



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

# \$1.7M RECOVERED: A FORENSIC LOOK AT FORCE ACCOUNT TAGGING

### INVESTIGATION RESULTS



BART reached \$1.7 million in combined settlements with contractors as result of a BART Office of the Inspector General (OIG) investigation. On December 19, 2023, the OIG issued a limited report on its investigation into an anonymous whistleblower complaint alleging that BART was improperly billed for labor, hours, and equipment on a major capital project. We determined that contractors submitted \$1.7 million in invoices to BART for work that may not have been supported or verified in accordance with established procedures, and we recommended that BART obtain settlement from the contractors or file a civil suit.

We committed to issuing a full report on our investigation when either settlement with all parties was reached, or litigation was complete. In June 2025, BART reached settlement with the contractors for a combined amount of \$1.7 million.

During our investigation, we identified inaccuracies in billing practices related to Force Account and Daily Work Delays tags, collectively referred to as “tags.” The construction firm completing the capital project used the tags to bill BART for change-order work with not-to-exceed limits on a time-and-materials basis. A construction management (CM) firm was then responsible for verifying the accuracy of the tags and preparing the billings. The CM firm’s inspectors were charged with this responsibility and required to sign and date the tags, and submit them within one day, or no later than one week after the work was done. We determined those obligations may not have been fully met.

December 2023 OIG Limited Report: [bart.gov/oig](https://bart.gov/oig)

### WHY THIS INVESTIGATION MATTERS



Routine administrative processes left unchecked can quietly erode financial integrity, public trust, and contractual accountability within a major transit infrastructure project. Tag-based billing is to reflect actual, observed work performed. When that process breaks down, BART risks paying for labor, equipment, and materials that were never verified, never delivered, or never needed.

### RELEVANT RULES



On BART’s behalf, the CM firm established procedures to verify that force-account charges were accurate and reliable, and to comply with contract General Condition (GC) 9.3 and its subparts. The GC sets the requirements for billing on a time-and-materials basis.

### RECOMMENDATIONS IMPLEMENTED



We made three recommendations with our limited report in December 2023. Management addressed all three:

1. Obtained settlement from contractors.
2. Avoided civil action by reaching settlement.
3. Adopted a suspension and debarment policy.

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## KEY FINDINGS

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- CM firm employee signed 595 tags totaling \$1.7 million in costs that lacked proper verification.
- CM firm employee signed tags indicating that they verified the work, but they were not on the job site that day, including in some cases being on vacation.
- CM firm employee signed tags months – and in some cases years – after the work was completed, increasing the risk that the tags did not accurately reflect the work performed.
- CM firm received internal complaints alleging the same circumstances as our whistleblower allegation at least as early as May 2018.
- CM firm conducted an internal investigation on the CM Firm Employee in February 2020 and terminated the employee in June 2020.
- CM firm identified multiple non-allowable charges submitted by the construction firm resulting in multiple exchanges between the two firms.

These findings raised concerns about the accuracy of the tags and compliance with contract terms and billing rules. BART reached a \$1.7 million combined settlement with the CM and construction firms in exchange for BART's release of claims arising out of this investigation. This report presents further detail on the investigation without drawing conclusions about liability or wrongdoing.

## OIG REPORTING REQUIREMENTS & 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 investigation 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 investigation described in this report is associated with case number 029-2021.

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## INVESTIGATION

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In 2016, BART contracted with a construction firm to complete a major capital project (project). The base award of the contract was \$267 million with five options for additional work totaling \$46.5 million. The base contract amount plus options totaled \$313 million. BART also contracted with a construction management firm to provide oversight of the project, including ensuring the accuracy of the invoices sent to BART for work completed under the contract and change orders.

On December 18, 2020, the OIG received an anonymous whistleblower complaint alleging that BART was billed for inflated construction labor, equipment, and materials on a major capital project.

