



THE OFFICE OF THE INDEPENDENT PERFORMANCE AUDITOR

Fraud, Waste and Abuse Report

Fiscal Year 2022-23 – Third Quarter

March 2023

About the Fraud, Waste and Abuse:

The Office of the Independent Performance Auditor (OIPA) is the official body of the agency to investigate allegations of potential fraud, waste, and abuse identified by agency staff or other stakeholders. Once the investigation into the allegations has been conducted, the OIPA advises the SANDAG Audit Committee and the Office of General Counsel on whether improper activities occurred.

[SANDAG Board Policy No. 41](#) - Internal Control Standards is intended to help prevent and detect potential fraud, waste, and abuse of public funds by guiding and encouraging agency management and staff to consider, implement, and monitor good system controls. Additionally, [SANDAG Board Policy No. 042](#) dictates the policy and procedures for reporting Fraud, Waste and Abuse to the OIPA.

Fraud, Waste, and Abuse of Public Funds or Assets Defined

"Fraud, waste, or abuse" means any activity by a local agency or employee that is undertaken in the performance of the employee's official duties, including activities deemed to be outside the scope of his or her employment, that is in violation of any local, state, or federal law or regulation relating to corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, is economically wasteful, or involves gross misconduct.

Per the Board of Director's approval of [SANDAG Board Policy No. 039](#), the Independent Performance Auditor (IPA) is the official body of SANDAG to investigate allegations of potential fraud, waste, and abuse identified by staff or other stakeholders. Once the investigation into the allegations has been conducted, the IPA advises the Audit Committee, the Office of the General Counsel or outside counsel under contract with SANDAG on whether improper activities occurred.

An employee, contracted parties, member of the public, or other stakeholders of SANDAG can file a complaint with the OIPA alleging improper activities. A member of the public or other stakeholders are encouraged to file as soon as the complainant has knowledge of the alleged improper activity. An employee or applicant for employment that is subject to Government Code Section 53297 shall have the right to file a complaint within 60 days of the date of the act or event which is subject of the complaint. Prior to filing a written complaint, the employee shall first make a good faith effort to exhaust all available administrative remedies.



OFFICE OF THE INDEPENDENT PERFORMANCE AUDITOR

DATE: April 1, 2023

TO: Chair Zito and Members of the Audit Committee

FROM: Mary Khoshmashrab, Independent Performance Auditor

SUBJECT: **Independent Performance Auditor First Quarter Fraud, Waste, and Abuse Report**

During Fiscal Year 2022-23 – as of March 31, 2023, OIPA has received one additional Fraud, Waste and Abuse complaint. During the 3rd Quarter OIPA was able to close **four** pending investigations, with **two** matters found to be partially substantiated, **one** matter found to be unsubstantiated, and **one** matter dismissed and has been managed by SANDAG's Human Resources. Currently, there are seven external cases that remain open with no pending or open internal cases.

Table 1: the following page summarizes the types of allegations received during Fiscal Year 2022-23 or pending from prior fiscal year.

Table 2: page 5 provides detailed reporting and status on External Fraud, Waste and Abuse Reporting's.

Table 3: page 6 provides detailed reporting and status on Internal Fraud, Waste, and Abuse Reporting's.

Table 1: Reporting Received in Fiscal Year 2022-23

Independent Performance Auditor Reporting's	Number of Reporting's (Prior Year)	Number of Reporting's (Current Year)	Closed	Open
External Reporting's				
Fraud				
Gross Mismanagement				
Waste				
Abuse/Misuse		1	1	
Substantial and Specific Danger to Public Health and Safety		1		1
Combination of Allegations	6			6
Subtotal External Investigations	6	2	1	7
Internal Reporting's				
Abuse of Authority		1	1	
Unfair Treatment				
Misuse and Abuse		2	2	
Employee Relations				
Overall Risk Lack of Control/Policy				
Theft of Time				
Combination of Allegations				
Subtotal Internal Investigations		3	3	
Total Reports in Purview of the IPA	6	5	4	7

