

ACTIVITIES REPORT

July 2022 – September 2022

Office of the Inspector General

Fraud, Waste, and Abuse Investigations

The OIG investigates indications of fraud, waste, or abuse regarding BART's programs, operations, and suppliers. Employees, contractors, and citizens are encouraged to report their observations.

Every individual, regardless of religion, race, immigration or documentation status, or national origin, is safe to obtain assistance from the OIG.

Audits

The OIG conducts performance audits that contribute to public accountability and transparency by providing independent and objective analysis of the efficiency and effectiveness of BART programs, operations, and activities.



Message from the Inspector General

I am dismayed to share that California Governor Newsom vetoed Senate Bill 1488. The bill was intended to enact legislation for the BART OIG that models legislation governing other Offices of Inspector General and the California State Auditor. It would have ensured that the BART OIG has the authority it needs to conduct audits and investigations and clarified its requirement to follow professional standards as a means of providing independent oversight.

Unfortunately, the majority of the Board of Directors did not support SB 1488 and the Board President requested that the Governor veto it because it did not require the OIG to notify and engage unions in investigations where the employee is not the subject of the investigation. This seems to have influenced the Governor's decision. Such requirements would harm the confidentiality of and obstruct investigations. I do wish it was better understood that the need to maintain confidentiality is about protecting the integrity of investigations and in doing so, protecting BART's interests. It is also about protecting employees' whistleblower rights as required by law and allowing them the right to decide for themselves if they would like to notify their union.

Employees are always welcome to request union representation at any time. The disconnect with BART is that my office needs employees to make that request directly to us. This is consistent with law but not what BART wants. If an employee reasonably believes their interview could lead to disciplinary actions, then we will, of course, allow union representation during the interview. Despite false statements made to the contrary, we have always supported those rights and have, in fact, held interviews with union representatives present because the employee requested it. It is unfortunate that Governor Newsom did not understand this to be true.

Harriet Richardson

Accomplishments & Efforts



We continued with our commitment to do the work expected of an Office of Inspector General (OIG) and accomplish the goals we set for our office. This last quarter, we:



- Issued our audit of the organizational structure of BART's financial operations, completed by our consultant, [Sjoberg Evashenk Consulting](#). The report is pending presentation to the Board of Directors. We will be requesting that they adopt a Chief Financial Officer (CFO) structure as recommended by the audit, and that they direct the Audit Committee or a newly created committee to assist with implementing a CFO structure.



- Continued work on 33 investigations, resolving 9 of them, and began work on 6 new allegations. We have several major investigations underway that require a great deal of our time and attention, which is slowing progress on some of our cases. However, we are close to wrapping up our work on some of those major investigations, which will free up our resources.



- Spoke at the [September 8, 2022](#), Board of Directors meeting encouraging the Board to not accept BART management's response to the [Alameda Grand Jury Report](#) and, instead, request that management work with us to prepare a response that will help us comply with our mandates. The Board did not accept our request. We do wish the Board and management had been more open to working with us to ensure the success of the OIG.



- Completed an evaluation of our fraud, waste, or abuse allegations case load to determine how best to employ our resources and identify the cases that require immediate attention.



- Presented to the Audit Committee on [July 19, 2022](#), and [September 13, 2022](#). We discussed our most recently completed investigations and our financial structure audit.

- Conducted follow up on our completed investigations to determine what action management has taken to address our recommendations. We also followed up on the cases we forwarded to management for issues outside of our purview to ensure that those complaints were addressed to the extent possible.



- Established a [YouTube](#) channel to showcase our new animated videos that provide educational information about our office to BART employees and present our reports to all BART stakeholders, including the public.



- Evaluated our strategic plan for fiscal year 2023 and made adjustments to account for our resource limitations and to be more reflective of the strain that puts on our ability to conduct audits.

