

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors **DATE:** October 22, 2021
FROM: Director Dufty
SUBJECT: Proposed Amendment to Audit Committee Charter

After the recent unsuccessful attempt to fill the two public member seats on the Audit Committee, I propose that the requirements contained in the Charter be revised slightly, as shown below, to expressly permit a determination by the Board that a candidate's experience may substitute for the required certification. The proposed addition to the existing Charter language is underlined below as a new last sentence.

3.2 Public members serving on the Audit Committee shall be appointed by a majority of the full Board of Directors through an application process following current Board rules.

3.2.1 Public members shall possess the independence, experience, and collective technical expertise necessary to carry out the duties of the Audit Committee as demonstrated by the following criteria.

They shall:

3.2.1.a. Have expertise in governmental accounting, financial management, or performance auditing, or conducting investigations of fraud, waste, or abuse.

3.2.1.b. Have technical knowledge of accounting, financial or performance auditing, financial reporting, and internal controls, including an understanding of and ability to apply the Government Auditing Standards, accounting standards issued by the Government Accounting Standards Board, and a recognized internal control framework.

3.2.1.c. Possess a relevant professional certification, such as Certified Public Accountant, Certified Internal Auditor, Certified Fraud Examiner, Certified Inspector General, Certified Internal Controls Auditor, Certified Information Systems Auditor, or a similar certification. Relevant experience may substitute for such certification in the Board's discretion.

BART AUDIT COMMITTEE CHARTER¹

1. Purpose

The purpose of this charter is to specify the functions of the BART Audit Committee.

2. Governance and Authority of the Audit Committee

- 2.1 Audit Committee assists the Board of Directors ("Board") in discharging its oversight responsibilities for financial management, operational effectiveness, ethics, and regulatory compliance of the San Francisco Bay Area Rapid Transit District ("District"), specifically in the areas under the direction of the Office of the Inspector General (OIG), the Controller-Treasurer, and Performance and Budget.
- 2.2 The role of the Audit Committee is to provide independent oversight and advice to the Board of Directors regarding the effectiveness and efficiency of operations, reliability of reporting for internal and external use, and compliance with applicable laws and regulations. It achieves this by providing a forum to discuss and pursue opportunities for improvements in business and performance operations, financial and nonfinancial reporting, and internal controls, as identified through audit and investigation reports of the District, whether conducted internally or by an external entity.
- 2.3 The Audit Committee shall be comprised of five voting members, including three Board Directors and two public members with governmental financial expertise.
- 2.4 The Audit Committee shall review the scope of its roles and responsibilities, its structure, and its processes at least biennially and make recommendations to the Board for modifications as necessary to ensure the Audit Committee's effectiveness.
- 2.5 The Audit Committee may hear items pertaining to financial and performance audits; audits by federal, state, and local government agencies; internal controls; general financial issues; and investigations of fraud, waste, or abuse. The Committee may provide recommendations to the full Board of Directors for action on matters within the Audit Committee's purview.
- 2.6 The Audit Committee is a legislative body for the purposes of the Brown Act. Accordingly, committee meetings are open public meetings subject to the noticing and meeting requirements under this law except in those proceedings where a closed session may be appropriate and required.
- 2.7 The Audit Committee shall meet at least four times per year, with authority to convene additional meetings as needed. A quorum of at least three committee members is required to conduct official committee business. The committee will invite

¹ The terminology used in this charter is based upon standard audit and internal control language and not meant to be specific to transit agency operations.

the General Manager (GM), GM-designated members of staff (GM Staff), Board Appointed Officers (BAOs), auditors, or others to attend meetings and provide pertinent information as necessary.

- 2.8 The Chair of the Audit Committee shall report during the Board Matters segment of Board meetings on the results of Audit Committee meetings. This report may be written or oral, depending on the significance of what is to be reported, such as the status of outstanding recommendations and breaches of internal controls that resulted in fraud, waste, or abuse.

3. Selection of Audit Committee Members

- 3.1 Board members who wish to serve on the Audit Committee shall be nominated by the Board President and appointed by the Board.

