



San Francisco Bay Area Rapid Transit

Office of the Inspector General Fiscal Year 2023 Annual Report to the California State Legislature



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MESSAGE FROM THE INSPECTOR GENERAL



It seems impossible that we are already at the end of the fiscal year. Yet here we are. It has been our most eventful year yet with some major changes, including my appointment to Inspector General by Governor Gavin Newsom in May 2023. I am deeply honored by the trust given to me to provide you with independent oversight of BART and I am fully committed to my role. This is the most exciting, challenging, and rewarding job of my professional career.

This year we also received news of a significant boost in our annual budget. We received approval for an additional \$1.1M in funding from the Bay Area Toll Authority and \$600,000 from BART, bringing our new budget to \$2.7M. The new funding starts in fiscal year 2024 and it will allow us to conduct more investigations and audits, secure our work on a private network, and revisualize our website. We can hardly wait to get started.

Besides being eventful, this year has also been busy. We handled some difficult investigations, including several conflict-of-interest allegations and a time theft case that led to an arrest. We also continued to move a complex fraud investigation forward. In all, we successfully closed 35 investigations and released 21 reports, including an audit of BART's financial structure and our activity reports. On top of that, we created video content to share our work, followed up on management's progress on implementing our recommendations, and evaluated and processed 55 new whistleblower complaints. It was quite a productive year.

My team and I are proud of what we accomplished. It exemplifies our commitment to serve the public with integrity and objectivity, and to help improve the District.

Regards,

WHAT WE DO



We investigate indications of fraud, waste, or abuse regarding BART's programs, operations, and suppliers; and conduct performance audits that contribute to public accountability and transparency. We do this by providing independent and objective analysis of the efficiency and effectiveness of BART programs, operations, and activities. All our work supports those two objectives, either directly or indirectly.

VALUE ADDED



We play a critical role in providing independent oversight of BART programs, activities, and operations so that the public can feel assured that their tax dollars and ridership fees are used in the manner intended. We add leverage to BART's limited resources by investing our time into finding ways to make the District more effective, efficient, and equitable.

OIG CORE VALUES



Whistleblower Complaints

FY23 Performance Highlights

We investigate fraud, waste, or abuse allegations made against employees, vendors, and contractors. Our major accomplishments in this area and the most significant issues we investigated in fiscal year 2023 include:

35 Closed Investigations: We successfully completed 35 investigations, some of which we received in prior fiscal years. We tackled a wide range of allegations, several of which were quite complex and challenging to navigate.

55 New Complaints: We received and evaluated 55 new whistleblower complaints, which tracks with our annual average and resulted in us opening 29 investigations into allegations of fraud, waste, or abuse.









Time Theft: A BART employee who earned \$307K in one year was arrested for falsifying time records. The employee was at their personal residence or other nonwork locations during most of their paid shift and when claiming overtime.

Contract Waste: BART spent \$350K on a homeless outreach contract that did not yield clear results, with only one unhoused person entering treatment. BART also spent \$56K on unnecessary project administration costs by not using its emergency contracting process.

Conflicts of Interest: One current and two former BART employees violated conflict-of-interest laws due to their financial interests in contracts that they participated in making for the District. BART made a total of \$1.5M in payments under those contracts.

Spending Transparency: BART spent \$61M on contracts for the Link21 program but had not provided detail on its specific use of those funds. Link21 is a transformative rail improvement program that is expected to lead to capital projects with total costs in the billions. Taxpayers seek visibility on the program's spending.

Case Statistics All Years

	complaints received	186
	under investigation	22
	investigated	69
	forwarded	39
	declined	56
	substantiated	26
	not/unsubstantiated	31
	inconclusive	11

Trends



Fraud

We received **43 (23%)** allegations of fraud or misappropriation.

Timesheet and contracting fraud are the most common suballegations.

19	<u>investigated</u>	7	<u>substantiated</u>
11	<u>under investigation</u>	9	<u>not/unsubstantiated</u>
13	<u>forwarded/declined</u>	3	<u>inconclusive</u>



Compliance

We received **39 (21%)** allegations of noncompliance. Unfair competition and noncompliance with policies and procedures are the most common suballegations.