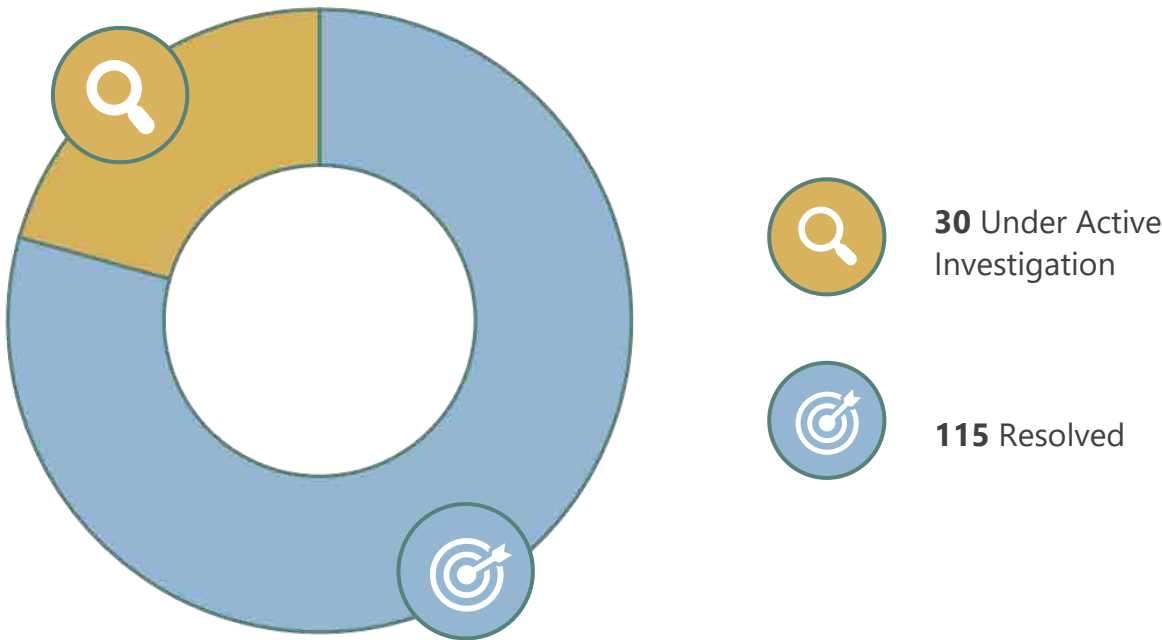


- Maintained our professional designations and compliance with our professional standards by obtaining continuing professional education credits.

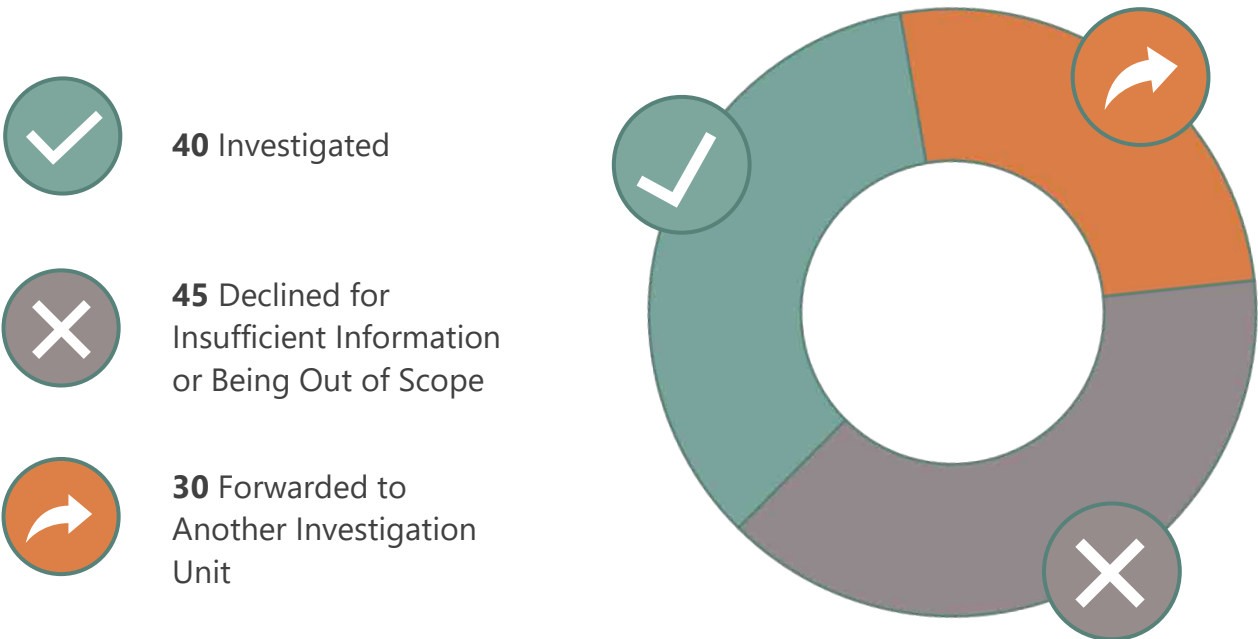
- Received and evaluated 12 new allegations of fraud, waste, or abuse:
 - 6 accepted as investigations: all under various stages of active investigation
 - 2 declined for being outside our scope of services or providing insufficient information
 - 4 forwarded to BART management for investigation

