



August 7, 2020

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I am pleased to present the first annual activities report of the BART Office of the Inspector General (OIG) to the California State Legislature.

As a new OIG, there has been and continues to be much to do to develop our office and integrate ourselves into a well-established transit agency. We spent this last year focusing on learning about BART operations, culture, and practices; meeting with management and directors; conducting investigations; and establishing procedures to build a foundation that will ensure our long-term success. We also successfully completed three investigations, two of which are pending reporting, initiated a districtwide risk assessment to inform our audit plan, and entered into a contract to establish a whistleblower hotline for reporting allegations of fraud, waste, and abuse. Additionally, we drafted a charter for the OIG to add clarification regarding our authority and responsibilities and coordinated with other departments in BART to draft a charter for an Audit Committee. It has been a busy year.

Our accomplishments did not come easily. Being a new office within the organization has meant we have had to educate others about what an Inspector General does. It has also been a challenge to navigate the organization without having support staff who know and understand BART operations and procedures.

We continue to have some challenges ahead, but I look forward to continuing the efforts we began during the past year to meet the expectations of California voters and legislators who desired independent oversight of taxpayer and ridership money that funds BART's operations and capital projects.

The attached report provides more details regarding our accomplishments for FY 2020.

Harriet Richardson, CPA, CIA, CGAP, CRMA
Inspector General

cc: BART Board of Directors



SF Bay Area Rapid Transit Office of the Inspector General

**Annual Report to the
California State Legislature**



Fiscal Year 2020

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This report summarizes the activities of BART's Office of the Inspector General (OIG) for Fiscal Year 2020. As a new OIG, there has been and continues to be much to do to develop our office and integrate ourselves into a well-established transit agency. The sections below describe our work regarding investigations, conducting a districtwide risk assessment to inform our development of an audit plan, our role in developing charters for our office and an audit committee, and what we have done to build our foundation to ensure the long-term success of our office. It also provides a look forward into the work we expect to perform during the next year.

INVESTIGATIONS

Our [legislative mandate](#) requires us to conduct investigations related to BART's programs and operations, including, but not limited to, toll-funded programs, and to examine BART's operating practices to identify fraud, waste, and opportunities for efficiencies in the administration of programs and operations. We primarily initiate investigations based on allegations received from employees, contractors, residents, or other stakeholders. Our investigations may include activities performed by BART staff or by those who do business with BART.

Investigation Cases

In Fiscal Year 2020, we received 20 complaints of potential, fraud, waste, or abuse. The status of those complaints is:

- Completed M-Line Tunnel Lighting Upgrade investigation, follow up is continuing
- Two cases complete and pending reporting
- One case currently in progress
- Two cases forwarded to other departments as personnel issues
- Two cases declined – one not fraud, waste, or abuse, and one not related to BART operations
- Four cases identified as potential audits, not investigations
- Eight cases evaluated for acceptance as investigations

M-Line Tunnel Lighting Upgrade Project

We investigated allegations that BART had approved a manufacturer to provide light fixtures that did not meet several contract specifications for the M-Line Tunnel Lighting Upgrade Project (report is available at bit.ly/2XrySyl). Our investigation supported the allegations, but BART management did not implement our recommendations as they

said they would and provided new information during follow up that did not align with our findings and raised additional concerns.

We recommended that BART rescind its approval of the light fixture, which was \$814,000 of an \$11.6 million Measure RR contract with ABM Electrical and Lighting Solutions, and ask ABM to submit a different fixture for review and approval.¹ Instead, BART terminated the entire contract for convenience two months after telling both our office and ABM that BART would rescind its approval of the noncompliant light fixture. At that time, BART management said BART employees would perform the work and that BART would review its specifications before purchasing another light fixture. However, two months after terminating the contract, BART purchased the noncompliant light fixtures, although there was no designated use for them. BART management is now discussing a settlement agreement with ABM and expects to pay about \$2 million of ABM's \$3 million claim in settlement fees for the contract termination, including the cost of the light fixtures. This cost does not include the cost for time BART staff and consultants spent on the contract to date.

During our follow up, BART management supported its decision to waive some of the contract specifications during the approval process by saying it is common practice for public works contract specifications to be issued to the "highest standard" and to allow for variances of specifications they determine are not critical as they evaluate a product. This practice is contrary to public sector procurement best practices, which say that contracts should require only the minimum specifications to maximize the competitive procurement process and avoid unfairly eliminating potential suppliers. We are continuing to discuss resolution of these issues with BART management, including where the purchased light fixtures will be used, what light fixtures will be used in the tunnel, the cost to BART for terminating the contract, and BART's contracting practices.

Whistleblower Hotline

We researched whistleblower hotlines and investigation case management software to provide an anonymous means for employees, contractors, residents, and other stakeholders to report allegations of fraud, waste, or abuse of BART resources and to manage our investigation documentation. After careful evaluation of several providers, we selected [ETHIX360](#), which is a cloud-based investigation case management and hotline system. We are in the process of implementing ETHIX360 and expect to have it functional by the end of August 2020.

¹ Voters passed Measure RR in November 2016, which authorized BART to issue bonds for \$3.5 million to rebuild BART's aging infrastructure, with goals to make the system safer and more reliable, and to reduce traffic.

Once ETHIX360 is implemented, we will engage in a marketing campaign to inform BART employees of the hotline and their responsibility to report fraud, waste, or abuse of BART resources that they have observed and that such reports can be made anonymously.

AUDIT PLANNING RISK ASSESSMENT

Our [legislative mandate](#) requires us to conduct, supervise, and coordinate audits related to BART's programs and operations, including, but not limited to, toll-funded programs. The mandate also identifies other responsibilities that are best accomplished by conducting audits, including identifying opportunities to improve data used to determine project resource allocations, identifying best practices in the delivery of capital projects, and recommending policies promoting efficiency in the administration of programs and operations.