24	<u>investigated</u>	11	<u>substantiated</u>
2	<u>under investigation</u>	11	<u>not/unsubstantiated</u>
13	<u>forwarded/declined</u>	2	<u>inconclusive</u>



Unprofessional Conduct

We received **28 (15%)** complaints alleging unprofessional conduct.

Harassment and inappropriate behavior are the most common suballegations.

4	<u>investigated*</u>	1	<u>substantiated</u>
24	<u>forwarded/declined</u>	3	<u>inconclusive</u>

*We investigate unprofessional conduct only when it is not a personnel matter that falls under Human Resources' purview or an Equal Employment Opportunity matter that falls under the Office of Civil Rights' purview.



Conflict of Interest

We received **16 (9%)** complaints alleging a conflict of interest.

Financial interest in a contract is the most common suballegation.

10	<u>investigated</u>	5	<u>substantiated</u>
3	<u>under investigation</u>	4	<u>not/unsubstantiated</u>
3	<u>forwarded/declined</u>	1	<u>inconclusive</u>

Improvements

Positive Change

Tracking Progress: We obtained status updates from BART Executive Management on their progress with implementing our recommendations. During fiscal year 2023, they took action to implement 12 recommendations, 4 of which were carried over from prior fiscal years and 8 were from investigations we completed during the reporting period. They also made progress on 23 other recommendations. Appendices II and III provide detail on our recommendations and management's progress to improve contracting compliance, avoid conflicts of interest, and strengthen timekeeping controls.

Self-Correction: Individuals and firms have started coming to us for guidance on whether they are or could be in violation of conflict-of-interest laws or policies. We also noted instances in which inappropriate behavior ceased once we issued an investigation that addressed similar actions. This is evidence that our work leads to positive change for the District and helps protect against financial loss.

Recommendations

all years

#	total recommendations	75
+	accepted	66
×	not accepted	9
✓	implemented	45
⚙	in progress	21

fiscal year '23

#	total recommendations	26
+	accepted	25
×	not accepted	1
✓	implemented	10
⚙	in progress	15

Highlights

Organizational Change

Financial Structure: We determined that the District would benefit by consolidating financial operations under a Chief Financial Officer (CFO) within the span of control of the General Manager. A CFO structure will assist BART with its improvement efforts and better position the District to be more flexible and responsive to changes in transit and the economy, and make the most of its revenues. Sjoberg Evashenk Consulting, Inc. conducted the audit on our behalf.

Span of Control: We are evaluating the number of management layers within the District to identify potential areas where organizational change may allow for faster decisionmaking, improved communication, and streamlined operations. Results of the audit are intended to assist BART in addressing the fiscal challenge of reduced revenue resulting from the slow return to optimal ridership levels. TAP International, Inc. is conducting the audit on our behalf.

Recommendations

#	total recommendations	2
+	accepted	2
✓	implemented	1
⚙	in progress	1

Increased Funding

FY24 Resource Allocation

looking ahead



new employees



new website



private network



more investigations



more audits



new software tools



professional services

Path to Achieving Goals: With news of a budget increase, we mapped out how we would use that funding to achieve success in fiscal year 2024 and beyond. We have allocated our new \$2.7M annual budget to obtaining professional services and hiring more staff so that we may conduct more investigations and audits, including the more complex audits on our audit plan, and start public outreach to market our fraud, waste, and abuse hotline. It also allows us to develop a private network to ensure confidentiality over our investigative and auditing files; create our own website; and purchase software to assist with our investigative and auditing needs.

Larger Team

new staff

During our strategic planning for the upcoming 2024 fiscal year, we planned for adding four new staff members to our team. We will be bringing on one principal investigative auditor, two senior investigative auditors, and an executive assistant to support the office.

Organizational Change

new units

Strategic planning included developing a new investigative unit and an audit unit. Each will consist of one principal investigative auditor and one senior investigative auditor. Team members may crossover between units, but their primary responsibility will be their assigned unit.

Modern Communication

Sharing Results

increased public connections



YouTube channel



investigation/audit results



annual/activity reports



educational/training content



social media content

100s of Views: Our use of animated videos to share our work has proved highly successful. By posting our video content to our YouTube channel we can track the number of views our videos receive. One of our videos received nearly 1,000 views, while most received several dozen. This is measurable proof of our effectiveness as an OIG in providing transparency to the public and BART stakeholders. Our social media content also provides public information on what we do and the results of our work. Additionally, our educational content will assist BART employees in understanding our operations and how to report concerns to our office.