Investigations at a Glance

145 Total Complaints Received

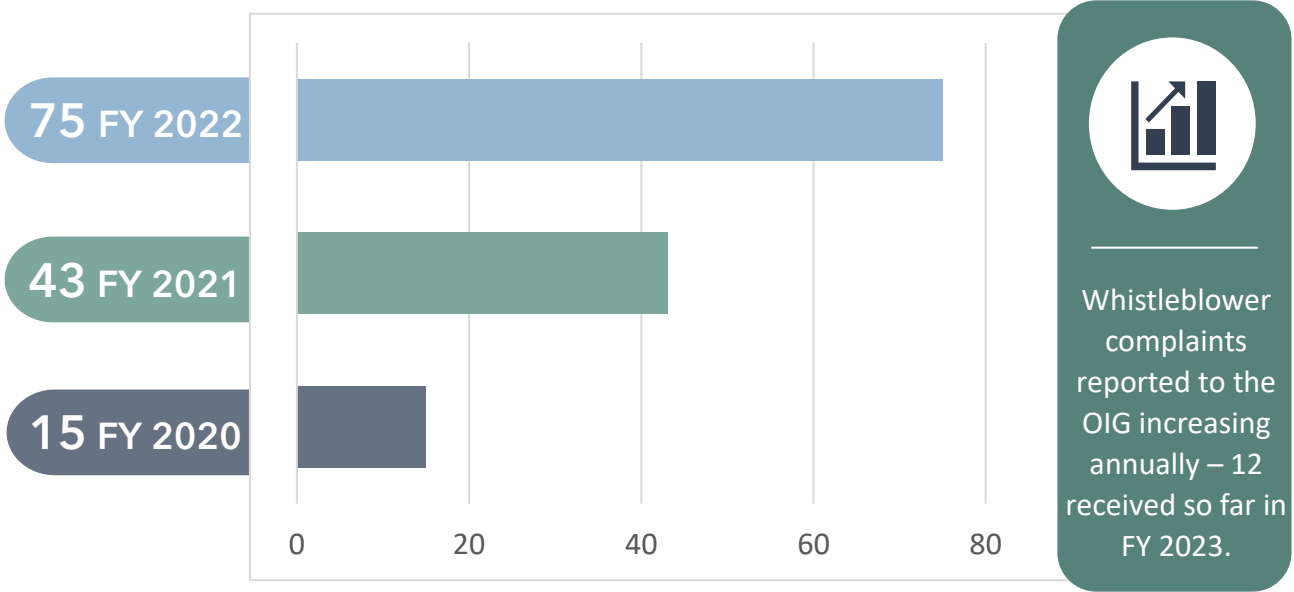


115 Total Cases Resolved



Investigations at a Glance

Total Annual Complaints Received - Prior Fiscal Years



Most Common Allegations

Fraud

We received **26** complaints alleging fraud or misappropriation. Timesheet and contracting fraud are the most common suballegations.

Unprofessional Conduct

We received **28** complaints alleging unprofessional conduct. Conflict of interest and harassment are the most common suballegations.

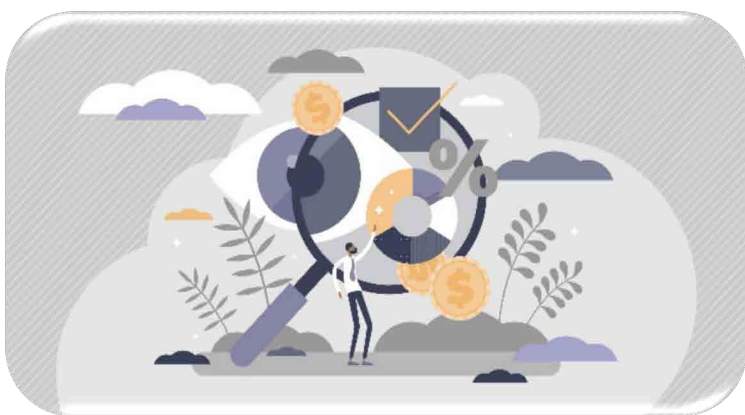
Compliance

We received **32** complaints alleging noncompliance. Unfair competition, conflict of interest, and policy and procedural noncompliance are the most common suballegations.

