



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

# CONTRACTOR SUBMITTED AT LEAST \$5.5K IN FALSE CLAIMS

### INVESTIGATION RESULTS



A sweeping services contractor submitted at least \$5,500 in false claims to the District. Under the California False Claims Act, the contractor may be subject to \$505k to \$993k in treble damages and penalties for their misstatements. Over a two-month period, we found that garbage, trash, and debris remained in parking garages and station plazas after the contractor purportedly conducted sweeping services in those areas. This was consistent with the photographs taken by our confidential complainant prior to our investigation period.

When presented with our photographic evidence, the contractor acknowledged that the parking areas and station plazas were not clear of trash and debris. The contractor said that, in some instances, parked cars obstructed their vehicle power sweeper. However, their contract with BART states, *"Areas not immediately accessible to vehicle power sweepers shall be cleaned by power blowers, other manually operated mechanical devices, or manual sweeping."*

The contractor told OIG investigators that they would reimburse the District for the services they billed to BART that they did not perform or did not perform in accordance with contract terms.

### RELEVANT LAW



The California False Claims Act provides liability against anyone who "[k]nowingly presents or causes to be presented" false claims to a public entity. Case law defines "knowing" to include "deliberate ignorance" and "reckless disregard" of the truth. Failure to make simple inquiries that would uncover the false claims is, therefore, not a defense in a False Claims Act case.

### WHY THIS INVESTIGATION MATTERS



Unclean parking areas and station plazas deter BART riders and are contrary to the District's "Safe and Clean" plan. Failure to deliver on promises for clean stations as well as contractor misuse of funds erodes public trust and places the District at risk of losing riders and funding opportunities.

Ensuring contractors and BART officials alike adhere to contract terms provides assurance to the public that contractors fulfill their contractual obligations before obtaining payment.

### RECOMMENDATIONS IN BRIEF

To hold the contractor accountable for failing in their contractual obligations, BART should:

- Recover the \$5,500 in false claims.
- Seek penalties and damages.
- Terminate the contract.
- Evaluate invoice accuracy.

See page 10 for details.

Based on a similar OIG investigation that coincided with this one, we recommended BART improve its contract management by providing training and adhering to contract terms. BART agreed. Therefore, we do not repeat those recommendations here.



## Whistleblower Complaint

We received a confidential whistleblower complaint submitted in good faith alleging that a contractor failed to provide services in accordance with their BART contract and then submitted invoices to the District claiming they rendered the services. We substantiated those allegations.

### Notable Facts

The California False Claims Act (CFCA) allows private citizens to file civil lawsuits on behalf of the government against those who have defrauded it. These lawsuits are called "qui tam" suits.

Whistleblowers who file qui tam actions are protected from retaliation and may be eligible to receive a portion of any recovery, up to 30%. For example, in 2021, Prime Healthcare Services and two doctors were accused of a kickback scheme for patient referrals under the California False Claims Act. The total settlement was \$37.5M, with the whistleblower receiving almost \$10M.



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## OIG REPORTING REQUIREMENT & DISCLOSURE PRACTICES

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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.

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## BACKGROUND

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### Contract for Overnight Parking Area and Station Plaza Sweeping Services



In February 2023, the District awarded a \$1.54M, three-year contract for overnight sweeping and cleaning services at BART parking garages, station plazas, and other areas. Key contract terms included:

- **Scope of Work:** Remove trash and debris from station parking lots, parking structure stairwells, station plazas, and yards/shops and related parking lots. Trash and debris include *“pieces of broken glass, bottles, rocks, gravel, soil, leaves, landscape debris, litter, garbage, paper, boards, cardboard, biohazard materials, feces, or any other refuse (these include discarded clothing, drug paraphernalia, etc.).”*
- **Schedule:** Perform cleanings on an established weekly schedule:
  - Monday to Friday: Between 8:30 p.m. and 6:00 a.m.
  - Saturday 6:00 a.m. to Monday 6:00 a.m.
- **Reporting:** Submit daily “BART Contractor Work Performance Reports” the morning after the cleanings to demonstrate completion of the required services.
- **Cleaning Methods:** Use a combination of mechanical (vehicle power sweepers) and manual methods to remove trash and debris. Specifically, *“Areas to be cleaned by vehicle power sweepers shall be limited to parking lots and areas intended for vehicular traffic. Areas not immediately accessible to vehicle power sweepers shall be cleaned by power blowers, other manually operated mechanical devices, or manual sweeping.”*
- **Termination:** Contract may be terminated for convenience (i.e., in the District’s best interest) or for cause (e.g., the performance of work violates terms of the agreement).

