

# **SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

## **CHARTER FOR THE OFFICE OF THE INSPECTOR GENERAL<sup>1</sup>**

### **A. Introduction**

The Office of the Inspector General (OIG) for the San Francisco Bay Area Rapid Transit District ("District" or "BART") was authorized in Regional Measure 3 (RM 3), which voters approved on June 5, 2018. The measure requires the OIG to:

- ensure the District makes effective use of bridge toll revenue and other revenue.
- ensure the District operates efficiently, effectively, and in compliance with applicable federal and state laws.
- conduct audits and investigations of BART's operating practices to identify fraud and waste and identify opportunities for efficiencies in the administration of the District's programs, operations, and delivery of capital projects, including, but not limited to, toll-funded projects.

The Governor of California appoints the Inspector General in accordance with California Public Utilities Code Section 28840.

### **B. Responsibilities and Authority of the Inspector General**

California Public Utilities Code (PUC) Section 28841 sets forth the general duties and responsibilities of the OIG. This Charter clarifies responsibilities of the OIG to achieve compliance with PUC Section 28841 in the context of typical responsibilities of an OIG:

- B.1. Performance Audits – The *Government Auditing Standards*, promulgated by the Comptroller General of the United States, defines audits that evaluate the efficiency and effectiveness of programs and operations as "performance audits." These standards are typically used by auditors in government organizations who are independent of and do not work under the direction of management. The OIG will meet its legislative requirement to conduct audits as follows:
- B.1.a. Conduct risk assessments of District programs, activities, and functions, and use the results to develop prioritized lists of potential performance audits that will identify opportunities for improving performance and operations, reducing costs, implementing best practices, and facilitating decision making by management, the Board of Directors, and oversight bodies.
  - B.1.b. Conduct performance audits, in compliance with the *Government Auditing Standards*, to provide the Board of Directors, District management, oversight

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<sup>1</sup> This Charter is largely modeled after Administrative Code Chapter 2-20, Inspector General, for the Los Angeles Metropolitan Transportation Authority and standards and guidance in the *Principles and Standards for Offices of Inspector General*, issued by the Association of Inspectors General, and the *Government Auditing Standards*, issued by the U.S. Government Accountability Office.

bodies, other stakeholders, and the public with independent and objective analysis, findings, and conclusions regarding the effectiveness of the District's programs and operations, accuracy of the District's information systems, the economic and efficient use of District resources, use of best practices, the adequacy of the District's internal controls, and accuracy of data used for measuring performance and decision-making purposes.

- B.1.c. Recommend policies or remedial actions to correct deficiencies or promote effectiveness, economy, and efficiency in the District's programs and operations and improve the accuracy of data provided through its information systems.
- B.2. Investigations – OIGs at the state and local government levels typically use the *Principles and Standards for Offices of Inspector General*, promulgated by the Association of Inspectors General, to conduct their investigations. The independent Office of the BART Inspector General conducts its investigations in compliance with these standards and will perform the following activities to meet its legislative requirement to conduct investigations:
  - B.2.a. Maintain a whistleblower hotline for the purpose of receiving allegations of fraud, waste, or abuse of District resources or noncompliance with laws, regulations, or District policies and procedures.
  - B.2.b. Receive complaints from any source and proactively conduct civil and administrative investigations concerning alleged fraud, waste, or abuse of District resources or noncompliance with laws, regulations, or District policies and procedures. The OIG may also initiate investigations based on information obtained from other than a formal complaint.
  - B.2.c. Recommend corrective actions, as necessary, based on results of investigations.
  - B.2.d. Report expeditiously to BART's Chief of Police and General Counsel, the appropriate county District Attorney, California Attorney General, United States Attorney, or other appropriate prosecutorial and investigative agencies whenever the Inspector General has reasonable grounds to believe there has been a criminal violation of law.
  - B.2.e. Participate in joint investigations with law enforcement agencies or other agencies conducting investigations of District operations as necessary.
- B.3. Other:
  - B.3.a. Engage in fraud prevention activities, including reviewing policies, procedures, and transactions to identify internal control weaknesses that can lead to fraud, and providing recommendations to strengthen internal controls.
  - B.3.b. Select employees, within the budget approved for the OIG, to carry out the functions, duties, and responsibilities of the OIG.



