

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT CHARTER FOR THE OFFICE OF THE INSPECTOR GENERAL¹

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 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 Section 28841 sets forth the general duties and responsibilities of the OIG. The Inspector General shall have the following responsibilities to achieve compliance with those duties and responsibilities:

B.1. Performance Audits:

- 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 that can provide the Board of Directors, District management, oversight 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 its information systems, the economic and efficient use of its resources, use of best practices, the adequacy of its internal controls, and accuracy of data used for measuring performance and decision-making purposes.
- B.1.c. Comply with the standards set forth in the *Government Auditing Standards*, promulgated by the Comptroller General of the United States, when conducting performance audits.

Commented [A1]: This section contains standard general IG and Internal Audit responsibilities, which do not directly align with the “general duties and responsibilities” of the IG legislation. Although stated otherwise, this is an interpretation of the unspecific duties and responsibilities set forth in the legislation, and especially does not align with capital projects in general and toll-funded projects specifically.

Commented [A2R1]: The full Board should provide directions to the OIG to clarify roles and responsibilities so that other BAO’s understand the scope of the role.

Commented [A3]: Only mention of “best practices” in legislation pertains to delivery of capital projects and relations with collective bargaining units.

¹ 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.

B.1.d. 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:

B.2.a. Establish a 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.

B.2.c. Recommend corrective actions, as necessary, based on results of investigations.

B.2.d. Comply with the *Principles and Standards for Offices of Inspector General*, promulgated by the Association of Inspectors General, when conducting investigations.

B.2.e. Report expeditiously to the District Chief of Police, District 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.f. 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 review of policies, procedures, and transactions, and providing training and education to BART staff.

B.3.b. Select employees, within the budget approved for the OIG, to carry out the functions, duties, and responsibilities of the OIG.

Commented [A4]: Staff opinion is that OIG is not responsible for training BART staff.

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 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. The Inspector General shall have unlimited access to and authority to meet with any District or contractor staff that are relevant to a risk assessment, audit, or investigation, and the ability to attend any meetings held by BART staff and between BART staff and BART's contractors.
- C.3. 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 permission ~~to~~ fulfill the Inspector General's requests.
- C.4. 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.5. Employees or agents of the District shall not intentionally withhold, hide, alter, or destroy any information, records, data, property, or equipment that may be potential evidence in an ongoing investigation or audit.
- C.6. District contracts with outside contractors, vendors, and agencies shall include an audit clause that provides the OIG access to their personnel and all records, including those of their subcontractors, needed to verify compliance with the contract terms.
- 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

California Public Utilities Code Section 28843 requires the OIG to report, at least annually, to the Board of Directors and the California Legislature a summary of the OIG's findings, investigations, and audits, including significant problems identified and whether BART has implemented the resulting recommendations.

In addition, the Inspector General shall prepare written reports of the results of each audit and investigation conducted and retain a copy as a permanent record. 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 Inspector General will provide an opportunity for the General Manager and Assistant General Manager responsible for the area under audit or investigation to provide comments regarding the factual accuracy of the draft report. If they disagree with the Inspector General's findings, conclusions, and recommendations, they must provide

Commented [A5]: OIG should have authority to meet with any staff member if conducting investigations. If OIG is conducting audits, assessments, etc., OIG should coordinate with relevant AGM so that employees existing work is prioritized to allow for cooperation.

Statement regarding ability to attend any meeting held by BART staff is much too broad and should be limited to matters in which she has a specific reason to attend.

Commented [A6]: Need to be aware of CBAs. If line staff works overtime, then we may incur overtime costs.

Commented [A7]: By definition "recommendations" do not need to be followed or implemented. Until now there is nothing stating BART MUST implement recommendations.

Commented [A8R7]: There should be language stating that the report must include response from staff.

Commented [A9]: For alignment, suggest that Section 4.1 of the audit committee charter reference this section.

Commented [A10]: OMB Circular A-50 (Audit Follow-up) language does not mention "factual evidence": *Comments indicating agreement on final reports shall include planned corrective actions and, where appropriate, dates for achieving actions. Comments indicating disagreement shall explain fully the reasons for disagreement. Where disagreement is based on interpretation of law, regulation, or the authority of officials to take or not to take action, the response must include the legal basis.* The GM only needs to explain fully the reasons for disagreement.

factual evidence to support their disagreement. Based on the information provided, the Inspector General may make changes to the report before providing a final draft for an official response.

- D.3. Within two weeks after the Inspector General provides a final draft report, the General Manager, or designee, shall provide a written response to the Inspector General that addresses concurrence, nonconcurrence, or partial concurrence with each finding and a corrective action plan, including a timeline for implementation, for each recommendation. The General Manager must provide specific reasons, along with supporting evidence, for nonconcurrence or partial concurrence with a finding or recommendation. The Inspector General will provide a response template with each audit or investigation.
- 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 Inspector General will publish finalized audit and investigation reports 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 of the BART Board of Directors.
- 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 the requirements of the *Government Auditing Standards and Standards and Principles 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 as otherwise required by law.

Commented [A11]: OIG should document management's disagreement and include in report, even if OIG does not change report.

Commented [A12]: Too short of a timeframe. Suggest using FTA 30-day response standard (FYI, FAA allows 45 days).

This does not read as a charter item of what the IG does in terms of reporting and monitoring. It reads as audit instructions to the GM. Should be re-worded to specify the IG's role.

Commented [A13]: "Corrective Action" does not typically follow a "recommendation".

Commented [A14R13]: The corrective action should be proposed by the audited entity and discussed with the auditor.

Commented [A15]: The board should be the final arbitrator of disagreements. The OIG should document opinions of both the GM and the OIG.

Commented [A16]: Management need only to provide a corrective action plan for those recommendations that it concurs, or partially, concurs with.

Commented [A17]: The IG should also have an expected timeframe to respond.

Commented [A18]: There should be a termination process or recommendations could remain open for an extended period. Board should make final determination of satisfaction with implementation of corrective actions, even if OIG does not agree. OIG can document in report to state at its discretion.

Commented [A19]: A recommendation is not a requirement. If there is no requirement there is no justification to follow-up until satisfied that management has adequately implemented recommendations. There must be a process where staff and the OIG agree to disagree so that continuous follow-up does not occupy staff resources.