

Consent Item (A) 01-26-2023

Washington Metropolitan Area Transit Authority

Board Action/Information Summary

☒ Action ☐ Information

MEAD Number:
203427

Resolution:
☒ Yes ☐ No

TITLE:

Board Resolution - Implementing Reforms to OIG

PRESENTATION SUMMARY:

The Inspector General submitted a memorandum to the Board describing proposed changes to procurement and human resource processes and procedures to strengthen OIG independence, along with a draft amendment to P/I 13.4/3, implementing the proposed changes.

PURPOSE:

The Board's acceptance of Board Resolution - Implementing Reforms to Office of Inspector General

DESCRIPTION:

N/A

Key Highlights:

OIG's memorandum dated December 16, 2022, provides specific language related to the procurement and human capital requirements to successfully implement reforms under the Infrastructure Investment and Jobs Act of 2021.

Those reforms include giving OIG authority to independently hire and execute policy related to hiring. In addition, the reforms give OIG contracting authority and independence to procure goods and services.

The reforms require OIG to follow WMATA policy. Any disagreement on OIG's execution will be discussed with the Board of Directors who will resolve the matter.

Background and History:

In Section 30019(c) of the Infrastructure Investment and Jobs Act of 2021 ("Infrastructure Act"), Congress recognized the importance of a strong and independent OIG and required the Board to adopt certain reforms to the OIG as a condition of funding for WMATA.

On December 9, 2021, the Board of Directors approved Res. 2021-46, adopting the reforms to the OIG set forth in Section 30019(c) of the Infrastructure Act and directed WMATA staff to implement those reforms.

Discussion:

There is no discussion.

FUNDING IMPACT:

There is no impact on funding.

TIMELINE:

Anticipated actions after presentation: Board's approval of Board Resolution - Implementing Reforms to Office of Inspector General.

RECOMMENDATION:

Adoption of resolution revising OIG's procurement and human resources processes and procedures and amending P/I 13.4/3 to implement these changes.

SUBJECT: IMPLEMENTING REFORMS TO OFFICE OF INSPECTOR GENERAL

RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, Compact Sections 9 (a) and (d) establishes the Inspector General as a permanent officer of WMATA and the Office of Inspector General (OIG) as a permanent independent and objective unit of WMATA; and

WHEREAS, The Board has previously approved the scope of duties, responsibilities, power and authority of the OIG (Res. 2006-18, 2007-33, and 2011-20); and

WHEREAS, In Section 30019(c) of the Infrastructure Investment and Jobs Act of 2021 ("Infrastructure Act"), Congress recognized the importance of a strong and independent OIG and required the Board to adopt certain reforms to the OIG as a condition of funding for WMATA; and

WHEREAS, On December 9, 2021, the Board of Directors approved Res. 2021-46, adopting the reforms to the OIG set forth in Section 30019(c) of the Infrastructure Act and directed WMATA staff to implement those reforms; and

WHEREAS, After working with WMATA staff on measures to implement the reforms set forth in Section 30019(c) of the Infrastructure Act, on December 16, 2022, the Inspector General submitted a memorandum to the Board describing proposed changes to procurement and human resource processes and procedures to strengthen OIG independence (Attachment A), along with a draft amendment to Policy/Instruction 13.4/3, *The Office of the Inspector General*, implementing the proposed changes (Attachment B);

WHEREAS, The Board recognizes the importance of a strong and independent OIG, and the Board wishes to adopt the memorandum and policy changes proposed by the Inspector General consistent with Section 30019(c) of the Infrastructure Act;

NOW, THEREFORE, be it

RESOLVED, That the Board of Directors adopts, and directs staff to implement (a) the measures set forth in the Inspector General's memorandum of December 16, 2022, attached as Attachment A, and (b) the amendments to Policy/Instruction 13.4/3, *The Office of the Inspector General*, as shown in Attachment B hereto; and be it finally

RESOLVED, That this Resolution shall be effective 30 days after adoption in accordance with Compact Section 8(b).

Reviewed as to form and legal sufficiency,

/s/
Patricia Y. Lee
Executive Vice-President, Chief Legal Officer
and General Counsel

WMATA File Structure No.:
13.5 Internal IG Policies and Procedures

December 16, 2022

REFERENCE: OIG Independence Measures

Dear Chair Smedberg and Members of the Board of Directors:

Section 30019 of the Infrastructure Investment and Jobs Act of 2021 (the "Act") strengthens the independence of the Washington Metropolitan Area Transit Authority (WMATA) Office of Inspector General (OIG). The Act requires the WMATA Board of Directors to implement certain reforms to strengthen the independence of OIG as a condition of receiving funds authorized by the Act. Procurement and Human Capital reforms are included in those reforms. This memo describes how WMATA will implement the reforms in those two areas.

Procurement Reforms

Section 30019(d)(2)(B) of the Act requires the Board to delegate Contracting Officer authority to the Inspector General (IG). The IG must exercise that authority:

- (i) in accordance with Section 73 of the Compact (contracting and purchasing), after working with WMATA to amend procurement policies and procedures to give the IG approving authority for exceptions to those policies and procedures; and
- (ii) only as is necessary to carry out the duties of OIG.