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## SERVICES NOT PERFORMED

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### Investigator Observations & Key Findings

In January and February 2024, we conducted observations the morning after the contractor was to perform sweeping services to assess their performance and adherence to contract standards. Our goal was to determine whether the contractor fulfilled their obligations as outlined in the contract. We then requested daily work performance reports from the contractor to compare to our observations and to contractor invoices.

Despite the contract stipulating the submission of daily work performance reports, the contractor had not been completing them and claimed that they were not asked to do so until February 2024, a year after the contract began. We noted that the timing of this change coincided with our findings from a similar investigation into contractor noncompliance where a different contractor also did not provide daily work performance reports because the District did not enforce that contract provision.<sup>1</sup> Consequently, we compared our January and February 2024 observations to only invoices and substantiated 25 instances where the contractor subject to this investigation billed the District for work it did not perform or did not perform satisfactorily.

Because BART did not enforce the contract provision for the work performance reports until February 2024, the contractor subject to this investigation provided us daily work performance reports for March and April 2024. We cross-referenced the reports the contractor was able to provide to the invoices submitted by the contractor to BART for payment. We found that 10 of the contractor's invoices lacked the supporting daily work performance reports in March and April, despite the District's requirement to submit them.

In total, we substantiated 35 instances where the contractor received payment for services that they either did not perform or did not perform satisfactorily, or that did not include the required documentation to support the claim. We initially identified 37 instances in our analysis, but we removed two after the contractor provided their own photos of parking areas that they purportedly serviced on April 29, 2024, despite there being no daily work performance reports to support their assertions.

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## FALSE CLAIMS ANALYSIS

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We assessed the dollar loss for the District to be least \$5,500 for the 35 cleanings that we determined the contractor did not perform or did not perform satisfactorily, or that lacked the required daily work performance report to verify that the contractor provided the services. See Table 1. Because our confidential complainant alleged that the contractor was not performing their services prior to us initiating our investigation and provided photos to support their assertions, we believe the dollar loss to be higher than what we captured during our investigation.

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<sup>1</sup> Contractor Submitted Nearly \$12k in False Claims, issued September 3, 2024: <https://bit.ly/3ZT1aCS>

**TABLE 1: DOLLAR LOSS FROM FALSE CLAIMS**

Date	Station	Evidence	False Claim Amount
1/4/2024	Glen Park Station	Observation/Photos	\$92.65
1/9/2024	South San Francisco Station	Observation/Photos	\$162.98
1/9/2024	South San Francisco Garage	Observation/Photos	\$244.47
1/10/2024	Colma Garage	Observation/Photos	\$488.94
1/11/2024	Glen Park Station	Observation/Photos	\$92.65
1/12/2024	Daly City Station	Observation/Photos	\$162.98
1/12/2024	Daly City Garage	Observation/Photos	\$162.98
1/13/2024	Millbrae Garage	Observation/Photos	\$407.45
1/18/2024	Balboa Park Station	Observation/Photos	\$92.65
1/18/2024	Glen Park Station	Observation/Photos	\$92.65
1/23/2024	South San Francisco Garage	Observation/Photos	\$244.47
1/26/2024	Daly City Station	Observation/Photos	\$162.98
1/25/2024	Balboa Park Station	Observation/Photos	\$92.65
1/25/2024	Glen Park Station	Observation/Photos	\$92.65
1/26/2024	Daly City Garage	Observation/Photos	\$162.98
1/27/2024	Millbrae Garage	Observation/Photos	\$407.45
1/30/2024	South San Francisco Station	Observation/Photos	\$162.98
1/30/2024	South San Francisco Garage	Observation/Photos	\$244.47
2/1/2024	Glen Park Station	Observation/Photos	\$92.65
2/8/2024	Glen Park Station	Observation/Photos	\$92.65
2/9/2024	Daly City Station	Observation/Photos	\$162.98