Major Activities

Investigations & Audits

We were actively investigating 30 allegations of fraud, waste, or abuse as of September 30, 2022. We resolved nine cases last quarter and received twelve new allegations, six of which are among those currently under investigation. We completed our quarterly evaluation of our case load to ensure that we are addressing the most critical issues first and making the best use of our resources. We have several major investigations underway that require a great deal of our time and attention, which is slowing progress on some other cases. Fortunately, we were able to obtain outside consulting services to assist us with some of those investigations, which helped prevent a complete stalling of our case backlog. Because our cases are ongoing, we cannot provide details on the allegations or specifics on the work we have done to date. However, we can share that our cases address a range of allegations including conflicts of interest and contract fraud and noncompliance. We hope to wrap up seven investigations and report our results by December, which will free our staff



resources to begin focusing more on addressing our case backlog. However, because we never know what allegation(s) a new complaint may bring to us, we may need to shift our work around and delay the release of some of our reports.

Our [audit](#) of the organizational structure of BART's financial operations was completed in August 2022. We contracted with [Sjoberg Evashenk Consulting](#) (SEC) for the work and they presented

their report to the Audit Committee on [September 13, 2022](#). SEC found that BART's organizational structure is unique among peer transit agencies in that it bifurcates financial management responsibilities between two independent Board appointees. They, therefore, recommended that BART modify its organizational structure to allow for the creation of a Chief Financial Officer (CFO) within the span of control of the General Manager. We are scheduled to present the report to the Board of Directors on November 17, 2022. We will be requesting that they accept SEC's recommendation and direct either the Audit Committee or a newly created committee to assist with implementation. It will take time to implement and see the effects of this major change. However, adopting a CFO structure now will assist BART with its continuous improvement efforts and better position the District to be more flexible and responsive to changes in transit and the economy, and making the most of its revenues.

Our resource constraints continued to force us to delay movement on our span of control audit. As we have shared before, we are an office of three with a continually growing caseload of fraud, waste, or abuse allegations. As we have also shared, our annual budget of \$1 million limits the amount of money we have available to contract for services. We have already committed funding this fiscal year to consulting services to assist with investigations, which has removed our ability to contract for services to assist with audits.

Major Activities



Follow-up Processes

We obtained updates from BART management on their progress toward implementing our recommendations. We are pleased to report that they continued to take action and moved forward with recommendations aimed at ensuring conflicts of interest are identified during the contracting process, improving how workplans are awarded under on-call contracts, helping District employees fulfill their fiduciary responsibilities, and improving transparency over timekeeping practices. [Appendix I](#) provides detail on management's progress on implementing open recommendations since June 30, 2022.

We also conducted work to follow up on the allegations we forward to management. Most of those allegations tend to be about unprofessional conduct, equal employment law violations, or service delivery and quality. The cases we forward about unprofessional conduct or equal employment law violations are often submitted to us anonymously with little to no specific information. This makes it challenging, if not impossible, to take action. However, we learned that management attempts to take some action even when complaints are anonymous, for example, by requiring employees to take training about communicating in the workplace. Therefore, we found management to be responsive in addressing them to the extent possible. To maintain confidentiality over investigations, the Office of Civil Rights (OCR) does not release information regarding their specific investigatory actions or case outcomes. However, we worked with the OCR to determine whether the equal employment law violation cases we forwarded were investigated or closed without investigation.

Our follow-up work allowed us to improve how we communicate with anonymous complainants regarding allegations we forward to the OCR. We learned that the OCR requires complainants to provide their name and contact information, which we do not, and to complete the OCR complaint form. We are able to communicate this to anonymous complainants via our case management system, which allows for anonymous communications, and encourage them to follow the OCR's procedures. We still forward the anonymous cases to the OCR so they have the information, particularly when subjects and potential victims of equal employment law violations are named in the anonymous complaint.

OIG Value & Looking Ahead

OIG Connection to Riders & Taxpayers



Members of the public are incredibly vital to the work we do. Their support is necessary for our success. For some BART riders, though, our connection to their BART experience is not so evident. We understand how it can be unclear. Therefore, we are taking this opportunity to make that distinction. Our work connects to the rider experience by protecting how their money is spent. Our job is to uncover fraud, waste, and abuse, and to find opportunities for efficiencies in BART's administration of its

programs and operations. That means we make sure that a rider's fare is spent appropriately and as intended. We do the same with tax dollars. Everyone who lives in or visits the Bay Area invests in BART as the District receives funding from property and sales taxes. Likewise, BART receives federal funding that also comes from tax dollars. One thing we do not do is investigate riders. That has been brought up as a concern and we want to be clear that investigating riders is not within our purview. Our goal is to ensure their fare revenue and tax dollars are not wasted or misused.

