

## \$56,000 in Project Administration Costs Were Avoidable

### Office of the Inspector General



#### Investigation Results

BART unnecessarily paid \$56,000 to a prime contractor to provide project administration services for work unrelated to the prime's contract scope of services. BART approved \$1.6 million in subconsultant workplans for financial advisory services to assist BART in responding to the fiscal crisis created by the COVID-19 pandemic. The prime contract was for on-call architectural and general engineering services. According to two BART officials, there was an urgency in getting the work done and the competitive

procurement process is known to be lengthy. Approving workplans under on-call contracts is faster than competitively procuring services. Given the uncertain nature of the pandemic and its immediate threat to BART's fiscal health, it is understandable that BART desired to expedite the financial advisory services. However, BART has emergency contracting procedures that circumvent typical contracting processes to avoid a delay in obtaining needed services. The BART officials we spoke with could not recall why they did not use the emergency procurement process. By adding the work to an on-call contract, BART had to pay the prime contractor to coordinate with the subconsultant. That could have been avoided by contracting directly with the firm providing the financial advisory services.

We investigated allegations that BART circumvented the competitive procurement process by adopting modifications beyond the original scope of a contract. We substantiated the allegations. Given the urgency to obtain the financial advisory services, it would have been appropriate for BART to use its emergency procurement process, which is noncompetitive. Opting to add the work to an on-call contract with an unrelated scope of services resulted in a violation of the contract provisions, which includes adhering to federal regulations. The work performed by the added subconsultant is a "cardinal change," per those regulations. A cardinal change is a significant change in contract work that causes a major deviation from the original purpose of the work or causes a revision of contract work so extensive that, in effect, the contractor is required to perform very different work from that described in the original contract. This deprives other contractors of the opportunity to propose on the work, which defeats the purpose of the competitive procurement requirements under California's [Public Contract Code](#).<sup>1</sup>

#### Recommendation

Require Procurement to 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.

*Management agreed to our recommendation. See page two for details.*



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Providing independent oversight of the District's use of revenue.

<sup>1</sup> We contracted with TAP International Inc. to assist in our investigation. Our finding is based, in part, on their work.



**BART OFFICE OF THE GENERAL MANAGER RESPONSE TO OIG FINDING & RECOMMENDATIONS**

**Report Title: \$56,000 in Project Administration Costs Were Avoidable**

1	<b>Recommendation:</b>	Require Procurement to 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.
	<b>Responsible Department:</b>	Procurement
	<b>Implementation Date:</b>	July 2023
	<b>Corrective Action Plan:</b>	<p>To guide the proper course of action when similar situations arise, management will develop a decision tree and specifications for choosing among a standard procurement, emergency procurement, or adding a subconsultant to an existing on-call agreement.</p> <p>Management has addressed many items related to adding subconsultants to existing on-call contracts through its response to the OIG’s investigation entitled <i>Overlooked Opportunity to Help Develop DBEs</i>, in which management will require a reasonable nexus to the existing on-call contract scope and proper justification for adding subconsultants.</p>