



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

CONTRACTOR SUBMITTED NEARLY \$12K IN FALSE CLAIMS

INVESTIGATION RESULTS



A power washing contractor submitted \$11,900 in invoices that contained false statements. Under the False Claims Act, the contractor could be subject to \$330k in damages and penalties for their false statements. Evidence supported that the services identified in those invoices were not performed or not performed to required standards. Photographs showed dirt and waste remained in scheduled cleaning areas despite contractor invoices stating they were cleaned. BART officials said that they sometimes requested the contractor to conduct unscheduled cleanings, which they said may account for some of the days that the contractor did not perform a scheduled cleaning. Both BART officials and the contractor did not adhere to contract terms, resulting in these purported changes not being reflected on invoices or properly documented.

A BART employee withheld payment on \$149k in invoices to the contractor for failing to perform satisfactory services, but BART paid the invoices because the District was out of compliance with the contract terms. The employee also attempted to hold the contractor accountable for its work but was directed to cease communication with the contractor. BART officials said that this was due to complaints from the contractor about their interactions with the BART employee.

RELEVANT LAW



The California False Claims Act (Government Code Sections [12650 – 12656](#)) 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



Properly managing contracts holds contractors accountable in their use of public funds. BART can avoid fraud and waste by using this investigation to inform future contract award decisions.

Unclean stations deter riders and are contrary of the District's "Safe and Clean" plan. Failure to deliver on promises for clean stations and contractor misuse of public funds erodes public trust and places the District at risk of not obtaining funding.

RECOMMENDATIONS IN BRIEF

To protect against those who fail to uphold their fiduciary duty to the public, BART should:

- Recover \$11,900 from the contractor.
- Seek penalties and damages for false claims.
- Train employees on managing contracts.
- Enforce contract terms.

BART agreed to our finding and three of our recommendations. See page 12 for full details.

CONTRACTOR REBUTTAL

The contractor responded to our findings claiming that they did complete the services and provided us with additional records and documents to support their position. After a thorough analysis of those records and documents, we determined they were not sufficient to reverse our conclusion. For example, the contractor provided Global Positioning System (GPS) data stating that it showed one of their trucks was at the 24th Street BART Station the night of the scheduled cleaning. However, our video evidence showed that no one performed power washing services at the station that night. Therefore, our investigatory findings remained unchanged.

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 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.



Whistleblower Complaint

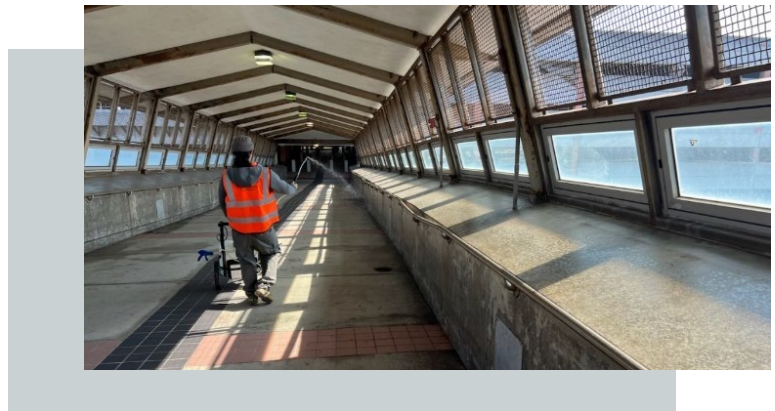
We received a confidential whistleblower complaint submitted in good faith alleging that a contractor failed to provide services in accordance with their BART contracts and then submitted invoices to the District claiming they rendered the services. We substantiated those allegations.

The complainant reported that they were experiencing retaliation. All complainants are protected under the District's [Whistleblower and Antiretaliation Policy](#). We spoke to BART officials and monitored the situation, and we determined that the actions deemed as retaliation were allowable, though we understood the complainant's perception. We considered the claim of retaliation as submitted in good faith.