OIG Integrity

Our integrity was attacked recently. There is no value in rehashing what happened, but it is vital to stand up for who we are. We strive to maintain the highest level of trust and integrity, and we take an honest, fair, and balanced approach to our work. We value and protect our access to information and people recognizing that reputations, public confidence, and lives can be affected by our actions. We also treat those we investigate with respect and remain free from bias. Any comments to the contrary are untrue. Our value rests on our integrity, and our promise to all BART stakeholders is that the work we do is meant to better the District. We have no other agenda. We acknowledge that our work brings forward bad news. It is the nature of oversight. It is important to remember, however, that uncovering the bad allows for the good. Our recommendations fix problems and support a more efficient, effective, economical, ethical, and equitable BART system. We know that the BART Board of Directors, management, and labor partners want those things for the District. We hope that, in time, they see how we are an integral part of making that happen.

Expanding Educational Materials

Some have questioned why we investigate allegations that they believe should be forwarded to other oversight functions because, to them, the allegations do not appear to meet the definition of fraud, waste, or abuse. We have decided, therefore, to create educational content that shares the definition of fraud, waste, or abuse as defined in [Government Code 53087.6\(f\)\(2\)](#). That definition says that fraud, waste, or abuse "means any activity by a local agency or employee that is undertaken in the performance of the employee's official duties, including activities deemed to be outside the scope of his or her employment, that is in violation of any local, state, or federal law or regulation relating to corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, is economically wasteful, or involves gross misconduct."

OIG Value & Looking Ahead

All of our fraud, waste, or abuse investigations align with that definition. In developing new educational content, we will help make it clear to BART stakeholders how that alignment is true. We are in the early stages of assessing how to create this content, but we expect that we will develop both written and video materials.

California Senate Bill 1488

As mentioned above, Governor Newsom vetoed Senate Bill 1488 (SB 1488). In his letter to the California State Senate, he said that he could not sign the bill because, “there is one unresolved issue regarding the notification of all represented employees of their right to representation.” That statement is not reflective of the language in the bill. Senate Bill 1488 specifically required notification of Weingarten rights, in other words, the bill included language requiring that the BART OIG notify represented employees of their right to representation. This is something we have always done, even before the introduction of SB 1488.

The unresolved issue was not notification of rights to representation. It was the position shared by the BART Board of Directors, management, and labor partners that SB 1488 should require the BART OIG to seek prior cooperation and assistance from the unions when we conduct investigations and have a union representative present at all investigatory interviews, even when an employee is not the subject of the investigation or does not request it. This would insert the unions in our work, thus removing our legally required independence and our ability to maintain control over the trajectory of our investigations.

It is perplexing that the Governor would veto legislation that models existing law for the State Auditor’s Office and other inspectors general in California. None of those offices are expected to insert unions in their investigations in the manner being requested of the BART OIG. It is widely understood by inspectors general and auditors that inserting unions – or anyone outside of their offices – in investigatory processes would effectively make their offices powerless to fulfill in their responsibility to identify fraud and provide independent oversight. It is quite a disappointment that the BART OIG is being asked to do what other oversight functions within BART are not because it is untenable to the goal of independent oversight. We do not know what will happen to the BART OIG since SB 1488 was meant to help the office overcome limitations that prevented it from functioning with the necessary authority and independence. We can only hope that the future holds the changes that will allow the office to succeed. For now, we leave you with retired California State Auditor, Elaine Howle’s comment to the Governor in her letter encouraging him to sign SB 1488:

“Requiring the BART IG to notify the union essentially deprives the employee the opportunity to determine whether he or she seeks representation. Furthermore, this could call into question the BART IG’s independence and threaten the BART IG’s credibility. To the extent that management permits the union to control or influence the outcome of the BART IG’s work, such arrangement may constitute management interference and result in a scope limitation or external control mechanism, both of which pose significant, disclosable impairments to the BART IG’s ability to function independently.”