**TABLE 1: DOLLAR LOSS FROM FALSE CLAIMS**

Date	Station	Evidence	False Claim Amount
2/13/2024	South San Francisco Station	Observation/Photos	\$162.98
2/15/2024	Glen Park Station	Observation/Photos	\$92.65
2/27/2024	South San Francisco Station	Observation/Photos	\$162.98
2/27/2024	South San Francisco Garage	Observation/Photos	\$244.47
March 2024	Metro Building Center Employee Parking Lot	No Daily Report	\$98.87
March 2024	Metro Building Center Employee Parking Lot	No Daily Report	\$98.87
March 2024	Metro Building Center Employee Parking Lot	No Daily Report	\$98.87
March 2024	Metro Building Center Employee Parking Lot	No Daily Report	\$98.87
March 2024	Oakland Shop Parking Lot	No Daily Report	\$98.87
March 2024	Oakland Shop Parking Lot	No Daily Report	\$98.87
April 2024	Oakland Shop Parking Lot	No Daily Report	\$98.87
April 2024	Metro Building Center Employee Parking Lot	No Daily Report	\$98.87
April 2024	Metro Building Center Employee Parking Lot	No Daily Report	\$98.87
April 2024	Metro Building Center Employee Parking Lot	No Daily Report	\$98.87
<b>Total</b>			<b>\$5,571.09</b>

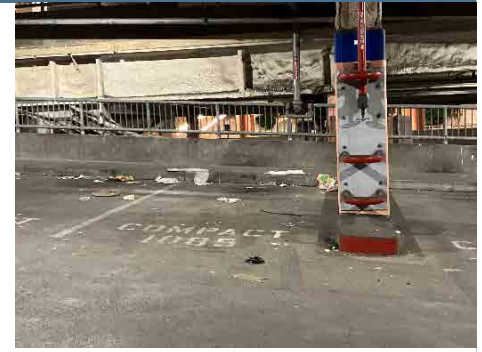
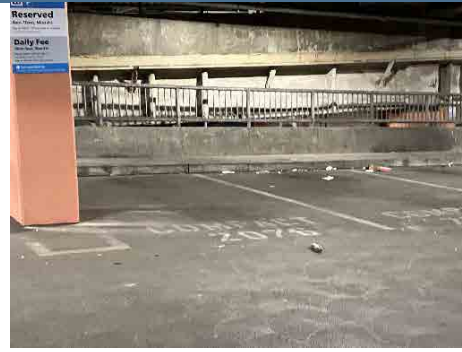
## PHOTOGRAPHIC EVIDENCE

While not exhaustive, we present the results of five of our site observations showing that waste and debris remained in locations the morning after the contractor purportedly cleaned them in accordance with the contract terms. In all instances, the photos were taken the morning following a scheduled cleaning that the contractor claimed to have completed the night before. All sweeping services were to be completed overnight, after the station closed and before it reopened in the morning.



### Colma Station Parking Garage January 11, 2024

Contractor Claimed to have Performed Sweeping Services & Billed District \$489



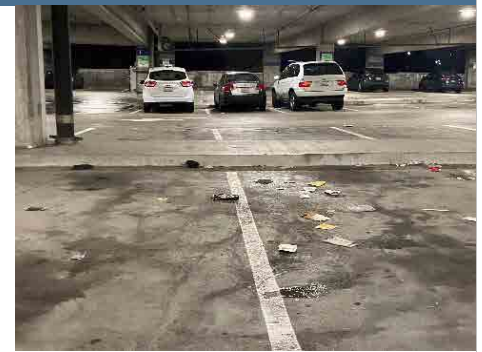
### Daly City Station Parking Garage January 13, 2024