Providing Independent Oversight of the District's Use of Revenue

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



24/7 Fraud, Waste, & Abuse
Whistleblower Hotline



www.bart.gov/oighotline



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REPORTS

You can read this and all the Office of the Inspector General's reports on our website at www.bart.gov/about/inspector-general/reports.

Appendix I: Definitions

Common Terms Used by the BART Office of the Inspector General

Abuse: Behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary, including misuse of authority or position for personal interests.

Allegation: A claim or assertion that someone has done something illegal, wrong, or inappropriate. Also referred to as a complaint.

Complaint: A claim or assertion that someone has done something illegal, wrong, or inappropriate. Also referred to as an allegation.

Declined: Allegation lacked sufficient information to investigate or was too broad for a fraud, waste, or abuse investigation.

Economical: An organization's administration of its programs, functions, or activities with honesty, integrity, and impartiality and in a manner that advances the collective interest of the public rather than private gain.

Effective: An organization's ability to achieve its intended goals and objectives.

Efficient: An organization's ability to get the most value from its available resources.

Equitable: An organization's consistency in serving members of the public, distributing public services, and implementing public policy in a manner that promotes fairness, justice, and equality.

Forwarded: Allegation outside the OIG's area of influence and oversight and sent to the correct oversight function.

Fraud: In broad terms, an act that is intended to swindle someone or an organization. It is the intentional misrepresentation of the facts for monetary or personal gain.

Inconclusive: No evidence to support that the allegation of fraud, waste, or abuse, or noncompliance did or did not occur.

Insufficient: Not enough evidence proving that it is more than probable that a fraud, waste, or abuse allegation did occur, or to support audit findings and conclusions.

Not Substantiated: Insufficient evidence to support that an allegation of fraud, waste, or abuse, or noncompliance did or did not occur.

Out of Scope: Outside of the OIG's parameters for conducting fraud, waste, or abuse or noncompliance investigations or audits.

Performance Audit: Objective analysis, findings, and conclusions that assist with improving program performance and operations, reducing costs, facilitating decision making, initiating corrective action, and contributing to accountability.

Scope: The boundary of the audit or investigation tied directly to the objective or allegation, or area over which an oversight body has jurisdiction or influence as stated by law or policy.

Substantiated: Sufficient evidence supported that the allegation of fraud, waste, or abuse, or noncompliance did occur.

Common Terms Used by the BART Office of the Inspector General

Sufficient: Enough evidence proving that it is more than probable that a fraud, waste, or abuse allegation did occur, or the quantity of evidence to support the audit findings and conclusions related to the audit objectives.

Unsubstantiated: Sufficient evidence supported that the allegation of fraud, waste, or abuse, or noncompliance did not occur.

Waste: Using or spending resources carelessly, extravagantly, or to no purpose.

Appendix II: Recommendation Status

Status of OIG Recommendations Issued During Fiscal Year 2023

Prior Fiscal Years' Recommendations are Listed in the OIG's [FY22 Annual Report](#)

Some recommendations have been edited for brevity.

Workplan Selection Process Gives Appearance that Favored Firms Could Receive an Unfair Advantage

Recommendation	Status
1 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.	In Progress

Questionable Credit Card Purchases by BART Employee

Recommendations	Status
1 Either return the wagon and headphones or find uses for them within the District.	Implemented
2 Determine the appropriate use and placement of the refrigerator currently kept in a private office.	Implemented
3 Adjust the \$378.86 purchase so that it is recorded to the correct account code.	Implemented

End of Shift Timekeeping Requires Clarification & Better Transparency

Recommendations	Status
1 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.	Implemented
2 Require Station Agent 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 Agreement for time that exceeds 30 minutes.	Implemented

\$350K in Homeless Outreach Yielded Unclear Results

Recommendation	Status
1 Ensure all future agreements with any organization clearly identify outcome metrics to be captured and monitored and require evaluation as to the accuracy of those metrics and correction of any incorrect reporting.	Implemented

