



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

CERTAIN LABOR CODE CERTIFICATIONS NOT APPLICABLE TO BART'S OAKLAND AIRPORT CONNECTOR

INVESTIGATION RESULTS



A confidential whistleblower alleged that a contractor was not compliant with California law requiring it and its mechanics servicing BART's Oakland Airport Connector (OAC) to hold certifications defined by the California Labor Code (Code). The certifications are intended to provide safety assurances. The complaint had merit as the contractor is not designated as a certified qualified conveyance company and it does not require its mechanics to be certified competent conveyance mechanics, which are the two designations in question.

However, the Division of Occupational Safety and Health (DOSH), which is the regulatory body responsible for the certifications, informed the OIG that it refrains from asserting jurisdiction over the OAC and the companies and people who work on it because there is already comprehensive safety oversight through the Federal Transit Administration (FTA) and the California Public Utilities Commission (CPUC), which is the designated state safety oversight agency. DOSH stated, "given the existing and extensive safety oversight of the CPUC, no purpose would be served by requiring transit agencies, their contractors, and their employees to adhere to two different regulatory programs."

Based on DOSH's assertions, the intent of the certifications required by the Code is met by other means. Therefore, we did not conclude that the contractor was out of compliance with the certification requirements. However, we recognize that this information is not readily known by the public who might question the need for the certifications based on the language used in the Code.

WHY THIS INVESTIGATION MATTERS



Unsafe or defective conveyances create a substantial probability of serious and preventable injury to employees and the public. It is in the best interest of all BART stakeholders to prevent these injuries by ensuring the District and its contracting partners adhere to legal requirements regarding safety measures.

RELEVANT LAW



California Labor Code § 7311.1 (a), states, "On and after June 30, 2003, no conveyance subject to this chapter shall be erected, constructed, installed, materially altered, tested, maintained, repaired, or serviced by any person, firm, or corporation unless the person, firm, or corporation is certified by the division as a certified qualified conveyance company," and, § 7311.2, states, "Any person who, without supervision, erects, constructs, installs, alters, tests, maintains, services or repairs, removes, or dismantles any conveyance covered by this chapter, shall be certified as a certified competent conveyance mechanic by the division."

RECOMMENDATIONS

There are no recommendations associated with this report.

OIG REPORTING REQUIREMENT & DISCLOSURE PRACTICES

We are providing this report to comply with California Public Utilities Code § 28841, which requires that we keep BART administration, the Board of Directors, and the public informed of our fraud, waste, or abuse investigative findings and recommendations.

We identify those involved in our investigations in only limited circumstances. This avoids violating privacy and confidentiality rights granted by law and creating unwarranted actions against those involved with our investigation. The decision to provide names is made on a case-by-case basis and considers all elements of an investigation. This practice does not prevent individuals from requesting documents under the California Public Records Act (CPRA). However, such disclosures may be restricted or limited by law. The case described in this report is associated with case number 196-2024.



Whistleblower Complaint

A confidential whistleblower alleged that a contractor failed to comply with the certification requirements under California Labor Codes § 7311.1 (a) and § 7311.2.¹ The whistleblower submitted their complaint in good faith out of a concern that the lack of the certifications posed serious safety issues.

The complainant also alleged that the contractor was not paying its employees who are certified competent conveyance mechanics the appropriate prevailing wage, and intentionally does not require that certification to keep wages low. We referred that complaint to the Office of Civil Rights, which has purview over BART's prevailing wage program and provided them with our conclusions.

¹ CA Labor Code Division 5, Part 3, Chapter 2: Elevators, Escalators, Platform and Stairway Chair Lifts, Dumbwaiters, Moving Walks, Automated People Movers, and Other Conveyance

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