></p> <p>Labor Relations, OCIO and TAAD (timekeeping) have met regarding the identifying and potential expanding the Union Business Time Reporting Codes (TRCs) to ensure that supervisors and managers use the correct Union Business code to identify the purpose of the Union Business time per the contract and then require a comment on the Union Business time code entry to identify further information as to the location or reason for the Union business. This will allow TAAD to accurately record the Union Business time pursuant to the contractual requirements. Labor Relations, OCIO and TAAD are in the process of developing an implementation plan for this transition.</p>

SUMMARY OF THEFT OF TIME INVESTIGATIONS (4/8/22)				
Recommendations	Original Management Response	Status	Implementation Dates	Management Updates
<p>To allow for proper oversight of timekeeping, BART should require utility workers assigned to graffiti car cleaning shifts to use the TCD machines to clock out of their shifts at the yards at which they are conducting the cleaning, regardless of which yard they are regularly assigned to work.</p>	<p>Assistant Chief Leo Pica has investigated this issue and the following direction in process will be reinforced. A worker should clock in at their headquartered location and clock out when their shift is completed, and they are released. If this cannot be accomplished due to travel or change of start location, the Foreworker in charge of graffiti remediation will manually enter the time of the crew.</p>	<p>In Progress</p>	<p>June 2023</p>	<p><u>12/29/22</u></p> <p>Labor proposed a method of assignment that the District reviewed. District is formulating a counter-proposal regarding the use of staff to ensure that employees participating in graffiti cleaning will be traceable by their location and time on the job.</p> <p><u>9/27/22</u></p> <p>Management and the labor unions are working together on a proposed zone system and rotating schedules so staff would not need to return to their bid location. Furthermore, management is reviewing policies and procedures, and planning to implement an inventory control and tracking system to better respond to train car graffiti issues.</p>

WORKPLAN SELECTION PROCESS GIVES APPEARANCE THAT FAVORED FIRMS COULD RECEIVE AN UNFAIR ADVANTAGE (7/8/22)				
Recommendation	Original Management Response	Status	Implementation Dates	Management Updates
<p>Implement written workplan selection guidelines that create more transparency and support accountability in how firms are chosen to perform work under their on-call contracts. Some options include a rotational basis that results in firms receiving work in a sequence or having all firms with on call contracts submit workplan proposals for evaluation. Regardless of the option chosen, the process should minimize the risk that favoritism is the driver or gives the appearance of being the driver behind the selection. The guidelines should include a requirement to consider overhead rates in the selection decision and to document the rationale for the selection for future reference.</p>	<p>While BART’s workplan selection process is designed to ensure maximum transparency, support accountability, and provide financial value to BART, management will review and document the process by which workplan recipients are selected. The documented process will be reviewed by the District’s Performance & Audit and Agreement Management teams, which will assess if opportunities for favoritism currently exist, identify where improvements to transparency can be made, and determine if other methods (including those identified by the OIG) are advantageous and appropriate for BART. In addition, the District will also commence posting a chart quarterly on its website summarizing the remaining capacity available on all on-call contracts.</p>	<p>In Progress</p>	<p>March 2023</p>	<p><u>12/29/22</u> Process is still under review as there is a new Program Management manager.</p> <p><u>9/27/22</u> Workplan selection process is under review.</p>