\$56,000 in Project Administration Costs Were Avoidable

Recommendation	Status
1 Ensure that the scope of services for all on-call contract workplans is in alignment with the contract scope of services and work with the requestor to identify and use a more appropriate procurement process when work outside the scope of work is being requested.	In Progress

Caution is Needed to Avoid Conflict of Interest Violations

Recommendations	Status
1 Void the workplans awarded to the former employee's firm and made under the contracts that the former employee participated in the making of while employed with the District.	Implemented
2 Void the contracts that the former employee participated in the making of while employed with the District.	Implemented
3 Pursue disgorgement in the amount of \$1,249,066 for payments made under the voided contracts or workplans.	Not Accepted
4 Update the District Contractor Code of Conduct and Employee Code of Conduct to ban former employees from entering into new contracts with the District for a minimum of one year post District employment.	In Progress

Overlooked Opportunity to Help Develop DBEs

Recommendations	Status
1 Create a standardized form that prime contractors must complete and submit to the OCR that justifies their proposed subconsultant addition by clearly identifying the special skills or resources required.	In Progress
2 Update the Procurement Manual to prohibit BART staff from directing, requesting, or suggesting that a prime contractor add a specific subconsultant to their contracts.	In Progress

BART Employee Collected Pay and Benefits for Time Not Worked

Recommendations	Status
1 Seek restitution from the former employee for an amount to be determined by BART management.	In Progress
2 Coordinate with CalPERS to make the appropriate years-of-service adjustment for the employee's retirement calculation.	In Progress
3 Investigate the time adjustments the manager made on behalf of the employee to determine if any policies and procedures were violated, and if so, discipline the manager in accordingly.	Implemented

Link21 Expenditures Missing from Public Reports

Recommendations	Status
1 Provide regular public financial reports showing contractor, scope of work, expenditures to date, and award amount for Link21 and other large-scale program and project contracts.	In Progress
2 Add the financial reports to the Link21 website to provide a consolidated location for BART Stakeholders to review the details of the work done along with costs to date.	Implemented

No Indication that Release of Personal & Private Information was Willful

Recommendations	Status
1 Remove the documents containing personal and private information from NextRequest so that they are no longer accessible to BART employees.	Implemented
2 Ensure documents are thoroughly reviewed prior to release and have information exempt from disclosure redacted or withheld in compliance with laws.	Implemented
3 Require employees who support NextRequest to upload files into folders that are labeled to assist in determining whether information should be redacted or withheld.	Implemented
4 Work with NextRequest to determine how to use the tools that can assist BART staff to quickly and easily associate emails with their attachments.	In Progress

Inconsistent Compensation & Hiring Practices Perpetuate Pay Disparities

Recommendations	Status
1 Ensure the nine employees in the protected classes are compensated in a manner reflective of their experience, education, and other applicable bona fide factors.	In Progress
2 Use bona fide factors consistently across all departments when determining compensation for any new or existing BART employees.	Implemented
3 Ensure all internal and external applicants understand that they may negotiate their starting salary and that doing so will not jeopardize their offer, but that the District is not required to accept their requests.	Open
4 Ensure managers involved with recruitment understand the District's provision to allow applicants to negotiate starting salaries.	Open
5 Limit non-represented employee temporary upgrades to six months or until a recruitment is completed to fill a vacancy.	In Progress
6 Maintain salary assessments for employees for the duration of their employment.	Implemented
7 Complete a Districtwide pay equity audit.	Open
8 Ensure that the improvements identified in these recommendations are reflected in standard operating procedures.	In Progress
9 Update the Non-Rep Handbook to be reflective of current employment terms and conditions for non-represented employees.	In Progress

Performance Audit of the Organizational Structure of BART's Financial Operations

Recommendations	Status
1 Modify the organizational structure of BART to allow for the creation of a Chief Financial Officer within the span of control of the General Manager.	In Progress
2 Direct either the Audit Committee or a newly created committee to discuss options and make recommendations to the Board of Directors for implementing the CFO structure.	Implemented

Appendix III: Recommendation Progress

BART Executive Management’s Progress on Open Recommendations

Provides information on only the status of recommendations not yet implemented as of March 31, 2023, and only the most current reported corrective actions. Refer to prior period annual and activities [reports](#) for older information.