Table 2: Status of External Fraud, Waste and Abuse Reporting Fiscal Year 2022-23

No.	Incident Type	Case #	Received	Date Started	Status/Outcome	Date Closed
1-4	Combination of Allegations (GM, Waste, and Abuse)	PY001-22, PY003-22, PY004-22, PY006-22	07/27, 02/02, 02/08,02/14	10/20/22	Open	Pending
<p>An allegation stating that SANDAG, the City of San Diego and Consultants working on the Bike Project are grossly mismanaging, wasting, and abusing public dollars. The claim includes four different complaints filed through the fraud, waste, and abuse hotline. The matter includes concerns that the project has doubled in estimated cost. Additionally, there are allegations that in some areas that have been completed, the contractors failed to ensure that proper safety guidelines were followed including proper signage and advanced posting of work tasks.</p>						
5	Combination of Allegations (Waste, GM, Abuse)	PY007-22	02/25/22	03/16/22	Open	Pending
<p>An allegation regarding misuse and abuse by a SANDAG consultant/contractor. The claim is regarding abuse of billing, overreaching of authority and failure to adhere to the terms of the contract. The claimant states that these actions by the contractor have been ongoing for many years.</p>						
6	Combination of Allegations (GM, Abuse, COI, Quid Pro-Quo)	PY009-22	02/17/22	Not started	Open	Pending
<p>An allegation regarding misuse and abuse by a SANDAG consultant/contractor and prior SANDAG employee. The claim is regarding abuse of power, conflict of interest (COI), overreaching of authority and financial gain by prior employee and contractor. Claimant provides detail of a “this for a that” agreement.</p>						
7	Public Safety Issue	002-23	08/7/22	Not Started	Open	Pending
<p>Complainant alleges that since 2006, for 16 years, she has had ongoing concerns regarding Seismic Safety on SANDAG, Port, Airport, and City of San Diego public funded projects. Specifically, for SANDAG, the concern is Seismic Safety concerns on the Rose Canyon Fault Zone (RCFZ) on SANDAG's Headquarters and SDMTS Bus Maintenance Facility in downtown San Diego, the double tracking over the San Diego River, the Old Town Station, and the limited fault investigations for only 3 bridges along the Mid-Coast Corridor, and the new stations and Transit Oriented Development (TOD) housing projects adjacent new trolley stops. The Complainant alleges that in the past SANDAG stated they were not confirming or denying active faulting along the full Mid-Coast corridor or the bridges over the San Diego River due to budget constraints. The ask is to require all SANDAG, Airport, Port, and City fault investigations to have third-party approvals. With the fault investigation reports and approvals sent to the State Geologist within 30 days of approval.</p> <p>Second, reconvene the Caltrans 2006 Coronado Fault Technical Advisory Panel (TAP) or reconvene or contact Caltrans's Seismic Advisory Board (SAB) for free Seismic guidance and approvals for public funded projects on liquefiable soils. Additional State Seismic guidance and approvals should be required for SANDAG's proposed Airport connectivity project for a new subway/trolley to the airport, Central Mobility Hub (CMH), and new City Hall complex, the Navy Broadway Complex (NBC), Seaport Village, and SANDAG's new Headquarters and SDMTS Bus Maintenance Facility.</p>						

8	Waste and Abuse	003-23	12/14/22	12/14/22	Partially Substantiated	3/23/23
<p>Complainant alleges that SANDAG provided, at no cost, public resources and supplies to non-government organizations that have left leaning political preferences and pose conflict of interest risk.</p> <p>IPA's conclusion: Partially substantiated.</p> <p>Auditors noted the following:</p> <p>Free services were provided to outside entities including cities, a university, and a private public person. Time spent on these services was billed to OWP 2300000.</p> <p>OWP 2300000 contains federal money FTA 5307.</p> <p>The dates of the example services found in the analysis match up to payroll records where 80% of the funds used were from FTA 5307.</p> <p>It is against the federal code to use federally granted money for free services.</p> <p>However, Auditors did not identify where SANDAG provided services to left leaning political party and noted not favoritism to a party preference.</p> <p>IPA's recommendation: Auditors recommend creating a new OWP which is funded by a source that allows free services to the public and for SANDAG employees to bill to this OWP when providing these services and does not contain comingled federal or state funds.</p>						