3.1.1. The President of the Board shall annually appoint one of the selected Board members to serve as chair of the Audit Committee.

- 3.2 Public members serving on the Audit Committee shall be appointed by a majority of the full Board of Directors through an application process following current Board rules.

3.2.1 Public members shall possess the independence, experience, and collective technical expertise necessary to carry out the duties of the Audit Committee as demonstrated by the following criteria. They shall:

- 3.2.1.a. Have expertise in governmental accounting, financial management, or performance auditing, or conducting investigations of fraud, waste, or abuse.
- 3.2.1.b. Have technical knowledge of accounting, financial or performance auditing, financial reporting, and internal controls, including an understanding of and ability to apply the Government Auditing Standards, accounting standards issued by the Government Accounting Standards Board, and a recognized internal control framework.
- 3.2.1.c. Possess a relevant professional certification, such as Certified Public Accountant, Certified Internal Auditor, Certified Fraud Examiner, Certified Inspector General, Certified Internal Controls Auditor, Certified Information Systems Auditor, or a similar certification.
- 3.2.1.d. Within the past 10 years and other than in their role as a committee member, have no affiliation with the District or with a firm that has done business with the District.

- 3.2.2 Public members shall serve two-year terms and are eligible to serve up to six years total. To the extent possible, appointments shall be made so no more than one term of office expires in any one year.
- 3.2.3 Public members shall be residents within the District's boundaries.
- 3.2.4 Public members are subject to conflict of interest laws and must file an annual Form 700, Statement of Economic Interests, with the District Secretary.

4. Audit Committee Roles and Responsibilities

4.1. General

- 4.1.1. Review or hear presentations of and discuss audit and investigation reports produced by the external financial auditors; federal, state, and local government agencies; Internal Audit; and the OIG, and the GM's or auditees' responses to those reports, including items of disagreement, if any, to provide full accountability to the public regarding the results of audits and investigations of District operations.
- 4.1.2. If an audit or investigation included recommendations, review and monitor implementation of corrective actions taken by management to address findings in audit and investigation reports to ensure they appropriately addressed the underlying findings. Discuss reasons for not implementing appropriate corrective actions(s) or implementation in a timely manner, if necessary.
- 4.1.3. Clarify the roles of Internal Audit and the OIG to prevent overlap of concurrent responsibilities while ensuring the OIG can meet its state-mandated responsibilities.
- 4.1.4. Make inquiries to GM/BAOs, internal and external auditors, and the Inspector General about significant risks or exposures facing the District and efforts to address identified risks.

4.2. Financial and Other Reporting

- 4.2.1. Controller-Treasurer – Provide oversight of financial activities related to the Controller-Treasurer:
 - 4.2.1.a. After staff have reviewed external audit firms' responses to Request for Proposals to verify that minimum requirements have been met, review the responses, conduct interviews, and recommend to the Board of Directors the firm to conduct the annual financial statement audit.

- 4.2.1.b. Upon selection, and annually thereafter:
 - i. Confirm the external audit firm's independence by reviewing their engagement letter and peer review report that attest to their independence and pass rating.
 - ii. When appropriate, recommend to the Board removal of the external audit firm.
- 4.2.1.c. Meet with external financial auditors as needed to review and discuss their audit scope of work and the annual audited financial statements, including any significant financial reporting issues.
- 4.2.1.d. Review interim and annual financial statements, including management's discussion and analysis, management's representation letters, and reports of internal control over financial reporting, for appropriateness, reliability, and timeliness.
- 4.2.1.e. Understand new accounting and reporting requirements and assess how changes may affect the District.
- 4.2.1.f. Review the District's Board-adopted financial policies and make recommendations to ensure the policies remain current and relevant.
- 4.2.2. Internal Audit – Review activities of Internal Audit:
 - 4.2.2.a. Review the letter of authority that describes Internal Audit's authority, roles, and responsibilities.
 - 4.2.2.b. Review Internal Audit's risk assessment and annual (or periodic) audit plan.
 - 4.2.2.c. Review Internal Audit's quality assessment and improvement program, as required by professional auditing standards. Hear the results of such reviews and monitor implementation of recommendations for improvement.
- 4.2.3. Office of the Inspector General (OIG) – Provide oversight of activities of the OIG pursuant to California Public Utilities Code Sections 28840 - 28845
 - 4.2.3.a. Review and recommend to the Board approval of the charter that describes the OIG's authority, roles, and responsibilities and clarifies the broad roles and responsibilities listed in the state legislation.
 - 4.2.3.b. Review the OIG's risk assessment and resulting audit plan, including the scope of audits to be conducted.