### **C. Access to Information, Records, Property, and Personnel**

- C.1. Unless prohibited by law or subject to attorney-client work product privilege, the Inspector General shall have unlimited and prompt access to and authority to examine and copy any and all documents, including but not limited to, books, accounts, internal memoranda, writings and tapes, reports, vouchers, correspondence files, personnel files, computer files, email, and other records, bank accounts, money, and other property of any District office, including automated data and contractors' records, that are relevant to a risk assessment, audit, or investigation.
- C.2. Any employee or agent of the District having control of such records shall fully cooperate with the OIG's requests and expeditiously provide access to, and examination thereof, upon the request of the Inspector General or their authorized representative. Any such employee or agent shall not be required to seek approval to fulfill the Inspector General's requests.
- C.3. The Inspector General shall have prompt access to and authority to meet with any District or contractor staff that are relevant to an ongoing risk assessment, audit, or investigation.
- C.4. The Inspector General shall have the ability to hold meetings with BART staff and between BART staff and BART's contractors to collectively discuss their conclusions and avoid misunderstandings regarding the OIG's work and to discuss whether implementing solutions other than recommended will satisfactorily address the underlying findings.
- C.5. It is the duty of any such employee or agent to make full disclosure of all pertinent information. Any employee or agent of the District who is aware of or becomes aware of information relevant to an investigation, audit, or risk assessment being conducted by the Office of the Inspector General should voluntarily provide it to the OIG even if it has not been requested.
- C.6. Employees or agents of the District shall not intentionally and knowingly withhold, hide, alter, or destroy any information, records, data, property, or equipment that may be potential evidence in an ongoing investigation or audit.
- C.7. Although the OIG does not have direct subpoena powers, the OIG may find it necessary to obtain subpoenas through a court proceeding to compel subjects or witnesses in an investigation to produce documents or appear for an interview.

### **D. Reporting and Monitoring**

In addition to the PUC reporting requirements, the OIG will issue reports consistent with the *Government Auditing Standards and Principles and Standards for Offices of Inspector General*. Prior to publishing a report:

- D.1. The Inspector General shall provide a draft report to the General Manager and the Assistant General Manager responsible for the area under audit or investigation. The draft report shall include the Inspector General's findings, conclusions, and recommendations.



- D.2. The OIG will provide an opportunity for the General Manager and Assistant General Manager responsible for the area under audit or investigation to provide written comments regarding the factual accuracy of the draft report. The OIG will change the report before providing a final draft for an official response if BART management provides sufficient, appropriate evidence to support their disagreement or the legal basis for the disagreement if based on an interpretation of a law, regulation, or the authority of BART management to take or not take action on the audit or investigation recommendations.
- D.3. The OIG will provide a final draft report to the General Manager and the Assistant General Manager of the function that was audited or investigated and allow 30 days for management to provide a written response. The OIG will provide a response template with each audit or investigation for management to use to address their concurrence, nonconcurrence, or partial concurrence with each finding and a corrective action plan, including a timeline for implementation, for each recommendation, along with their reasons for nonconcurrence or partial concurrence with a finding or recommendation.
- D.4. The Inspector General will review the General Manager's response to determine if additional discussion is needed. However, the Inspector General makes the final determinations regarding both the accuracy of an audit or investigation finding and whether management's planned corrective actions will adequately address the issues identified in the audit or investigation.
- D.5. The OIG will publish finalized audit and investigation reports, including management's response or a summary of management's response, on the OIG's website and provide copies to each member of the Board of Directors, the Metropolitan Transportation Commission, and the California State Legislature.
- D.6. The Inspector General will present the results of each audit and investigation to the Audit Committee as described in the Audit Committee Charter.
- D.7. The Inspector General will follow up on audit and investigation recommendations until satisfied that management has implemented the recommendations, otherwise adequately addressed the concerns brought forward by the OIG, or the OIG determines that a recommendation is no longer relevant.

#### **E. Quality Assurance and Improvement Program**

The OIG shall comply with requirements of the *Government Auditing Standards and Principles and Standards for Offices of Inspector General* for establishing a system of quality control, including developing written policies and procedures and undergoing external peer reviews as required by those standards.

#### **F. Confidentiality of Investigations**

The OIG is the official body of BART to investigate allegations of possible fraud, waste, and abuse identified by BART staff or other stakeholders and shall maintain appropriate

confidentiality of records and complainants as set forth in Public Utilities Code Section 28844. In addition, the Inspector General shall not disclose the identity of a complainant from whom a complaint or information has been received, unless the complainant has consented to such disclosure, such disclosure is unavoidable during the course of the investigation, or is otherwise required by law.