



SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT INDEPENDENT OFFICE OF THE INSPECTOR GENERAL

BART WOULD BENEFIT FROM CLEARER GIFT GIVING RULES

INVESTIGATION RESULTS



We investigated an allegation of bribery and found no evidence supporting the claim. We did determine that two District employees, each accompanied by a family member, attended a subconsultant's holiday party in 2023, with the total value of the party costing \$3,915. The subconsultant and the employees told us that the employees had paid \$110 and \$120, respectively, for their share of the costs of attending. However, they could not provide documentation to support the payments or what the employees consumed.

We also concluded that the District's Employee and Contractor Codes of Conduct lack information on determining the value of intangible benefits, such as the value of an invitation-only event, and documenting actions taken to avoid an actual or perceived violation of the codes when employees attend events, or similar, hosted and paid for by contractors. Because the codes lack this information, we could not conclude as to whether there were any violations of the respective codes of conduct.

RELEVANT LAW & POLICY



Section X of the District's Contractor Code of Conduct prohibits contractors et. al from giving gifts to District officials. Section VIII of the District's Employee Code of Conduct prohibits employees from accepting gifts from contractors including gifts in the form of free or discounted meals.

The District's codes mirror California Code of Regulations, Title 2, Section 18940, which places limits and restrictions on gift receipt and requires reporting gifts valued greater than \$50 to the FPPC on Form 700, Statements of Economic Interests.

WHY THIS INVESTIGATION MATTERS



Ensuring vendors, contractors, and BART officials alike adhere to ethics rules and laws provides assurance to the public that District officers and employees will fulfill their obligations to the public to uphold the highest ethical conduct regardless of personal considerations.

RECOMMENDATIONS IN BRIEF

To assist employees and contractors in ensuring they adhere to the District's Codes of Conduct, BART should clarify how to:

- Calculate the value of intangible benefits.
- Document mitigating actions taken to comply with gift prohibitions.

PRIOR RECOMMENDATIONS

We previously recommended that BART update its Employee and Contractor Codes of Conduct to aid in preventing conflicts of interest. Management agreed to update the codes and have made significant improvements. Our recommendations at the time did not address intangible gifts as it was not pertinent to our prior investigations.

OIG REPORTING REQUIREMENT & DISCLOSURE PRACTICES

We are providing this report to comply with California Public Utilities Code Section 28841, which requires that we keep BART administration, the Board of Directors, and the public informed of our fraud, waste, or abuse investigation findings and recommendations.

We identify those involved in our investigations in only limited circumstances. This avoids violating privacy and confidentiality rights granted by law and creating unwarranted actions against those involved with our investigations. The decision to provide names is made on a case-by-case basis and considers all elements of an investigation. This practice does not prevent individuals from requesting documents under the California Public Records Act (CPRA). However, such disclosures may be restricted or limited by law. The investigation described in this report is associated with case number 238-2024.



Whistleblower Complaint

A confidential whistleblower alleged that a subconsultant invited BART senior management to their holiday party that cost almost \$4,000 in total in exchange for workplans and contracts. We confirmed that the BART employees attended the party but did not find evidence supporting bribery. We also determined that evidence was insufficient for determining whether the employees and the contractor violated the District's codes of conduct.

INVESTIGATION

No Evidence of Bribery

We evaluated photographic evidence of a BART senior manager purportedly attending a District subconsultant's holiday party in December 2023. The subconsultant confirmed that they hosted the party and that the senior manager as well as a second BART official had attended.

We ascertained that one of the two BART officials submitted a workplan for approval for a prime contractor with the subconsultant being awarded a portion of that work, about two weeks after the party, which raised the concern of a potential conflict of interest. However, upon further review, we were able to confirm that the workplan had been in routine workflow processing since April 2023, well before the incident in question. The workplan was ultimately approved in February 2024. The total value of the workplan was \$511,000, but the subconsultant's portion was valued at \$41,000. Given that the contract in question had been in process for several months prior to the incident, we did not conclude that the BART official approved the workplan in exchange for being hosted at the subconsultant's party.