Some recommendations have been edited for brevity.

No Evidence of Fraud but Employees Would Benefit from Training on Their Fiduciary Responsibilities

Open Recommendation Update

Status

- 1 Develop training and guidance to assist BART employees in fulfilling their fiduciary responsibility in reviewing and approving invoices.

Executive Management Response

Staff has not had the resources to complete this recommendation. A new internal auditor onboarded in June 2023, which should free-up some resources to transform the already completed fraud awareness materials into a viable training tool.

Partially
Implemented

Expected
Implementation:
Fall 2023

Summary of Time Thefts Investigations

Open Recommendations Update

Status

- 1 Require supervisors to enter the information that SEIU employees are required to provide when conducting union business when they manually clock out SEIU union representatives who leave their worksites during their work shifts to conduct union business.

Executive Management Response

A Letter of Understanding regarding new Union Business Codes has been sent to SEIU. It will take at least 30 days for the new Time Reporting Codes (TRCs) to be added to the timekeeping system after the letter is signed. Upon agreement, a joint memo will be sent out with new Union Business Code reporting requirements. Requirements will include specifying Union Business type, date and duration in the timesheet to be entered by the party responsible for time entry. It is difficult to specify the location of each instance of Union Business due to the sheer number of locations where such business can occur. Staff believes that documenting the type of Union Business will greatly determine its location. Management's proposed corrective actions should allow Union Business to become more auditable should questions or concerns about its use arise.

Partially
Implemented

Expected
Implementation:
Fall 2023

- 2 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.

Executive Management Response

Operations has changed its graffiti cleaning strategy and is performing graffiti removal job training on graffitied cars. The training and cleaning is being performed locally at each yard, which addresses the travel time and clock in/out concerns since employees are bided (clock in and out) to the location where the work is taking place. Some employees at the Richmond and Hayward yards have been trained, and it is the goal to train all dayshift Utility Workers to clean graffiti cars across all four yards. Operations is in the process of revising procedures to make cleaning improvements and to use new effective products that have a lesser PPE requirement. There is no premium pay to clean graffitied cars.

Partially
Implemented

Expected
Implementation:
Fall/Winter 2023

Potential Conflict of Interest May Require Voiding a \$40 Million Construction Management Contract and Not Paying \$5.4 Million of Invoices

Open Recommendations Update

Status

3 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.

Executive Management Response

Management is updating the Contractor Code of Conduct first in order to fully implement corrective actions related to 'Avoiding COI Violations' and will use similar language and formatting in the update of the Employee Code of Conduct.

Partially
Implemented

Expected
Implementation:
Fall 2023

4 Revise the Proposal Evaluation and Award Confidentiality and Conflict of Interest Certification as necessary to align it with the updated Employee Code of Conduct 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.

Executive Management Response

Management is in the process of addressing this recommendation and assessing whether similar technical improvements can be used to address other recommendations related to 'Avoiding COI Violations' and 'Opportunity to Help DBEs'.

Partially
Implemented

Expected
Implementation:
Late Fall 2023

Workplan Selection Process Gives Appearance that Favored Firms Could Receive an Unfair Advantage

Open Recommendation Update

Status

- 1 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.

Executive Management Response

Management is commencing a broad overview of its entire work plan consultant selection process with the intention of making the selection more equitable and should result in more consistent expenditures of individual consultant team budgets.

In Progress

Expected
Implementation:
TBD

Open Recommendations Update

Status

- 1 Create a standardized form that prime contractors must complete and submit to the OCR that justifies their proposed subconsultant addition by clearly identifying the special skills or resources required.

Executive Management Response

Management is reviewing similar forms from other transit and government agencies. Staff is reviewing bart.gov for proper placement of the form in conjunction with other potential changes (e.g., Procurement page) to bart.gov.

Partially Implemented

Expected Implementation:
Fall 2023

- 2 Update the Procurement Manual to prohibit BART staff from directing, requesting, or suggesting that a prime contractor add a specific subconsultant to their contracts.