On August 4, 2021, the OIG interviewed a witness who corroborated the allegations raised by the whistleblower. These allegations centered on the use of time and materials tags, known as Force Account and Daily Work Delay tags, submitted by the construction firm, and verified by inspectors from the CM firm. For simplicity, these are referred to as tags throughout this report.

The witness alleged that tags were submitted retroactively, often reflecting inaccurate labor and equipment. They also alleged that their attempts to verify and correct inaccurate tags were affected by the construction firm rerouting those tags to a different inspector (CM firm employee), an individual that the CM firm later concluded to have violated policy related to the tag approval process detailed in this report.

Based on this information, we launched an investigation, ultimately bringing on a Certified Fraud Examiner (CFE) firm to assist due to the volume and complexity of the evidence requiring forensic evaluation. The investigation objective was to follow the facts to determine whether BART was incorrectly billed, as alleged, and whether tag documentation complied with established rules and contract terms.

The forensic examination included:

- Reviewing 1,489 tags submitted by the CM firm employee from August 2017 to January 2020, totaling more than \$4.1 million.
- Identifying 595 tags submitted by the CM firm employee valued at \$1.7 million that raised concerns that the costs may not have been allowable, or that the billings may not have been accurate.
- Creating a database to house and analyze tag data.
- Cross-referencing tag information with Inspector Daily Reports (IDRs), timekeeping and payroll records, and agreed upon tag procedures.

- Identifying deviations from tag procedures, such as missing signatures, late submissions, and unsubstantiated labor claims.
- Conducting interviews with key witnesses and reviewing internal emails, certified payroll records, and invoice documentation.

Our investigation results are based on a comprehensive and methodical analysis and an examination of available records and evidence, and are consistent with our mandate for oversight, accountability, and transparency.

### Work Rules

Central to our investigation were the procedures governing the tag completion process, which involved coordination between the CM firm's inspectors and the construction firm's superintendents. Our investigation focused on the following procedures, which – when not followed – raised doubts as to the accuracy of the tags:

- Inspectors are to verify that the work as described on the tags is change work, and not base contract work.
- Superintendent and inspector will discuss and agree on the hours, labor, equipment, and material.
- Superintendent will discuss planned work or ongoing training with inspector the day prior or day of the planned work.
- Inspector will document work on an Inspector Daily Report (IDR).
- Tags must be signed within 24 hours or weekly at the latest.
- Superintendents are to create tags for inspectors signature the day following the work.
- Inspectors must print their name and date and sign the tags.
- Tags must be signed by the inspector who witnessed the work, except for yard work and training.

### Reliability Issues

We applied the established procedures to the tags under review to identify patterns that may have compromised the accuracy and reliability of tags submitted by the construction firm for billing purposes. Our analysis of 1,489 tags, generated from August 2017 to January 2020, revealed several concerning trends on tags signed by the CM firm employee. Through our forensic analysis, we identified 595 tags – including 573 Force Account (FA) tags and 22 Daily Work Delay (DWD) tags – that did not satisfy the above-listed procedures. These tags did not comply with requirements for timely, on-site verification by an inspector and a corresponding signed IDR.

Our observations were categorized based on deviations from the above-listed procedures, especially the requirement that all labor and equipment be verified in real time by the assigned inspector. These irregularities raised questions about the reliability of the tags submitted and the potential for unsupported charges. We grouped these tags into five categories. (Table 1)

Category 1 Tags with no corresponding IDR to support the listed charges.

- Tags Value: \$880,358
- Tags Count: 181
- Issue: There were no IDRs from any inspector to corroborate the tags in this group, raising concern that the charges for labor and equipment may not be accurate.

Category 2 Tags not supported by the content of the IDR.

- Tags Value: \$302,032
- Tags Count: 224
- Issue: An IDR corresponding to the tag exists, but it does not identify the work listed on the tag. This suggests that the work may not have taken place that day and, therefore, the labor, hours, and equipment listed on the tags may not be accurate.

Category 3 Tags not supported by an IDR signed by the CM firm employee.