WMATA's Procurement Department will support OIG's procurement activities by providing training to individual(s) in OIG who are designated to maintain contracting authority. This includes purchase card, simplified acquisitions, and competitive procurements.

OIG will follow WMATA's procurement policies and instructions, including requirements for full and open competition and organizational conflict of interest rules, consistent with the Compact and the Procurement Procedures Manual, as amended from time to time. Although the Act calls for giving the IG approving authority for exceptions to procurement policies and procedures, OIG will continue, as it currently does, to coordinate such policy exceptions with the Chief Procurement Officer, unless OIG deems that doing so would materially impede OIG operations and business needs or adversely impact independence, in which case the IG will raise the matter with the Board. All procurements will be coordinated, as necessary, with a WMATA senior Procurement Officer or Vice President, who will be later named by Procurement. In light of OIG's procurement independence set forth above, OIG acknowledges and agrees that neither Procurement or Finance will be responsible or accountable for any OIG procurements, including, but not limited to, bid protests or other claims of procurement integrity issues.



**Washington
Metropolitan Area
Transit Authority**

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People, Culture, and Inclusion Reforms

Section 30019(d)(2)(C) requires the Board to delegate to the IG the authority to select, appoint, and employ such officers and employees as may be necessary for carrying out the duties of OIG. The IG must exercise that authority in accordance with:

- (i) Compact Sections 12(g) (creating and abolishing positions as needed without regard to the laws of the Compact signatories) and 12(h) (personnel system based on merit); and
- (ii) WMATA personnel policies and procedures.

The Board is also to delegate approving authority to the IG, subject to Board approval, for exceptions to policies that OIG deems materially impede OIG operations and business needs or adversely impacts independence. Those exceptions, however, may not include the use of employee benefits and pension plans other than WMATA employee benefits and pension plans.

To ensure that People, Culture, and Inclusion prioritizes, as necessary, the human capital needs of OIG, the Vice President of Workforce Planning and Strategy will work closely with OIG on all human resource related needs.

With respect to exceptions to policies impacting OIG independence, attached is a draft amendment to the current OIG Policy/Instruction that would give the IG the authority to grant exceptions to People, Culture and Inclusion policies and procedures for hiring, compensation, leave, training, promotion, alternative work schedules, telework, and compensatory time; provided, however, that any such exceptions will comply with applicable laws and regulations, the WMATA Compact, and the policies and procedures of Diversity, Equity and Inclusion, Equal Employment Opportunity, and Fair Practices (DEI/EEO/FAIR). To the extent the IG and the Executive Vice President and Chief People Officer disagree on whether an exception is appropriate, the matter will be presented to the Board of Directors for resolution.

This memo has been shared with the relevant department heads and the General Counsel and their comments have been considered and incorporated as appropriate. The purpose here is not to create a different set of rules for OIG. Various WMATA officials already have authority to grant exceptions to various People, Culture, and Inclusion policies and procedures. Rather, the purpose is to give the IG, instead of a non-OIG official, approval authority for internal OIG human resource matters.

Beyond those outlined in the attached draft amendment, policy exceptions would be rare and would only involve policies, if any, that OIG deemed materially impede OIG operations and business needs or adversely impacts independence. OIG does not seek exceptions to applicable laws, including applicable provisions of the Compact, Board resolutions, or regulations, including FTA regulations, DEI/EEO/FAIR rules, merit-based hiring (candidates must meet minimum qualifications in job descriptions), and the like.

Thank you for your attention. Please feel free to share as appropriate and follow up with us directly for any questions that you may have.

Respectfully,

A black rectangular redaction box covering the signature of Rene Febles.

Rene Febles
Inspector General

Attachment: as stated

7.00 EXCEPTIONS

Because of the special needs of the OIG to ensure the independence of its operations, investigations, and audits, and to ensure the confidentiality, safety and security of its staff, the OIG shall have the following exceptions to certain People, Culture, and Inclusion, and Procurement policies and procedures:

7.01 People, Culture, and Inclusion

The Inspector General shall have authority to grant exceptions to People, Culture, and Inclusion policies and procedures for hiring, compensation, leave, training, promotion, alternative work schedules, telework, and compensatory time; provided, however, that any such exceptions granted shall comply with applicable laws and regulations, the WMATA Compact, and the policies and procedures of Diversity, Equity, and Inclusion/Equal Employment Opportunity/Fair Practices (DEI/EEOFAIR). To the extent the Inspector General and the Vice President, Workforce Planning and Strategy or the Executive Vice President & Chief People Officer disagree on whether an exception is appropriate, the matter will be presented to the Board of Directors for resolution.

7.02 Procurement and Contracts

The Inspector General, or his/her designee, shall have Contracting Officer authority as that authority is defined in P/I 8.1/6 (Delegation of Contracting Officer Authority) only as is necessary to carry out the duties of the OIG; provided, however, that the Inspector General or his/her designee satisfies the qualifications and requirements for the exercise of contracting officer authority as established by the Senior Vice President & Chief Procurement Officer, and that the exercise of such authority shall comply with applicable laws and regulations, the WMATA Compact, and Metro policies and procedures.