Contractor Claimed to have Performed Sweeping Services & Billed District \$163



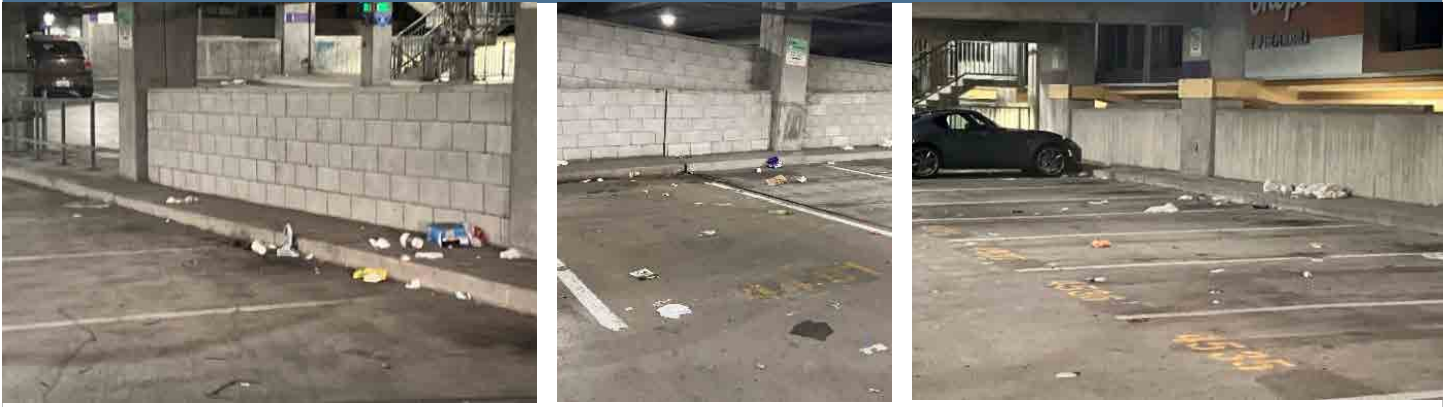
### Millbrae Station Parking Garage January 14, 2024

Contractor Claimed to have Performed Sweeping Services & Billed District \$407



**Millbrae Station Parking Garage January 28, 2024**

**Contractor Claimed to have Performed Sweeping Services & Billed District \$407**



**South San Francisco Parking Garage/Lot February 28, 2024**

**Contractor Claimed to have Performed Sweeping Services & Billed District \$407**



**CONTRACTOR ASSERTIONS**

We interviewed the contractor to address our observations and provide them with an opportunity to respond to our findings of noncompliance and false claims. In summary, the contractor claimed that quality control issues, vehicle obstructions, and a lapse in contract monitoring may have led to them being compensated for services that they did not render. We assessed those assertions against contract terms. See Table 2.



<b>TABLE 2: CONTRACTOR’S ASSERTIONS &amp; OIG ASSESSMENT</b>	
<i>Contractor Assertion</i>	<i>OIG Assessment</i>
Insufficient quality control led to them being paid for cleanings that they may not have performed.	Contract requires contractor to “maintain full and adequate records to show the actual time devoted and the cost incurred” for service performance.
Some of the trash and debris were underneath or beside parked vehicles, which are areas their cleaning equipment cannot effectively reach.	Contract requires the use of power blowers and brooms when trash and debris are not accessible by a vehicle power sweeper.
Emphasized they removed trash and that our photographic evidence was just leaves.	Contract includes “leaves” in its definition of debris.
BART did not require the submission of daily work performance reports until late February 2024.	Contract requires completion of daily work performance reports.
There was a period (October 2023 to February 2024) when the contractor operated without oversight.	Contractors are to comply with District contracts even when BART oversight is lacking.

The contractor also provided two photos in lieu of daily work performance reports as evidence of completing sweeping services on April 29, 2024, at two separate locations. We initially included those days in our analysis of contract noncompliance and false claims. However, we did not perform observations following those purported cleanings; therefore, we excluded them despite the contractor not having the required daily work performance report to support their invoice. The contractor said that they now maintain photographic evidence of all their cleanings beyond the three-to-five-day complaint period, which was their past practice. They also claim that they now prepare and submit daily work performance reports as required.

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### **LACK OF CONTRACT OVERSIGHT & IMPROVEMENTS**

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As previously mentioned, BART officials did not require the contractor to submit daily work performance reports until late February 2024, despite it being a provision of the contract that was entered into in February 2023. Additionally, there were periods when the contractor operated without field oversight due to the District restricting the BART project manager’s engagement with the contractor. This lack of oversight hindered the District’s ability to ensure that the contractor met its contractual obligations.