BACKGROUND



In fiscal year 2020, the District awarded two contracts totaling \$5.9M to the same contractor for external power washing services at BART stations. Additional compensation was permissible by change order for unscheduled cleanings and both contracts were for a three-year period with two, one-year options to renew. All unscheduled cleanings required the District to provide the contractor written notifications of the change and for the contractor to respond with a written proposal that included a cost estimate prior to proceeding with the work. The first contract (\$1.7M) required the contractor to power wash the exteriors of four areas at the 16th and 24th Street (Mission Street) Stations every night, while the second contract (\$4.2M) required the contractor to clean the exteriors of other stations throughout BART on a predetermined schedule one or two times a week. Both contracts required the contractor to submit daily “work performance reports” by 8 a.m. to support that they performed the required cleanings. Both contracts also required the contractor to provide its own water for the power washings, perform the cleanings Monday through Sunday between 9 p.m. and 4 a.m., gather and pick up all resulting trash, debris, and waste, and dispose of it away from District property in accordance with state and local ordinances. In establishing cleaning schedules, the contractor was required to provide the days and specific hours they were to clean each station. The contractor was also required to provide BART with a proposal to change their schedules in “writing” and obtain “written approval” for those changes.

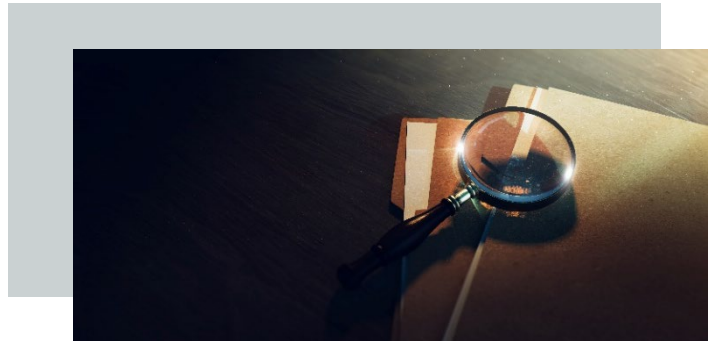


LACK OF CONTRACT OVERSIGHT

BART officials allowed the contractor in question to deviate from contract terms, including the requirements to submit daily work performance reports, adhere to established cleaning schedules, and use the documented change order process for unscheduled cleanings. This removed the ability to provide proper oversight of the contractor and ensure their performance met contractual requirements. BART officials also accepted contractor invoices containing false information due to the allowed deviation from the contract terms.

When a BART employee was assigned to manage the power washing contracts and monitor the contractor's performance in 2022, they attempted to hold the contractor accountable and reported the contractor's noncompliance with the contract terms to higher levels of BART management. The employee noted that the contractor did not perform scheduled cleanings or did not perform cleanings to the "highest standards," as required by the District contract. However, the employee did not require the contractor to provide daily work performance reports. BART management directed the employee to cease communications with the contractor because the contractor reported that they felt harassed.

The employee withheld over \$149k in payments from the contractor for what they determined to be failure by the contractor to perform cleanings or to provide satisfactory service. BART paid the withheld payments because the District did not follow the requirements for breach of contract and notification. This resulted in BART accepting invoices that did not reflect the actual work performed by the contractor. However, the employee continued to press that the contractor was not performing satisfactorily. Because both contracts were nearing the end of their terms, BART management determined that they would allow the contracts to expire without enforcing the contract terms. Not following the contract terms removed the District's ability to determine whether the contractor performed power washing services and to ensure the contractor billed for only those services rendered.



SERVICES NOT PERFORMED

We conducted our own observations to determine whether the contractor was performing cleanings and to what standards. We then requested daily work performance reports from the contractor for the Mission Street, West Bay, and Castro Valley stations for the month of September 2023 to compare to our observations. According to the contractor, they completed the reports to comply with our request, which is contrary to the contract requirement for the contractor to complete work performance reports "upon completion of the work each day at each work location." We then compared the contractor's daily reports for our period of review with photographic evidence taken during our site visits or video evidence from BART's security systems for the stations in question and identified 22 instances where the contractor did not perform cleaning services in accordance with contract terms. We then confirmed that the contractor billed BART for those 22 instances. We determined BART's dollar loss for the month of September 2023 to be at least \$5,100, as shown in Table 1.

