

Circumvention of Procurement Rules Risks Disruption to Payroll

Office of the Inspector General



Investigation Results

Evidence supports that BART has been splitting a software programming consultant's contracts into smaller compensation limits so that it is not necessary to obtain BART Board of Directors' approval. This expedited the contracting process but created risks for the payroll process. Documentation available for review supports that BART:

- Kept ten of the consultant's contracts below \$100,000, thus not requiring the Board's approval.
- Paid the consultant more than \$100,000 for the same work in a single fiscal year at least six times.
- Entered into at least five agreements retroactively.
- Allowed the consultant to perform work outside the contractual performance period under at least nine contracts.

BART entered into 12 professional service agreements with the consultant, resulting in total payments of over \$1.46 million. This supports that the services are necessary beyond a single fiscal year for an amount exceeding \$100,000.

BART has been relying on this one consultant to perform critical technical updates to BART's PeopleSoft system for over a decade. The consultant performed the work as contracted, but reliance on a single person could lead to a disruption in payroll processing and reporting to outside agencies such as CalPERS should the consultant become unavailable.

Recommendations

1. Plan for long-term contractual needs for maintaining and updating PeopleSoft beyond one fiscal year.
2. Use BART's competitive contracting process to obtain proposals from multiple consultants who can provide the necessary PeopleSoft technical support.

Background and Investigation



BART began implementing the PeopleSoft time and labor application in 2006 for timekeeping and payroll processing. Updating and maintaining the application is critical to ensuring BART pays employees correctly and reports accurate information to the California Public Employees' Retirement System (CalPERS). Errors in the system could result in employees being under- or overpaid, and having their pensions calculated incorrectly upon retirement. CalPERS reporting errors can also trigger reviews by the CalPERS Office of Audit Services (OAS), such as the one conducted in [2014](#) in which the OAS found that BART was not compliant with select sections of the California Government Code; California Code of Regulations; and its contract with CalPERS. BART is working to resolve those findings through a group led by Human Resources who is charged with understanding CalPERS rules and regulations and communicating those needs to the Office of Information Technology.

BART contracted with a software programming consultant to provide technical services in support of BART's Business Advancement Program Phase II, which included PeopleSoft implementation. BART entered annual contracts with the consultant since 2011 to make necessary coding changes and corrections to PeopleSoft applications, including those used for payroll processing and CalPERS reporting. BART has entered into a total of 12 professional service agreements with the consultant and has paid the consultant \$1.46 million to perform over 10,000 hours of work. The consultant's fees ranged from \$130 an hour to \$150 an hour. The consultant performed the work as BART requested.

BART's procurement policies dictate contracting procedures that are meant to allow for fair competition and transparency in the use of public dollars. The policies are common in public sector procurement and include:

- Requiring all contracts of \$100,000 or more to be presented to the BART Board of Directors for approval.
- Allowing contracts under \$100,000 to be approved by the General Manager's Office.
- Limiting work under contracts of less than \$100,000 to a single fiscal year.
- Obtaining competitive quotes, proposals, or bids from more than one organization or consultant to assist in selecting a contractor for the work.
- Allowing for sole sourcing when the work is so unique that only one entity or person can perform it.



The Office of the Inspector General (OIG) received an allegation that BART was intentionally underestimating the cost of a software programming consultant's work to bypass the BART Board of Directors' approval. This practice is known as contract splitting. The complainant also alleged that the consultant was a CalPERS annuitant who was ineligible to perform contract work for BART, and that the work the consultant was performing should be done by BART employees. We considered the allegations potential violations of law and policy and launched an investigation.

Contract Splitting

The practice of avoiding formal procurement rules by breaking up purchases to bring costs below organizational or legislative approval thresholds.

Key Findings



The allegation that the consultant was a CalPERS annuitant proved false. However, evidence does support that there was contract splitting to avoid presenting the consultant’s contracts to the BART Board of Directors for approval. BART was unable to provide the OIG a copy of all its professional services agreements with the consultant. However, the documentation BART was able to provide showed that BART kept ten of the consultant’s contracts below \$100,000, thus not requiring the Board’s approval. Further, BART paid the consultant more than \$100,000 in a single fiscal year at least six times. BART also entered into at least five agreements retroactively and allowed the consultant to perform work outside the contractual performance period under at least nine contracts. Combined, these issues support that BART did not properly plan for their technical support needs for PeopleSoft and kept the compensation limit below \$100,000 to expedite the contracts. The ongoing nature of the consultant’s work supports that the services are necessary beyond a single fiscal year for an amount exceeding \$100,000.

BART’s overreliance on a single person to conduct critical work risks a disruption to payroll processing and CalPERS reporting. There is no assurance that the consultant will be able to perform project work for BART indefinitely. Should the consultant no longer be able or willing to contract with BART, the District would be unable to make programming updates when needed. This could lead to BART paying employees incorrectly or late, misreporting payroll taxes to the Internal Revenue Service and California State Tax Board, and misreporting information to CalPERS. BART said they need to sole source with the consultant because no one else is available to do the work due to the complexity of BART’s payroll. However, there are other consultants capable of doing the programming, including those who contract with other public entities that also have complex payrolls.

The allegation claimed that the work the consultant provided should be done by BART personnel. Although BART has attempted to build in-house capabilities to perform the work, it has continued to lose those skills through employee attrition.

The OIG reviewed the consultant’s project lists and payments. The evidence supports that the consultant did the work required by BART and charged for the services based on the contracted hourly rate.



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BART OFFICE OF THE GENERAL MANAGER RESPONSE TO OIG FINDINGS & RECOMMENDATIONS

Report Title: Circumvention of Procurement Rules Risks Disruption to Payroll

Management Response:

BART has a very complex PeopleSoft implementation. The processing of employee's time is a very complex automation which has required extensive customization to the time and labor module.

BART decided to contract with the consultant with the objective of transitioning the responsibility to internal resources. With each periodic change to the collective bargaining agreement, the work of further modifying and maintaining the customizations to the time keeping module has continued to increase. The office of the controller treasurer needed a part time resource to support them in understanding the functional changes to the time keeping module while the OCIO needed the resource to make technical modifications to the system. The consultant worked on 2 very distinct scopes of work, each below \$100k which is well within the General Managers authority. The consultant worked part-time on an as-needed basis.

BART has knowledgeable staff to mitigate any risk to the payroll system. BART also has a support contract with Oracle that provides expert assistance when needed.

There are other outside resources that can perform the work being done by the consultant, but at a much higher cost and not without significant delays.

Furthermore, we agree that work was performed retroactively. This was done due to an urgency to compete the time and labor rules in an expedited manner while simultaneously experiencing delays in the contracting process.

1	Recommendation:	Plan for long-term contractual needs for maintaining and updating PeopleSoft beyond one fiscal year.
	Responsible Department:	OCIO
	Implementation Date:	10/01/2021
	Corrective Action Plan:	Identify contractual needs for the next three years.
2	Recommendation:	Use BART's competitive contracting process to obtain proposals from multiple consultants who can provide the necessary PeopleSoft technical support.
	Responsible Department:	OCIO
	Implementation Date:	10/01/2021
	Corrective Action Plan:	OCIO has been using State of California's CMAS program which was approved by the BART board. OCIO will extend the use of the program to include procurement of PeopleSoft consulting help.