Starting in February 2024, we observed improvements in cleanliness at certain locations. This positive change correlated with the District's increased field oversight and the enforcement of daily work performance report submissions, which came on the heels of the similar investigation we referenced above. We found during that investigation that the contractor was also not required to submit daily work performance reports and submitted invoices and received payment for services that they did not render or did not render in the manner required by their BART contract. In response to those findings, we made recommendations to improve contract oversight and management. BART agreed to those recommendations and partially implemented them as of July 2024.

While we did observe service improvements, we also noted that the contractor submitted daily work performance reports indicating that they performed 172 cleanings in March 2024. However, their March invoice reflected only 166 cleanings, a potential underbilling of \$3,630. Likewise, as we discussed above, we identified 10 instances of service billings in March and April 2024 lacking daily work performance reports or photographic evidence, supporting \$989 in false claims. This suggests that the contractor's daily work performance reports are inaccurate, and that the contractor is still having problems maintaining proper records to support their time rendering services and their actual costs.

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## FALSE CLAIMS ACT

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The contractor violated the California False Claims Act (CFCA) (Government Code §§ [12650 – 12656](#)) by submitting invoices to BART with information they knew or should have known was not accurate. Under the CFCA, BART could recover approximately \$505k to \$993k in treble damages and penalties for the contractor's false claims. The CFCA is a state law modeled after the federal False Claims Act. It protects the government from fraud by making it illegal to submit false claims for payment. The CFCA holds people liable if they knew or should have known that a claim is false, fictitious, or fraudulent. "Should have known" means acting in reckless disregard or deliberate ignorance of the truth. For example, someone who submits a claim that omits a material fact could be liable. The law can result in significant penalties, including fines of \$13,946 to \$27,894 per claim, plus up to three times the amount of damages sustained by the government.

**RECOMMENDATIONS AND DISTRICT RESPONSES**

Recommendations		
1.	<b>Recommendation:</b>	Recover the \$5,571.09 identified in this investigation for services the contractor did not render or did not render to contractual standards.
	<b>Implementation Date:</b>	TBD
	<b>Corrective Action Plan:</b>	BART’s General Counsel’s Office will prepare and send a demand letter for triple the calculated actual damages suffered by the District and a penalty as determined appropriate by the District up to the amount that the District is legally able to demand as determined by consultation with District Counsel. The General Counsel will negotiate to achieve the reimbursement for the dollar amount determined by the Inspector General or BART Maintenance staff (see recommendation #4), and penalties up to, but not exceeding, the total dollar figure that could be assessed in penalties as determined appropriate by the District.
2.	<b>Recommendation:</b>	Seek damages and penalties as permissible under the California False Claims Act.
	<b>Implementation Date:</b>	TBD
	<b>Corrective Action Plan:</b>	If, as determined by the District, a satisfactory settlement is not reached from the Corrective Action Plan for Recommendation #1, the District will prepare and file legal action on or before the date of Monday, January 4, 2027. Thereafter, the General Counsel will conduct legal action based on the best practices of civil litigation to the best interest of the District and conduct further settlement negotiations as determined appropriate by the District and District Counsel.

Recommendations		
3.	<b>Recommendation:</b>	Terminate the contract for either convenience or cause.
	<b>Implementation Date:</b>	December 13, 2024
	<b>Corrective Action Plan:</b>	Maintenance management staff suggests not to terminate this contract at this time. BART Maintenance met with the contractor on August 29, 2024, to reiterate contract terms and scope of work, work performance report and invoicing requirements. BART Maintenance staff will conduct a 3-month follow up review to make sure that the contractor is following the contract guidelines/specifications. BART Maintenance is preparing new, extensive standard operating procedures for BART Project Managers and contractors to adhere to, including periodic meetings with contractors and verification of work performed by both the contractor and BART staff.
4.	<b>Recommendation:</b>	Evaluate the accuracy of the contractor’s invoices and daily work performance reports since February 2024 and make any necessary adjustments to payments.
	<b>Implementation Date:</b>	December 13, 2024
	<b>Corrective Action Plan:</b>	BART Maintenance requested all daily work performance reports since February 2024 from the contractor on September 5, 2024. The BART Project Manager and Financial Analyst will reconcile the work performance reports against contractor invoices and request necessary adjustment(s) if discrepancies are identified.

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