- Tags Value: \$223,626
- Tags Count: 76
- Issue: The IDR associated to the day's tag was drafted but it was not signed by any inspector, limiting the ability to verify the IDR's reliability.

Category 4 Tags signed by the CM firm employee when they were not working at the project job site.

- Tags Value: \$185,980
- Tags Count: 61
- Issue: Payroll and time records confirm the CM firm employee was either on leave, e.g., vacation, or not working on the BART project, e.g., working at the CM firm's office, removing the ability for CM firm employee to have observed the work described.

**Category 5** Tags without an Inspector Daily Report (IDR) completed by the CM firm employee.

- Tags Value: \$102,445
- Tags Count: 53
- Issue: Tags were signed by the CM firm employee without a corresponding IDR, raising concerns that the tag may not be reliable.

**Table 1: Tags That Did Not Meet Required Verification Standards**

Category	Tag Issue Description	Count	Amount
1	No Corresponding IDR.	181	\$880,358
2	Tag Not Supported by IDR.	224	\$302,032
3	IDR Not Signed by CM Firm Employee.	76	\$223,626
4	CM Firm Employee Not at Project Site.	61	\$185,980
5	No IDR Completed by CM Firm Employee.	53	\$102,445
<b>Totals:</b>		<b>595</b>	<b>\$1,694,441</b>

**Delayed Signatures**

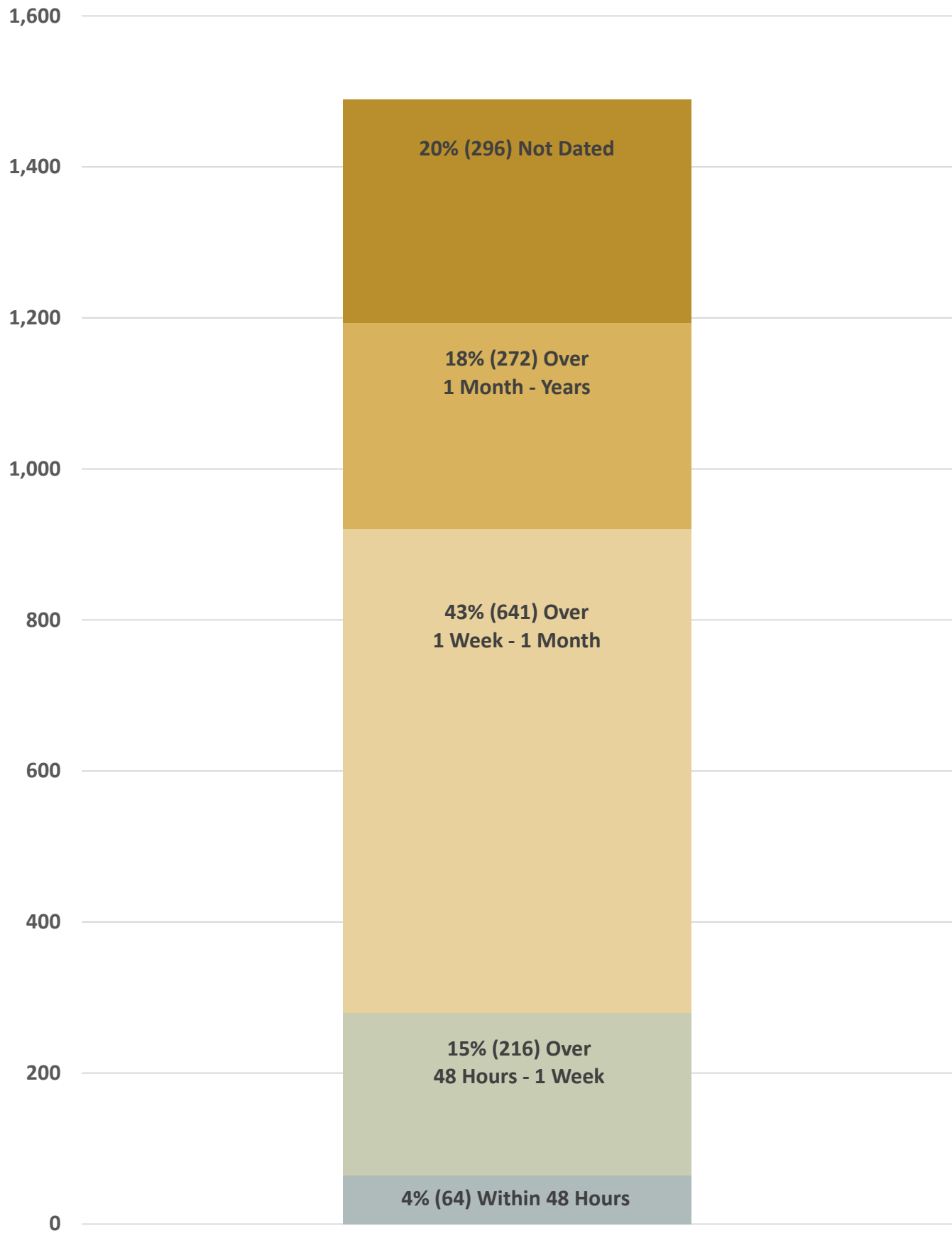
We also evaluated tag reliability by analyzing the timing of signatures by the CM firm employee. Tags were expected to be signed promptly after the completion of work, ideally within 24 hours, to ensure that the tag contents were properly verified. At most, signatures were to be completed within one week of the work, and each signature was required to include a date for accountability.