TABLE 1: FALSE CLAIMS – OIG INVESTIGATOR OBSERVATIONS

22 Instances of Billed Cleanings Not Performed at all or to the “Highest Standards,” per District Contract

	Date	Station	Evidence Type	False Claim
1	9/1/23	16th Street Mission/East	Video	\$225
2	9/1/23	16th Street Mission/East	Video	\$225
3	9/1/23	24th Street Mission/East	Video	\$225
4	9/1/23	24th Street Mission/West	Video	\$225
5	9/2/23	16th Street Mission/East	Video	\$225
6	9/2/23	24th Street Mission/East	Video	\$225
7	9/2/23	24th Street Mission/West	Video	\$225
8	9/8/23	16th Street Mission/East	Video	\$225
9	9/8/23	16th Street Mission/West	Video	\$225
10	9/8/23	24th Street Mission/East	Video	\$225
11	9/8/23	24th Street Mission/West	Video	\$225
12	9/9/23	16th Street Mission/East	Video	\$225
13	9/9/23	16th Street Mission/West	Video	\$225
14	9/9/23	24th Street Mission/East	Video	\$225
15	9/9/23	24th Street Mission/West	Video	\$225
16	9/10/23	24th Street Mission/East	Video	\$225
17	9/10/23	24th Street Mission/West	Video	\$225
18	9/12/23	Balboa Park	Site Visit	\$250
19	9/12/23	Castro Valley	Video	\$275
20	9/13/23	South San Francisco	Site Visit	\$250
21	9/18/23	San Bruno	Site Visit	\$250
22	9/25/23	San Bruno	Site Visit	\$250
Total:				<u>\$5,100</u>

Although not inclusive of all our photographic and video evidence, below are three examples of before and after photos depicting that waste and debris remained in locations on days the contractor purported to have cleaned the station exteriors.¹

September 18 & 19, San Bruno Station Before & After Photos Taken by OIG Investigator

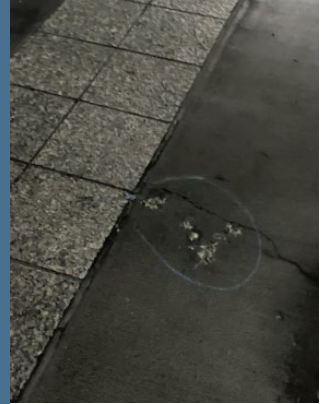
Before Photo

Taken 9/18/23 at 9:58 a.m. showing bird excrement at the San Bruno Station prior to purported cleaning.



After Photo

Taken 9/19/23 at 6:14 a.m. showing bird excrement remains at the San Bruno Station after purported cleaning.



September 13 & 14, South San Francisco Station Before & After Photos Taken by OIG Investigator

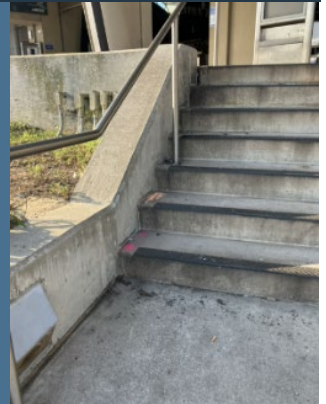
Before Photo

Taken 9/13/23 at 8:39 a.m. showing washable chalk at the South San Francisco Station prior to purported cleaning.



After Photo

Taken 9/14/23 at 8:30 a.m. showing washable chalk remains at the South San Francisco Station after purported cleaning.



September 12 & 13, Balboa Park Station Before & After Photos Taken by OIG Investigator

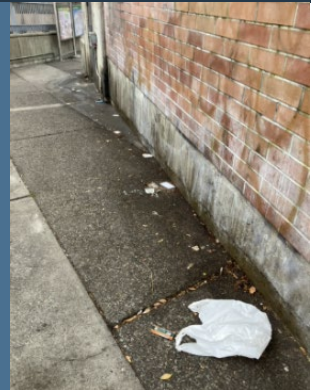
Before Photo

Taken 9/12/23 at 1:51 p.m. showing waste at the Balboa Park Station prior to purported cleaning.



After Photo

Taken 9/13/23 at 8:13 a.m. showing waste remained at the Balboa Park Station after purported cleaning.