Executive Management Response

Agreement management staff is performing a comprehensive analysis of its policies and procedures. As part of the analysis, staff will determine the best location(s) and format(s) to convey the message that BART staff is to NOT direct, request, or suggest that a prime contractor should add a specific subconsultant to their contracts, which may include the Procurement Manual. This message is already being conveyed to project management staff.

Partially Implemented

Expected Implementation:
Winter 2023

\$56,000 in Project Administration Costs Were Avoidable

Open Recommendation Update

Status

- 1 Ensure that the scope of services for all on-call contract workplans is in alignment with the contract scope of services and work with the requestor to identify and use a more appropriate procurement process when work outside the scope of work is being requested.

Executive Management Response

Management is performing a comprehensive review of aligning work plans with consultant work scopes, which is also related to the OIG's investigation entitled Overlooked Opportunity to Help Develop DBEs. The result of the alignment work will help drive the decisions regarding the use of the proper procurement mechanism. Concurrently, management is reviewing available emergency/urgent procurement methods to determine how they apply to the situation that prompted the recommendation.

In Progress

Expected
Implementation:
Winter 2023

Caution is Needed to Avoid Conflict of Interest Violations

Open Recommendation Update

Status

- 4 Update the District Contractor Code of Conduct and Employee Code of Conduct to ban former employees from entering into new contracts with the District for a minimum of one year post District employment.

Executive Management Response

BART's Request for Proposal (RFP) standard language has been updated to reference conflict-of-interest (COI) policies, which includes checkboxes for prime consultants to attest to whether they have no conflicts or if an actual or potential COI may exist among its team. Completing the attestation is a requirement for proposal submission. If the prime consultant identifies an actual or potential COI, it will be required to submit a District Contractor Conflict of Interest Declaration form that will be evaluated by Internal Audit concurrent with the proposal review process.

Partially
Implemented

Expected
Implementation:
September 2023

Subcontractors on teams selected for the contract will be required to each submit a District Contractor Conflict of Interest Declaration that will be evaluated during contract negotiations (it is anticipated that most COIs will be identified and resolved during the proposal evaluation process). The District Contractor Conflict of Interest Declaration form will also be used by contractors for identifying COIs at any time while under contract with BART.

Management is in the process of updating BART's Contractor Code of Conduct to align with the new process. The update must take place prior to full implementation. After the updated Contractor Code of Conduct is approved by the BART Board of Directors, a letter will be sent to all existing BART contractors to be made aware of the revised code of conduct and to outline the COI declaration process.

Prior to proposal submission or at any other time, contractors can contact Internal Audit and the District's Ethics Officer at ConflictOfInterest@bart.gov to inquire about COI.

BART Employee Collected Pay and Benefits for Time Not Worked

Open Recommendations Update

Status

- 1 Seek restitution from the former employee for an amount to be determined by BART management.

Executive Management Response

The case is currently under review by the Alameda County District Attorney's (DA's) office. Management will determine next steps based on the outcome of the DA's review and subsequent actions.

In Progress

Expected
Implementation:
TBD

- 2 Coordinate with CalPERS to make the appropriate years-of-service adjustment for the employee's retirement calculation.

Executive Management Response

Management is awaiting the results of the DA's review and subsequent actions to determine the next steps with respect to CalPERS adjustments.

In Progress

Expected
Implementation:
TBD

- 3 Investigate the time adjustments the manager made on behalf of the employee to determine if any policies and procedures were violated, and if so, discipline the manager in accordingly.

Executive Management Response

An Investigation of supervisor was completed 4.18.23, and a Notice of Termination was issued. The supervisor retired effective 4.30.23.

Implemented:
April 2023

Link21 Expenditures Missing from Public Reports

Open Recommendations Update

Status

- 1 Provide regular public financial reports showing contractor, scope of work, expenditures to date, and award amount for Link21 and other large-scale program and project contracts.

Executive Management Response

Quarterly Link21 and summary Status of On-call Agreements reports have been posted on the BART public website since late-2022.

In Progress

A quarterly capital financial report that includes actual expenditures is under development, and it will be posted on bart.gov and included in the quarterly reports posted to the Link21 website.

Expected
Implementation:
Fall 2023

No Indication that Release of Personal & Private Information was Willful

Open Recommendations Update

Status

- 3 Require employees who support NextRequest to upload files into folders that are labeled to assist in determining whether information should be redacted or withheld.