Codes of Conduct

District employees and contractors doing business with public agencies are required to adhere to the District's codes of conduct, which place restrictions on gift giving and receipt.

The BART Employee Code of Conduct states, "Officers and employees shall not solicit or accept gifts or favors of *any* (emphasis added) value from persons or entities with which the District contracts or may reasonably be expected to contract. Gifts or favors include, but are not limited to, *free or discounted meals* (emphasis added), tickets, transportation, and accommodations."

Similarly, the District's Contractor Code of Conduct prohibits gifts to District Officials. Specifically, it states, "No bidder, proposer, or Contractor, or any of their consultants or proposed subcontractors shall offer, give, or promise to offer or give, directly or indirectly, *any* (emphasis added) gift or favor of *any* (emphasis added) value to any District Official. Further, it defines a gift as "the provision of anything of value, **whether tangible or intangible** (emphasis added), that provides a personal benefit when **full consideration is not provided for the value of the benefit received** (emphasis added)."

Both the District Employee Code of Conduct and Contractor Code of Conduct are silent on how to determine the value of intangible benefits, and how to document steps taken to avoid an actual or perceived violation of the codes.

Gift Valuations

We confirmed that the subconsultant paid the restaurant \$3,915 for their holiday party, which covered meals; alcoholic and nonalcoholic beverages; room, special event, and employee benefit charges; and tip. Each adult meal was \$75, and each kid meal was \$12. Because the BART officials were each accompanied by a child, the minimum share of the \$3,915 was \$87 each.

According to the employees and the subconsultant, the employees paid \$110 and \$120, respectively, to cover their and their child's meals and beverages. The employees also said that they discussed taking steps to avoid accepting gifts and intentionally did not participate in a gift exchange during the party. However, the employees could not provide documentation to support having made the payments.

Assuming that the payments were made, the employees and the contractors were aware of the gift restrictions prior to our investigation and took steps to avoid code violations. However, without documentation and an accounting of what was consumed by whom, we could not confirm that the payments were made or that they were sufficient.

Without clarity on how the District determines the value of an intangible benefit, it is not clear whether the employees' purported payments for the items that they and their child consumed were sufficient or if a "pro-rata" calculation would have been more appropriate. This lack of clarity also removed our ability to determine whether the employees should have reported anything to the FPPC on their annual Statements of Economic Interests.

Although it is unclear whether the subconsultant or employees violated the District's gift receipt or giving rules, it is clear that the District would benefit from incorporating language in its codes of conduct that specify how to calculate the value of an intangible benefit and how to document mitigating actions taken to avoid violating the District's gift prohibitions.

FPPC Reporting & Guidance

The FPPC offers guidance on how to value attendance at an invitation-only event that the District would benefit from incorporating into its Employee and Contractor Codes of Conduct. With limited exceptions, the FPPC notes, "the admission value of the benefit received by an official and one guest who attend an invitation-only event, is the official's and the guest's pro-rata share of the cost of the food, catering services, entertainment, and any item provided to the official and guest that is available to all guests attending the event."

RECOMMENDATIONS AND DISTRICT RESPONSES

Recommendations		
1.	Recommendation:	Update the District's Employee and Contractor Codes of Conduct to specify how to calculate the value of an intangible benefit such as an invitation-only event hosted and paid for by a contractor.
	Implementation Date:	TBD
	Corrective Action Plan:	The Employee Code of Conduct is in the process of being updated. The section on Acceptance of Gratuities and Favors will include discussion of intangible benefits and how to estimate their value. The Contractor Code of Conduct section on Prohibition Regarding Gifts will be updated accordingly.
2.	Recommendation:	Provide guidance on how to document the mitigating action taken to remain compliant with gift prohibitions when attending an invitation-only event hosted and paid for by a contractor.
	Implementation Date:	TBD
	Corrective Action Plan:	Management will prepare a memo to be sent to all employees regarding the prohibition of accepting gifts, including intangible gifts, and will include guidelines for how to attend contractor-hosted events without violating the Employee Code of Conduct and related conflict-of-interest regulations. Management will work with the OCIO to automatically send the memo to all employees prior to the holiday season each year.

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