- 4.2.3.c. Discuss the OIG's access to information, records, and personnel and advise the Board on recommended solutions.
 - 4.2.3.d. Review the OIG's quality assessment and improvement program, including hearing the results of its external peer reviews as required by professional auditing and investigation standards and monitoring implementation of recommendations for improvement.
 - 4.2.3.e. Hear the OIG's quarterly reports of activities.
- 4.3. Internal Control – To provide reasonable assurance to the Board regarding the adequacy of the District's internal control systems, the Audit Committee should:
 - 4.3.1. Understand the District's internal control structure, including key operational, reporting, and compliance risks, and the controls implemented to mitigate those risks.
 - 4.3.2. Ensure compliance with the Federal Transit Administration's internal control requirements. Review the District's efforts to follow another standard internal control framework, e.g., *Standards for Internal Control in the Federal Government*, published by the U.S. Government Accountability Office, or *Internal Control – Integrated Framework*, published by the Committee for Sponsoring Organizations of the Treadway Commission (COSO).
 - 4.3.3. Discuss internal control systems and safeguards for District assets, discuss with GM/BAOs deficiencies, if any, and associated action plans for correcting such deficiencies.
- 4.4. Compliance with Laws, Regulations, and Procedures – To provide reasonable assurance to the Board that its policies are being carried out, the Audit Committee shall:
 - 4.4.1. At least biennially, review and, as needed, recommend changes to the District's Code of Conduct policies.
 - 4.4.2. Review and recommend changes, as needed, to the District's Whistleblower Policy.
 - 4.4.3. Review Procurement procedures to ensure that all agreements with outside contractors include a right-to-audit clause that provides the District's audit functions access to financial and performance-related records, property, and equipment purchased in whole or in part with District funds when conducting an audit or investigation related to the prime contract or subcontracts.
 - 4.4.4. Review the District's procedures for reporting noncompliance with laws, regulations, and policies, including whistleblower hotline and other

communication methods, and ensure that employees, contractors, and residents know how to report violations.

Terminology

This section is intended to clarify standard audit terminology in the context of a public transit agency since audit and public transit terms can be similar and sometimes overlap.

Internal Control: A process effected by an entity's oversight body, management, and other personnel that provides reasonable assurance that the objectives of an entity will be achieved. It is a dynamic, iterative, and integrated process in which the five components (control environment, risk assessment, control activities, information and communication, and monitoring) impact the design, implementation, and operating effectiveness of each other. Internal control objectives and related risks can be broadly classified into one or more of the following three categories:

- Operations – Effectiveness and efficiency of operations
- Reporting – Reliability of reporting for internal and external use
- Compliance – Compliance with applicable laws and regulations

Internal Control System: A continuous built-in component of operations, effected by people, that provides reasonable assurance – not absolute assurance – that an entity's objectives will be achieved.

Operational Processes: Processes that define the primary activities an organization needs to perform in order to successfully execute its business. Operational processes represent essential business activities that accomplish business objectives.

Performance Audit: Independent assessment that provides objective analysis, findings, and conclusions to assist management and those charged with governance and oversight with, among other things, improving program performance and operations, reducing costs, facilitating decision making by parties responsible for overseeing or initiating corrective action, and contributing to public accountability.

Safeguarding of Assets: The effective stewardship of public resources against unauthorized acquisition, use, modification, or disposition. Public resources include, but are not limited to, cash, securities, inventories, equipment, information systems, and data.