Table 3: Status of Internal Fraud, Waste and Abuse Reporting Fiscal Year 2022-23

No.	Incident Type	Case #	Received	Date Started	Status/Outcome	Date Closed
9	Misuse and Abuse	001-23	07/22/22	8/9/22	Unsubstantiated	3/19/23
<p>Allegation of misuse and abuse of public funds. The complaint alleged that SANDAG has paid hundreds of thousands to employees over the past years that were unreasonable material amounts. Complainant provided dollar amounts for various past employees that were released from their duties at SANDAG yet were at will. The complainant demanded that the matter be reviewed as the amounts were material and the employees were at will. The complainant alleged that the policies should be changed and the Board should set more perimeters around how SANDAG management spends public funds.</p> <p>IPA's conclusion: Unsubstantiated. Upon review of this matter, it was noted that SANDAG did have settlements with previous employees that had At-Will Contracts. However, the settlements were shared with and approved by the Board of Directors. OIPA recommends that in the future SANDAG Management consider strengthening the terms of At-Will Employee Contracts to prevent future payouts of settlements that are deemed colorable claims saving taxpayers' dollars from such claims.</p>						
10	Abuse of Authority	004-23	12/21/22	12/21/22	Dismissed- HR matter	2/22/23
<p>Allegation of abuse of authority. Complainant alleged that some SANDAG Executive Management members abused their power of authority that resulted in negativity impacting the complainant.</p> <p>IPA's conclusion: This matter is being handled by SANDAG's Human Resources.</p>						
11	Misuse of Funds	005-23	12/21/22	12/21/22	Partially Substantiated	3/10/23
<p>Allegation of misuse of public funds. The complaint alleged that SANDAG Management was reimbursing an</p>						

employee who works remotely and resides out of state, for travel expenses incurred when the employee was required to appear in person to perform SANDAG duties/business. Some employees that can successfully complete their workload are given permission and the privilege to work remotely. However, if the employee requires to be physically present in San Diego, in any event, the employee is expected to incur the full cost associated with travel. However, SANDAG does not reimburse for such expenses. Complainant alleged that SANDAG Management reimbursed the employee for past expenses and agreed to for future travel-related expenses. Additionally, the complainant alleged that Management had granted permission to exceed the GSA travel limits that were adopted by SANDAG prior to the agreement.

IPA's conclusion: Partially Substantiated.

Based on the auditor's review, the employees' initial agreement provided no reimbursement for any travel-related expenses. However, the employee's *initially* renewed contract allowed for reimbursement of the employees' travel related expenses in accordance with the SANDAG Employee Business Travel Guide including adherence to GSA rates. Upon further review, auditors identified written evidence that supported the claim that the employee was granted permission to exceed the GSA rate. However, during our review Management agreed that the employee working remotely should be responsible for all travel related expense incurred for SANDAG related business and amended the employee's remote work contract to exclude travel related reimbursement in agreement with the employee. Auditors reviewed the amended contract and confirmed that language was added to ensure that the employee would be responsible for all travel related expenses. Additionally, SANDAG Management confirmed that no SANDAG employee with remote work had been reimbursed for travel-related expenses. Therefore, regarding this matter, auditors found no incidence of misuse of public funds. Furthermore, as part of OIPA's continuous auditing plan for FY2334 auditors will perform reviews over employee reimbursements. The matter has been closed.

Conclusion

The Office of the Independent Performance Auditor is committed to ensuring that all reported claims of fraud, waste, and abuse related to SANDAG's operations are sufficiently investigated and successfully resolved.

Respectfully submitted,



Mary Khoshmashrab, MSBA, CFE, CPA
Independent Performance Auditor

cc: SANDAG Board of Directors
Hasan Ikhmeta, Executive Director
Ray Major, Assistant Deputy Executive Director
OIPA Webpage and File