The first step in preparing to conduct audits is to understand where we should focus our limited resources. We are accomplishing that by conducting an operational risk assessment to identify the programs, functions, and activities that would have the best chance of identifying opportunities for improvement. The risk assessment will help us understand areas that are vulnerable to fraud, waste, and abuse and identify inefficient and ineffective use of resources and other weaknesses that could limit BART's ability to meet its objectives. We selected a consultant through a competitive solicitation process to assist us with this project. We put the project on hold in March due to the overwhelming impacts of the COVID-19 pandemic and the state's shelter-in-place orders but have restarted the effort. The risk assessment will result in developing a plan for performance audits that we can conduct during the next two to three years. We expect to complete the risk assessment in October 2020.

GOVERNANCE: AD-HOC AUDIT COMMITTEE AND CHARTERS

Our [legislative mandate](#) provides a broad list of roles and responsibilities. Because we are a state-mandated function, we operate differently than the rest of BART's offices. We are independent from management and report administratively to BART's Board of Directors. We have been working with the Board of Directors to create a governance structure that clarifies the authority, expectations, and responsibilities of the OIG. This has led to the Board creating an Ad-Hoc Audit Committee that will provide a venue for

us to discuss our investigation and audit findings and recommendations, as well as the status of implementation of those recommendations.

To support this effort, our office has coordinated with other audit and financial functions within BART to draft a charter for a permanent Audit Committee. We have also drafted a charter for the OIG. We expect the Board of Directors to adopt final charters for the Audit Committee and the OIG before the end of 2020.

BUILDING THE INSPECTOR GENERAL FUNCTION

The first year of operations has involved building the foundation for long-term success of the Office of the Inspector General. Among the many activities we have accomplished are:

- Recruited for, selected, and onboarded an Assistant Inspector General.
- Developed a [website for the OIG](#) and established the InspectorGeneral@bart.gov email address.
- Presented two activities reports to the Board of Directors, which can be viewed at bit.ly/3kjHjWi and bit.ly/2CYwMPq.
- Worked with the Office of the Chief Information Officer to develop a SharePoint site for sharing information.
- Developed written policies and procedures for conducting performance audits in compliance with the Government Auditing Standards and developed a framework for conducting investigations in compliance with the Standards and Principles for Offices of Inspector General.
- Developed a full range of written policies and procedures to complement our audit and investigation procedures, and 40 templates to simplify our documentation, allow for consistency and clarity, and ensure our work complies with our policies and the professional standards we follow.

We have accomplished a great deal this past year to set up the foundation of our office, but we have also faced restrictions to achieving our goals. It has been a challenge for both the District and my office to set reasonable parameters for the OIG to obtain access to BART staff and systems. We just recently gained access to several of BART's systems that contain information we need to conduct audits and investigations.

BART management has asked that our requests for information go through them so they can manage the workflow. Although management has stated they have no intentions on impeding investigations, requiring all requests to go through them allows

management to control the message rather than ensuring that employees are honest and forthcoming with the information we need. This conflicts with the roles and responsibilities of an Office of the Inspector General, as well as with the professional standards we follow. We understand management's intent and have had ongoing discussions with them on how to obtain information from employees without impeding management's ability to manage employees' workload, but there is still more work to do in this regard.

BART management's recurring questions about when we will close out the M-Line Tunnel Lighting Upgrade investigation is an indication that they may not fully understand that our role is to ensure the concerns we bring forward are fully addressed and that to comply with our legislative mandate, we must report the status of recommendations through closure. When management takes alternative actions, we must still ensure that their actions appropriately address the underlying issues.

We hold in high regard our duty to provide independent oversight and will continue to work with BART management to achieve that independence so we can function in a way that reflects the expectations of the legislation that created our office. We expect that the aforementioned Audit Committee and OIG charters will clarify the expectations for communications between BART staff and the OIG.

LOOKING FORWARD

We will continue to perform work during the next year that will provide relevant information that decision makers can rely upon to drive strategic actions and improve the quality of service to BART riders and taxpayers. Those activities include:

- Hire a Senior Inspector General Investigative Auditor to assist us in conducting investigations and audits.
- Complete the risk assessment and develop a list of performance audits to conduct during the next two to three years.
- Complete implementation of the whistleblower hotline and investigation case management system and prepare and distribute materials to notify BART employees of the hotline and the type of allegations to report.
- Continue to investigate allegations of fraud, waste, and abuse.
- Provide ongoing support to the Audit Committee.
- Monitor the status of recommendations.

OUR LEGISLATIVE MANDATE

Voters established the OIG when they approved Bay Area Regional Measure 3, which was subsequently codified in [California Public Utilities Code Section 28840-28845](#). Our mandate is to be an independent Office of the Inspector General to ensure that the San Francisco Bay Area Rapid Transit District makes effective use of bridge toll revenue and other revenue and operates efficiently, effectively, and in compliance with applicable federal and state laws. We accomplish our mission primarily by conducting audits and investigations. The legislation requires the OIG, at least annually, to provide BART's Board of Directors and the Legislature with a summary of our findings, investigations, and audits, including significant problems identified and whether BART has implemented recommendations related to our investigations and audits.

We strive to conduct our work in compliance with the highest standards of professionalism and quality. In that regard, we have adopted the [Government Auditing Standards](#) for conducting audits and the [Principles and Standards for Offices of Inspector General](#) for conducting investigations.

Providing Independent Oversight of the District's Use of Revenue

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