- Elaine M. Howle, California State Auditor-Retired

**Office of the
Inspector General**



**Harriet Richardson
Inspector General**



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**Providing Independent
Oversight of the District's
Use of Revenue**

**Stop Fraud, Waste, and Abuse
Report What You See to the OIG**



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Whistleblower Hotline**



www.bart.gov/OIGHotline



510-464-6100



Appendix I: Recommendation Follow Up

Please refer to Appendix II in the OIG FY22 Annual Report to the State Legislature for management's updates provided in the prior fiscal year: [Report](#)

NO EVIDENCE OF FRAUD BUT EMPLOYEES WOULD BENEFIT FROM TRAINING ON THEIR FIDUCIARY RESPONSIBILITIES (8/13/21)

Recommendation	Original Management Response	Status	Implementation Dates	Management Updates
Develop training and guidance to assist BART employees in fulfilling their fiduciary responsibility in reviewing and approving invoices. Include examples that demonstrate common invoice errors and methods by which vendors might attempt to or could submit false information. Require personnel to complete the training before they are inserted into the PeopleSoft invoice approval workflow. Training need not be in person and can be achieved through online tutorials and videos.	Management concurs with the recommendation. AP will coordinate with HR, OCIO, and IA to develop a training plan that will provide guidance and assistance to BART employees on how to conduct and perform a proper review of invoices. Currently OCIO conducts 'Purchase Requisitions and Receiving' and 'Creating and Approving Expense Reports' training on a quarterly and 'as needed/requested' basis, both including approval processes. Due to shelter-in-place, the frequency of training has diminished. OCIO will return to scheduled training as soon as possible. All the current training materials are also posted and available in Employee Connect. Performance & Innovation (P&I) performed an Accounts Payable Improvement Initiative in FY21 that resulted in the development of invoice process desk guides for AP staff. Both the online and P&I training materials focus on the PeopleSoft process and not necessarily on fraud detection. IA will work with AP to conduct fraud awareness training, and training materials will be enhanced to include fraud awareness and prevention techniques to detect fraud and fraud red flags. To prevent instances of inappropriate segregation of duties, the OCIO will check the system configuration in PeopleSoft to determine if there is a way to prevent or not allow subcontractors and contractors from being inserted as a fiscal approver of invoices. In cases where it is necessary to obtain concurrence from the contractor or subcontractor due to the nature of the work they were engaged to perform, the system will be configured to allow them to be inserted only as 'reviewer'. IA will also add a review of invoice approval policies and procedures to its master audit plan. Approval by District staff knowledgeable about the charges being billed will always be required. It should be noted that BART AP staff would be required to adhere to existing procedures for fiscal approval, regardless of 3rd party reviewers.	Partially Implemented	2) October 2022 3) November 2022	<u>9/27/22</u> 2) Fraud Awareness training materials are under review. Will likely distribute via Pathlore. 3) Awaiting meetings with OCIO to apply roles to similar job classifications. OIG Note: Management identified three steps to address our recommendation. They have already successfully implemented step one; therefore, this update addresses only steps two and three.

POTENTIAL CONFLICT OF INTEREST MAY REQUIRE VOIDING A \$40 MILLION CONSTRUCTION MANAGEMENT CONTRACT AND NOT PAYING \$5.4 MILLION OF INVOICES (4/8/22)

Recommendations	Original Management Response	Status	Implementation Dates	Management Updates
Review and update the Contractor and Employee Codes of Conduct to ensure discussions of conflicts of interest are clear and consistent for both contractors and employees, including when and to whom to report them, and that they incorporate appropriate provisions of both federal and state conflict-of-interest prohibitions.	Management is reviewing Contractor and Employee Codes of Conduct, Conflict of Interest Code (COIC), and procurement (RFP/bid/proposal evaluation) and contract documents to ensure that they reflect current federal and state conflict of interest rules/codes. Additionally, management will review to ensure that all BART codes and policies are internally consistent and align with each other.	Partially Implemented	October 2022	<u>9/27/22</u> Management is evaluating the various codes of conduct against recommendations from the FTA Triennial Review.
Revise boilerplate language in RFP and other bid documents to consolidate information on conflict-of-interest prohibitions, appropriate federal and state references, BART's Contractor Code of Conduct reference, and reporting requirements in a single location.	See Recommendation #3	Partially Implemented	November 2022	<u>9/27/22</u> Draft contract language is under review. Consolidation of information will be considered by Procurement and General Counsel. Management will work with BART's General Counsel's office to best determine how to implement these recommendations.
Create a template that contractors are required to use to disclose potential personal, financial, and contractual conflicts of interest. Include a preamble on the template that refers bidders to the consolidated conflict-of-interest information in the bid documents and a statement that bidders are required to sign indicating that they have read and understand the disclosure requirements.	BART will include a separate Conflict of Interest disclosure form in each contract for contractors to specifically disclose and attest to any potential conflict of interest.	Partially Implemented	October 2022	<u>9/27/22</u> Form is under review and will be inserted into the standard contract template.