¹ The OIG used environmentally safe, washable sidewalk chalk to mark some of the areas photographed.

UNSUPPORTED CLEANINGS

Our office also reviewed reports, videos, and photos generated by BART staff for the month of September 2023. They documented 25 instances where the contractor did not power wash station exteriors in accordance with contract terms but invoiced BART \$6,800 for those services. The contractor did not supply the required “work performance reports” upon our request for any of the 25 purported cleanings on the dates noted in Table 2.

TABLE 2: UNSUPPORTED CLAIMS – BART STAFF OBSERVATIONS

25 Instances of Billed Cleanings Lacking a Daily Work Performance Report

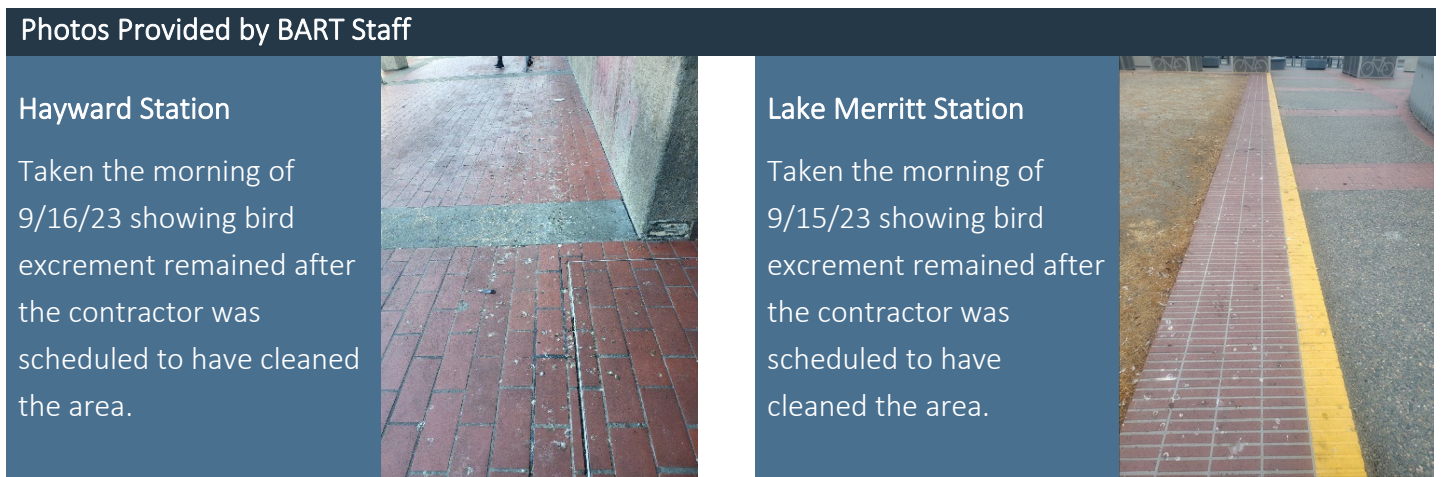
	Date	Station	Evidence Type	Unsupported Claim
1	9/12/23	Bay Fair	Video	\$275
2	9/13/23	Millbrae	Photo	\$250
3	9/13/23	San Bruno	Photo	\$250
4	9/14/23	Lake Merritt	Photo	\$275
5	9/15/23	Hayward	Video	\$275
6	9/18/23	Hayward	Video	\$275
7	9/19/23	Castro Valley	Video	\$275
8	9/21/23	San Bruno	Photo	\$250
9	9/22/23	Fruitvale Stairs	Photo	\$275
10	9/24/23	Richmond Stairs	Photo	\$275
11	9/24/23	El Cerrito Del Norte	Photo	\$275
12	9/25/23	South Hayward	Photo	\$275
13	9/25/23	Fremont	Photo	\$275
14	9/25/23	Warm Springs	Photo	\$275
15	9/25/23	Union City	Photo	\$275
16	9/26/23	Bay Fair	Photo	\$275
17	9/26/23	Castro Valley	Photo	\$275
18	9/27/23	Concord	Photo	\$275
19	9/27/23	North Concord	Photo	\$275
20	9/27/23	Pittsburg/Bay Point	Photo	\$275