We reviewed all 1,489 tags signed by the CM firm employee and found two main issues: 1) 296 tags (20%) had no signature date at all, making it difficult to know when they were approved; and 2) 913 tags (61%) were signed a week or more after the work was performed. Meaning a total of 1,209 (81%) of the tags signed by the CM firm employee did not comply with required procedures, raising doubt as to the ability to verify the contents.

Here's what we found (Chart 1):

- 4% (64) were signed within a 48-hour window.
- 15% (216) were signed over 48-hours to one week after the work date.
- 43% (641) were signed over one week to one month after the work date.
- 18% (272) were signed over one month later – some as much as years later.
- 20% (296) were not dated.

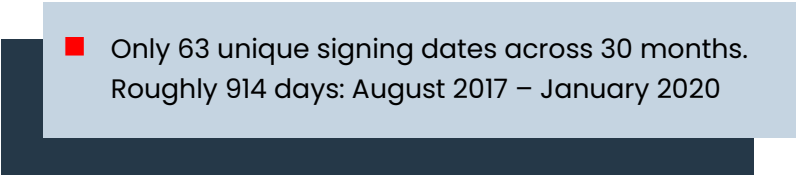
Chart 1: Time Elapsed Between Workday & Signature Meant to Indicate Work Verified



## Mass Signing

The data we gathered on the signature dates revealed that signatures were not spread out over time, as you would expect if each tag was signed shortly after work was completed. Instead, the same handful of dates appeared repeatedly, indicating tags were signed in large batches.

In total, there were only 63 unique signature dates across a span of over 900 days, which means on average, more than 18 tags were signed per day on those limited days. This suggests that instead of signing tags as work was completed, they were signed in bulk.



■ Only 63 unique signing dates across 30 months.  
Roughly 914 days: August 2017 – January 2020