POTENTIAL CONFLICT OF INTEREST MAY REQUIRE VOIDING A \$40 MILLION CONSTRUCTION MANAGEMENT CONTRACT AND NOT PAYING \$5.4 MILLION OF INVOICES (4/8/22)

Recommendations	Original Management Response	Status	Implementation Dates	Management Updates
Revise the Proposal Evaluation and Award Confidentiality and Conflict of Interest Certification as necessary to align it with the updated Employee Code of Conduct (see Recommendation 3) and expand its use of to include all staff who are involved in any way in the procurement and contract administration process for a project. The timing of when an employee signs the form should align with when their participation in the process is to begin.	See Recommendation #3. In addition, BART management will review, update, and enhance the existing internal Conflict of Interest Certification processes to include additional staff who are involved in procurement and contract administration. The design is currently underway to include an annual position-based certification and a project/agreement/contract-specific certification of conflict of interest. This new multi-layered system of certifications would provide BART with more robust controls surrounding Conflict of Interest certifications and achieve the required Federal-level standard (per FTA Circular 4220.1F) of including the administration of contracts.	Partially Implemented	November 2022	<u>9/27/22</u> Management is working with Administration (Procurement and Human Resources), General Counsel, Office of the Chief Information Officer, and Program Management to develop a comprehensive effective process that reflects the recommendations. Processes are in development and technology solutions are being discussed. Progress has been slowed by resource constraints.

SUMMARY OF THEFT OF TIME INVESTIGATIONS (4/8/22)

Recommendations	Original Management Response	Status	Implementation Dates	Management Updates
To allow for proper oversight of timekeeping, BART should require supervisors to enter the information that SEIU employees are required to provide when conducting union business - location, area of the activity, estimated time needed, and specific nature of the union business involved - into the timekeeping comment field, when they manually clock out SEIU union representatives who leave their worksites during their work shifts to conduct union business. This is in addition to ensuring supervisors enter the appropriate union code into the timekeeping system when they make time adjustments to account for union business time.	We are currently working with payroll to increase the input of information on fields explaining the nature of the business. The persons inputting time will be required to fill all applicable fields for a person to be paid Union Business. That pay code will require the inputter to fill in all fields with information for the payroll to be accepted by the system, if the required fields are not filled in properly the employee in question will have an error status. Which will trigger a secondary review of the persons payroll.	In Progress	December 2022	<u>9/27/22</u> Labor Relations, OCIO and TAAD (timekeeping) have met regarding the identifying and potential expanding the Union Business Time Reporting Codes (TRCs) to ensure that supervisors and managers use the correct Union Business code to identify the purpose of the Union Business time per the contract and then require a comment on the Union Business time code entry to identify further information as to the location or reason for the Union business. This will allow TAAD to accurately record the Union Business time pursuant to the contractual requirements. Labor Relations, OCIO and TAAD are in the process of developing an implementation plan for this transition.
To allow for proper oversight of timekeeping, BART should require utility workers assigned to graffiti car cleaning shifts to use the TCD machines to clock out of their shifts at the yards at which they are conducting the cleaning, regardless of which yard they are regularly assigned to work.	Assistant Chief Leo Pica has investigated this issue and the following direction in process will be reinforced. A worker should clock in at their headquartered location and clock out when their shift is completed, and they are released. If this cannot be accomplished due to travel or change of start location, the Foreworker in charge of graffiti remediation will manually enter the time of the crew.	In Progress	December 2022	<u>9/27/22</u> Management and the labor unions are working together on a proposed zone system and rotating schedules so staff would not need to return to their bid location. Furthermore, management is reviewing policies and procedures, and planning to implement an inventory control and tracking system to better respond to train car graffiti issues.

END OF SHIFT TIMEKEEPING REQUIRES CLARIFICATION & BETTER TRANSPARENCY (7/8/22)