TABLE 2: UNSUPPORTED CLAIMS – BART STAFF OBSERVATIONS

25 Instances of Billed Cleanings Lacking a Daily Work Performance Report

	Date	Station	Evidence Type	Unsupported Claim
21	9/27/23	Pleasant Hill	Photo	\$275
22	9/27/23	Walnut Creek	Photo	\$275
23	9/28/23	Lake Merritt	Photo	\$275
24	9/28/23	Rockridge	Photo	\$275
25	9/28/23	Macarthur	Photo	\$275
Total				<u>\$6,800</u>

Although not inclusive of all the photographic evidence provided by BART staff, below are two examples showing that waste remained in locations on days after the contractor was scheduled to have cleaned the station exteriors.



According to the contractor, BART staff often directed them to perform unscheduled cleanings to respond to customer complaints or accommodate BART events. BART officials confirmed the contractor’s statement. The contractor also said that they sometimes did not perform their scheduled cleanings when directed to perform an unscheduled cleaning. Contract terms do not state that unscheduled cleanings allow for the contractor to skip scheduled cleanings.

Unscheduled cleanings were permissible by change order under the contract upon written notification from the District and receipt of a cost proposal from the contractor. We saw some emails requesting an unscheduled cleaning; however, none of the invoices we reviewed were supported by a change order that stated regularly

scheduled cleanings may be skipped, nor were any changes supported by a cost proposal. The contractor generally billed for only regularly scheduled services. This aligned with the contractor's assertion that they sometimes performed unscheduled cleanings without charge. However, invoices are to reflect actual services provided by the contractor and are to be supported by required documentation such as change orders and cost proposals, which they were not.



Additional Observations

In October 2022, the City of San Bruno complained to BART that the contractor in question improperly accessed the city's water hydrants to clean the San Bruno BART station exterior. BART addressed the matter. During our investigation, we observed the contractor use a City of San Francisco hydrant to clean the 16th Street (Mission Street) station exterior and followed up on the issue given the circumstances with San Bruno. The contractor said that they had permission to use San Francisco's hydrants and provided us with invoices supporting that they paid for the use of hydrants and water consumption in San Francisco, San Bruno, and the East Bay Municipal Utility District (EBMUD).

We also observed the contractor sweep trash and debris into the streets of San Francisco, despite their contracts requiring them to, "gather and pick up all resulting trash, debris, and waste, and dispose of it away from District property...." According to the contractor, San Francisco Public Works personnel gave them permission to do so. However, a San Francisco City official said that doing so is not allowed. San Francisco Public Works was informed of the matter.



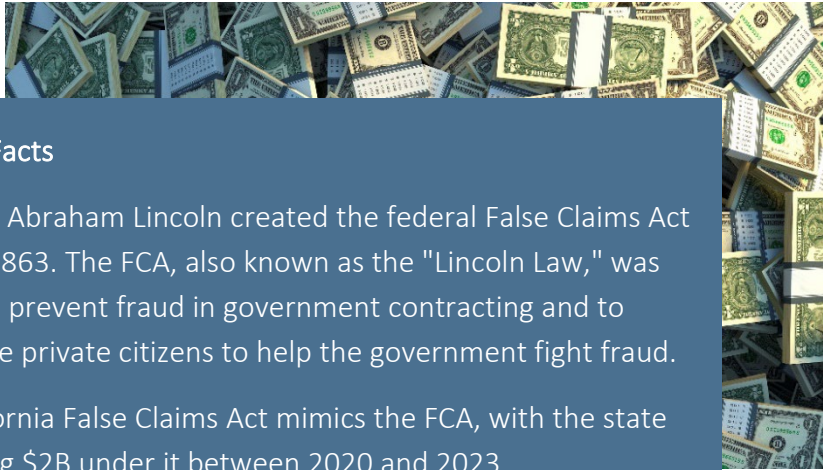
CONTRACTOR ASSERTIONS

We interviewed the contractor to discuss our observations and to provide them the opportunity to respond to our findings of noncompliance and false claims. The statements supplied by the contractor are presented in Table 3 in relation to the contract scope of services.

