



2022 FTA Triennial Review Update

PERFORMANCE & AUDIT DEPARTMENT –
NOVEMBER 2022



FTA Triennial Summary

- FTA is responsible for conducting oversight activities to help ensure that recipients of Chapter 53 grants use the funds in a manner consistent with their intended purpose and in compliance with regulatory and statutory requirements.
- As a recipient of FTA grants, BART is required to participate in the Triennial review every three years.
- Due to the Coronavirus 2019 (COVID-19) Public Health Emergency, the Triennial was delayed from 2021 and a virtual site visit was conducted for this Triennial Review.
- The Triennial Review focused on compliance in 23 areas, four of which were not applicable to 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 federal award funds.
- This presentation summarizes the findings from the FY22 Triennial Review of BART.

FTA Triennial Timeline

Key Dates:

- Recipient Information Request (RIR): November 23, 2021
- BART Triennial Planning Meetings: December 2021
- FTA Training Workshops: January 4-6 & 11-13, 2022
- FY22 Contactor Manual released: January 6, 2022
- BART's RIR submitted to FTA: January 24, 2022
- FTA Scoping Meeting: March 2, 2022
- Site Visit Agenda sent to BART: April 14, 2022
- Desk Review Initial Responses from FTA: April 22, 2022
- Site Visit: 3 days during May 3-9, 2022 (remote)
- Draft Report: June 10, 2022
- Final Report: June 28, 2022

FTA/BART Document Submission Counts

BART's advance preparation steps:

- RIR Responsibility Matrix Memo distributed: December 6, 2021
- Training schedule for FTA Workshops: December 7, 2021
- Internal BART team "kick-off" Meeting: December 21, 2021
- Reminder to stakeholders on RIR deadline: January 6, 2022

BART's response to FTA Triennial requests:

- Initial documents submitted for RIR in February: 283
- Additional documents submitted in April: 99
- Additional documents submitted as Corrective Actions: 120

FTA Process

The Triennial Review included the following detailed steps:

- Pre-review assessment.
- Desk review and scoping meeting with the FTA regional office.
- Site visit by FTA reviewers (remote due to COVID-19).
- BART had 27 open FTA grant awards at the time of the review.
- Review was expanded to address BART's compliance with the administrative relief and flexibilities FTA granted and the requirements of the COVID-19 operating relief funds received through the CARES (2020), CRRSA (2021), and ARP (2021/2022*).
- BART was 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.

**American Rescue Plan (ARP) funds were awarded subsequent to the review*

Sections of the Triennial Review (1 of 2)

1. Legal
2. Financial Management and Capacity
3. Technical Capacity – Award Management
4. Technical Capacity – Program Management & Subrecipient Oversight
5. Technical Capacity – Project Management
6. Transit Asset Management
7. Satisfactory Continuing Control
8. Maintenance
9. Procurement
10. Disadvantaged Business Enterprise (DBE)
11. Title VI
12. Americans with Disabilities Act (ADA) – General

Sections of the Triennial Review (2 of 2)

13. ADA – Complementary Paratransit
14. Equal Employment Opportunity
15. School Bus (Not Applicable)
16. Charter Bus (Not Applicable)
17. Drug Free Workplace Act
18. Drug and Alcohol Program
19. Section 5307 Program Requirements
20. Section 5310 Program Requirements (Not Applicable)
21. Section 5311 Program Requirements (Not Applicable)
22. Public Transportation Agency Safety Plan (PTASP)
23. Cybersecurity (New FY22)

FTA Metrics

FTA uses metrics to evaluate whether a transit agency is meeting the requirements for each of the areas reviewed:

- **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.

FTA Initial Deficiencies Noted in Draft Report

Review Area	FTA 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
Drug Free Workplace Act (DFWA)	DFWA1-1	No written DFWA policy

** Denotes a repeat finding from prior FTA Triennial*

FTA - 2022 Triennial Review Results Summary

TRIENNIAL REVIEW RESULTS			FTA Finding Running Count
Site Visit Initial Findings			10
Draft Report Findings - 2 removed entirely, resolved post-site visit with additional support			8
Final Report Findings - 4 closed in June with additional supporting documentation			4
Corrective Actions - 4 pending closure with additional support submitted to FTA			TBD
FTA Code	Deficiencies	Description	FTA Status
TC-AM5-1	Inactive award/untimely closeouts	FTA required further refinements on closeout scheduling, updates submitted	Submitted; Pending FTA Response
TC-PgM7-1	Inadequate oversight of subrecipients	FTA requires further refinements on document retention, updates submitted	Submitted; Pending FTA Response
P11-1	Missing FTA Clauses	Updated RFP provided, pending Board approval of sample purchase to also provide	Submitted; Pending FTA Response
DFWA1-1	No written DFWA policy	All required supporting documentation provided	Submitted; Pending FTA Response

Procurement FTA Clauses Added

Telecommunications: 2 CFR Part 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).*

Fraud, Waste or Abuse Reporting: *FTA Master Agreement (28) Section 39(b):*

(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.

2022 Triennial Review Results Comparison

FTA Average Count of Findings per Triennial Review:

- 2022 – 5.47 Avg. FTA Findings vs. BART’s 4 Findings
- 2018 – 6.86 Avg. FTA Findings vs. BART’s 6 Findings

Other Peer Agencies and their FY22 FTA Triennial Results:

- San Diego Metropolitan Transit System (MTS) – 7 Findings
- San Mateo County Transit District (SamTrans) – 4 Findings

FTA Triennial Reviews: Top 10 Findings for All Transit Agencies

FTA Review Area	Finding Code & Description
Procurement	P11-1 -Missing FTA clauses
Disadvantaged Business Enterprise	DBE5-1 -DBE uniform reports contain inaccuracies and/or are missing required information
Procurement	P10-2 -Lacking required cost/price analysis
Procurement	P10-1 -Lacking independent cost estimate
Title VI	TVI2-1 -Language Assistance Plan implementation deficiencies
Procurement	P5-1 -Incomplete written documentation of procurement history
Technical Capacity –Award Management	TC-AM2-1 -Incorrect Federal Financial Report (FFR) reporting
Procurement	P4-1 -Responsibility determination deficiencies
Procurement	P20-3 -Pre-award and/or post-delivery certifications lacking
Financial Management and Capacity	F4-1 –Electronic Clearing House Operation (ECHO) documentation deficient

FTA Triennial Summary – FY25 Triennial Planning

Internal Audit (IA) created standard operating procedures for Triennial, key steps include:

- **Additional Focused Professional Development**

- Attend the annual FTA Triennial Review Workshops & Grantee Oversight Workshops.

- **Pre-review Preparation**

- Further incorporate the most recent FTA's Contractor's Manual into our planning.
- Monitor and review documented corrective action implementation from previous review.

- **Establish a Working Team**

- Create a Triennial Review working group with various backgrounds (e.g., Legal, Financial & Procurement) to oversee the Triennial Review preparation and response.
- Conduct Self-Assessment or a 'mock' FTA Triennial review in non-review years.

- **Working within Triennial Review Framework**

- Prep BART staff regarding 'site' interviews (e.g., what to expect).
- Ensure that the requests from the reviewers are understood and have a BART IA moderator assign, monitor, and QA/QC responses.
- Prep to make the most of the three-day site visit as the individual departments will likely only have 1-2 hours to explain their internal processes, etc. to the FTA reviewers.

Questions?

Michael Wilkison

Manager of Internal Audit
michael.wilkison@bart.gov
510-464-7570

or

Dennis Markham

Director of Performance & Audit
dmarkha@bart.gov
510-464-6275