Recommendations	Original Management Response	Status	Implementation Dates	Management Update
To ensure the District uses its resources efficiently and effectively, BART should provide written guidance on the implementation of ATU Collective Bargaining Agreement Section 34.6 and the types of exceptions may allow for exceeding the 30 minute standard.	Transportation Department is researching applicable and valid uses of the MKN (Make Whole) Time Reporting Code (TRC). CBA S.34.6 is not the only valid use. After researching, guidance will be provided to employees authorized to use the TRC to delineate the situations in which the TRC can (and cannot) be used.	Implemented	September 16, 2022 and October 14, 2022	<u>9/27/22</u> There are many valid uses of the MKN (Make Whole) Time Reporting Code (TRC), including numerous applicable and valid uses of the MKN TRC beyond S.34.6 of the ATU CBA. Use of S.34.6 should be rare for manual MKN adjustments, which we clarified in a memo to Transportation staff. The memo cited in the response to the timekeeping recommendation regarding Make Whole is also applicable to this recommendation as the memo was distributed to all Foreworkers. Examples include making an employee whole when relieved from duty due to trauma. A broad example includes making an employee whole anytime the District requires the employee to return the next day and where the return would result in the employee not receiving the mandated rest period, including: • Joint Union/Management Business • Shift after training or back-to-back shifts (no 12 hour rest) • The first day after a bid/schedule change, and the employee's new scheduled start time is less than 12 hours from the old scheduled end time • An employee is called to be a witness in a disciplinary hearing with less than 12 hours rest since their shift end. Supervisors attempt to minimize the use of MKN, but the examples above could require that the employee be made whole up to their entire shift.
To allow for proper timekeeping oversight, BART should require Station Agent supervisors to enter clear descriptive information in the timekeeping system	A memo will be sent to supervisors to enter clear descriptive information in the timekeeping system comment field explaining why they manually applied Section 34.6 of the ATU Collective Bargaining	Implemented	September 16, 2022 and October 14, 2022	<u>9/27/22</u> The Chief Transportation Officer issued Transportation Notices reminding employees to enter the proper descriptive reason in the comment field to support usage of the MKN (Make Whole) and other Time Reporting Codes (TRCs), and that S.34.6 of the ATU CBA should rarely be the reason for MKN adjustments that exceed 30 minutes. <u>September memo text:</u> <i>To ensure transparency and to provide users with adequate information to avoid payroll issues, please be</i>

END OF SHIFT TIMEKEEPING REQUIRES CLARIFICATION & BETTER TRANSPARENCY (7/8/22)

comment field explaining why they manually applied Section 34.6 of the ATU Collective Bargaining Agreement for time that exceeds 30 minutes.

Agreement for time that exceeds 30 minutes.

reminded to enter bubble comments in reasonable detail to explain the reason for the manual entry. Comments are to be entered for all overtime (i.e. Missed lunch, missed breaks, extensions, early starts, drafts, etc.,) and for other manual entries such as MKN, VAC, time corrections, etc. Be sure to include your initials in case there are follow-up questions about the entry.

October memo text: A recent audit of Station Agent timesheets revealed that some “bubble comments” referenced the MEOS/MKN related to CBA Section 34.6 when the actual reason for the make-whole was not related to Section 34.6, and the make-whole time was unusually long, in many cases exceeding 1 hour.

While there are various acceptable reasons for making employees whole up to their entire shift, CBA Section 34.6 only pertains to the condition where the closing Agent is in fact leaving the station before the scheduled end of shift after the last revenue train and all patrons have left the station, and after properly securing and closing the station.

For purposes of transparency and accuracy of records, please be sure to only cite CBA Section 34.6 for the intended specific reason. Do not cite the section for other make-whole situations. Please make sure that all make-whole entries have bubble comments to explain in reasonable detail, the reason for the manual entry. Be sure to include your initials in case there are follow-up questions about the entry.

WORKPLAN SELECTION PROCESS GIVES APPEARANCE THAT FAVORED FIRMS COULD RECEIVE AN UNFAIR ADVANTAGE (7/8/22)

Recommendation	Original Management Response	Status	Implementation Dates	Management Updates
Implement written workplan selection guidelines that create more transparency and support accountability in how firms are chosen to perform work under their on-call contracts. Some options include a rotational basis that results in firms receiving work in a sequence, or having all firms with on call contracts submit workplan proposals for evaluation. Regardless of the option chosen, the process should minimize the risk that favoritism is the driver or gives the appearance of being the driver behind the selection. The guidelines should include a requirement to consider overhead rates in the selection decision and to document the rationale for the selection for future reference.	While BART's workplan selection process is designed to ensure maximum transparency, support accountability, and provide financial value to BART, management will review and document the process by which workplan recipients are selected. The documented process will be reviewed by the District's Performance & Audit and Agreement Management teams, which will assess if opportunities for favoritism currently exist, identify where improvements to transparency can be made, and determine if other methods (including those identified by the OIG) are advantageous and appropriate for BART. In addition, the District will also commence posting a chart quarterly on its website summarizing the remaining capacity available on all on-call contracts.	In Progress	November 2022	<u>9/27/22</u> Workplan selection process is under review.