TABLE 3: CONTRACTOR’S RESPONSE COMPARED TO CONTRACT SCOPE OF SERVICES	
<i>Contractor Response</i>	<i>Contract Scope of Services</i>
Relied on staff assertions that cleaning occurred.	Contractor to provide direct supervision.
Submitted work performance reports to the OIG only in response to our request.	Contractor to complete a work performance report no later than 8 a.m. the morning after the cleaning.
Unscheduled cleanings by District officials interrupted scheduled station cleanings.	Contract does not state unscheduled cleanings may be done in lieu of scheduled cleanings.
District did not provide contractor with a notice that the Project Manager found their work to be unsatisfactory.	Contract requires notifying the contractor when their work does not meet the highest standards.
San Francisco Public Works staff said to sweep debris and trash into streets for removal by the city’s street sweeping services.	Contractor to dispose of all trash, debris, and waste in accordance with state and local ordinances and codes.
Paid San Francisco, San Bruno, and EBMUD for their use of public water and hydrants.	Contract silent on use of public water. States only that contractor may not use BART sources.
Did not bill for at least \$13,350 in unscheduled cleaning services.	Contractor to submit invoices for services rendered with supporting documentation.

FALSE CLAIMS ACT

The contractor violated the California False Claims Act (CFCA) by submitting invoices to BART with information they knew was not accurate. Under the CFCA, the District could recover approximately \$330,000 in damages and penalties for the contractor's false claims. The CFCA allows for a California government entity to bring a civil action to recover treble damages and penalties against any person who knowingly uses or makes a false statement or document to obtain money from that entity. Though the contractor said that unscheduled cleanings were the reason we found station exteriors uncleaned, no documentation was provided to concretely support their statements. We were provided only testimonial evidence on the matter and some emails requesting unscheduled cleanings. However, we have video and photographic evidence showing that the cleanings were either not performed or not performed in accordance with contract terms, and correlating invoices claiming services were rendered in accordance with the contract.



Notable Facts

President Abraham Lincoln created the federal False Claims Act (FCA) in 1863. The FCA, also known as the "Lincoln Law," was passed to prevent fraud in government contracting and to encourage private citizens to help the government fight fraud.

The California False Claims Act mimics the FCA, with the state recovering \$2B under it between 2020 and 2023.

DISTRICT GENERAL COUNSEL AND GENERAL MANAGER RESPONSE

Recommendations – General Counsel		
1.	Recommendation:	Recover the \$11,900 identified in this investigation for services the contractor did not render or did not render to contractual standards.
	Implementation Date:	July 2024
	Corrective Action Plan:	The contractor has agreed to pay the District \$11,900 in settlement of this matter.
2.	Recommendation:	Seek damages and penalties as permissible under the California False Claims Act.
	Implementation Date:	July 2024
	Corrective Action Plan:	The Office of the General Counsel settled this matter for \$11,900 rather than pursuing the claims through litigation.

Recommendations – General Manager		
3.	Recommendation:	Provide contract management training to BART staff who are responsible for providing those services.
	Implementation Date:	September 2024
	Corrective Action Plan:	All Maintenance & Engineering (M&E) Project Managers (PMs) responsible for contract management will receive service contract procedural training from M&E Acquisition support in partnership with Procurement Contract Management Administration. Scope of Service accountability will be emphasized.
4.	Recommendation:	Ensure BART staff adhere to contract terms when managing contracts and that they require the same of contractors.
	Implementation Date:	April 2024

Recommendations – General Manager

Corrective Action Plan:

Maintenance and Engineering (M&E) managers distributed a memo to all maintenance staff outlining how maintenance contracts should be managed. M&E has implemented contract reviews and training for contracts that identify a specific person responsible for managing a program. The Project Manager (PM) will perform, in person, a "contractor check" and document reports/notes/photos of these visits in a dedicated folder. The PM and their reporting manager will meet quarterly to review the contractor's performance and all reports/notes of the PM. If at any time a PM encounters contractor scope of service deviations or nonconformity, the PM will document and notify their reporting manager immediately.

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