## Analysis Limitations

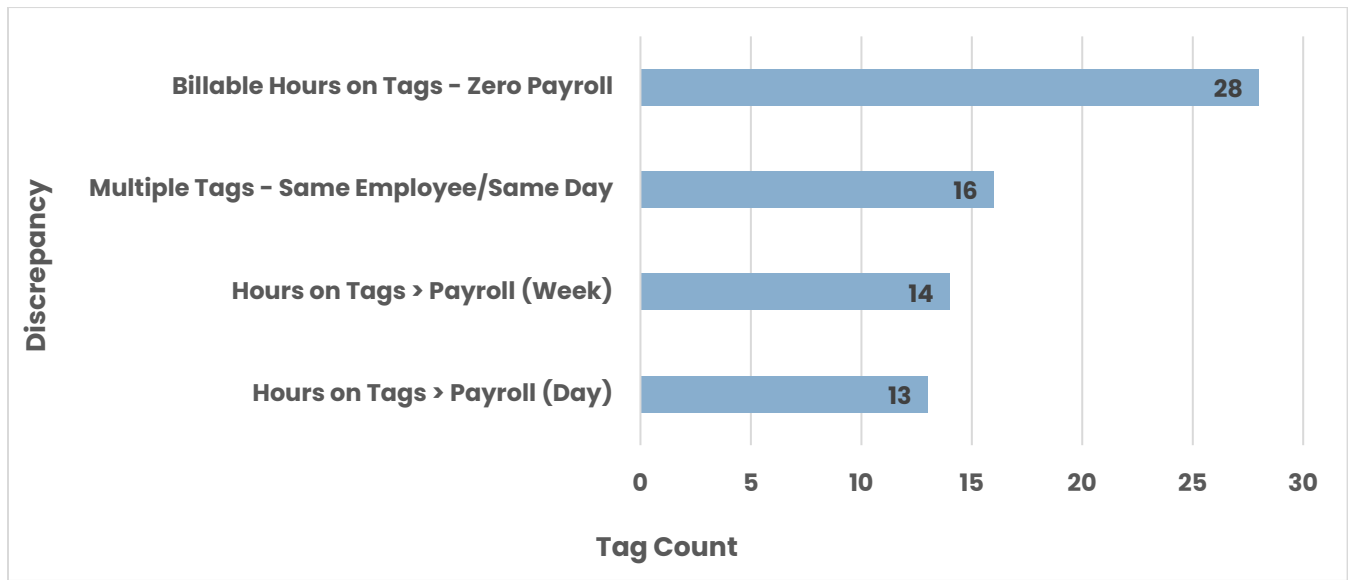
The above analysis provides a limited view of the tags that we determined were not verified in accordance with the procedures established by the CM firm for BART. Our ability to investigate potential misstatement of tags was limited by inconsistencies in the supporting documentation. Conflicting and incomplete labeling of change orders (COs) as either Lump Sum (LS) or Not-to-Exceed (NTE) made it difficult to reliably classify them for analytical purposes. Tags were to be used only for NTE change orders. As a result, we omitted any definitive analysis based on CO classification. That said, it is important to note that the NTE CO classification type carries a higher risk of error due to its reimbursement structure.

## Duplicate Billing & Payroll Discrepancies

We identified inconsistencies in our initial comparison of the construction firm's payroll records to tags that pointed to potential errors in the payroll data used to bill BART. (Chart 2) In 16 instances, a worker appeared on multiple tags for the same calendar day, with combined hours totaling 16 or more for the day. In 13 of the 16 cases, the total hours reported on tags exceeded the hours for which the worker was compensated via payroll.

We also identified 28 instances where tags reported hours worked by individuals who had zero hours recorded in payroll for the week, and 14 instances where the total number of hours on tags for a given week exceeded the total number of hours those same individuals were paid for, according to the construction firm's payroll data.



**Chart 2: Discrepancies Between Worker Billable Hours on Tags & Correlating Employee Payroll**

We used this initial analysis to identify a potential need for further tag to payroll comparison, which was not included within the scope of our December 19, 2023, report.

## CONCLUSION

Our investigation uncovered problems with the oversight mechanisms designed to safeguard the integrity of tag-based billing on a major BART capital project. Over the course of several years, critical procedures were not properly enforced. As a result, a CM firm inspector approved 595 tags – totaling \$1.7 million in charges – that did not satisfy verification procedures, casting doubt on the accuracy of those billings. The deviations identified in our investigation supported seeking repayment of the \$1.7 million in question. BART recovered that amount by reaching settlements for a combined amount of \$1.7 million in exchange for a release of BART's claims arising out of this investigation.

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