Executive Management Response

We have found a way for staff to create folders and have drafted instructions for them.

Implemented:
June 2023

- 4 Work with NextRequest to determine how to use the tools that can assist BART staff to quickly and easily associate emails with their attachments.

Executive Management Response

We had a meeting with NextRequest and IT about this issue. A new feature request may be required and that it could take a while to develop and implement. Conversations with NextRequest continue.

In Progress

Expected
Implementation:
TBD

Inconsistent Compensation & Hiring Practices Perpetuate Pay Disparities

Open Recommendations Update

Status

- 1 Ensure the nine employees in the protected classes are compensated in a manner reflective of their experience, education, and other applicable bona fide factors.

Executive Management Response

The Class & Compensation team has commenced a salary analysis and will make any necessary adjustments.

In Progress

Expected
Implementation:
June 2023

- 3 Ensure all internal and external applicants understand that they may negotiate their starting salary and that doing so will not jeopardize their offer, but that the District is not required to accept their requests.

Executive Management Response

For all new non-rep and AFSCME salaried positions, BART will incorporate language in the respective postings that informs candidates that their starting salaries are negotiable.

Open

Expected
Implementation:
June 2023

- 4 Ensure managers involved with recruitment understand the District's provision to allow applicants to negotiate starting salaries.

Executive Management Response

Hiring managers will continue to be provided with a draft of the job posting, which will now include language that starting salaries are negotiable (see Recommendation 3).

Open

Expected
Implementation:
June 2023

- 5 Limit non-represented employee temporary upgrades to six months or until a recruitment is completed to fill a vacancy.

Executive Management Response

BART is working to clear its backlog of temporary upgrade appointments, which is due mainly to the 2021 District Retirement Incentive Program. On a parallel track, BART is in the process

In Progress

Inconsistent Compensation & Hiring Practices Perpetuate Pay Disparities

Open Recommendations Update

Status

of revising its Temporary Upgrade policy. Pursuant to this revised policy, temporary assignments will typically last for no longer than six (6) months unless otherwise approved by the Assistant General Manager, Administration and in all cases BART will continue to administer the temporary upgrade program consistent with the CalPERS regulations.

Expected
Implementation:
June 2023

7 Complete a Districtwide pay equity audit.

Executive Management Response

The District agrees to the recommendation and will conduct a Districtwide pay equity audit in FY25.

Open

Expected
Implementation:
Fiscal Year 2025

8 Ensure that the improvements identified in these recommendations are reflected in standard operating procedures.

Executive Management Response

The Class & Compensation standard operating procedures have been documented and are in the process of being finalized, which will incorporate the necessary improvements.

In Progress

Expected
Implementation:
June 2023

9 Update the Non-Rep Handbook to be reflective of current employment terms and conditions for non-represented employees.

Executive Management Response

A comprehensive update to the Non-Rep Handbook is in process and will include updated and necessary changes to employment terms and conditions.

In Progress

Expected
Implementation:
Summer/Fall 2023

Note: Due to the timing of preparing this annual report and releasing our investigation, *Inconsistent Compensation & Hiring Practices Perpetuate Pay Disparities*, in late June 2023, updated implementation dates are not incorporated into this table.

Open Recommendations Update

Status

- 1 Modify the organizational structure of BART to allow for the creation of a Chief Financial Officer within the span of control of the General Manager.

Executive Management Response

Management has hired a consulting team to develop options and scenarios for a financial organizational structure based on the recommendation from the OIG's audit. These options along with a recommendation will be shared with the Financial Structure Ad Hoc Committee (see below) and the Board of Directors. The consulting team will provide a roadmap for implementing the recommended structure, including addressing change management. Staff is working to identify an author to carry legislation for amending the BART Act, which is required to place a Chief Financial Officer (CFO) position under the span of control of the General Manager.

In Progress

Expected
Implementation:
July 2025

- 2 Direct either the Audit Committee or a newly created committee to discuss options and make recommendations to the Board of Directors for implementing the CFO structure.

Executive Management Response

The BART Board of Directors established a Financial Structure Ad Hoc Committee to discuss options and make recommendations for a CFO structure.

Implemented:
November 2022