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State Auditor



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State of New Mexico
OFFICE OF THE STATE AUDITOR

August 25, 2015

Sheriff Enrique Vigil
Doña Ana County Sheriff's Office
845 N Motel Blvd
Las Cruces, NM 88007

Via Email: enriquev@donaanacounty.org

Re: Operation Stonegarden Grant Program Forensic Audit

Dear Sheriff Vigil:

On August 24, 2015, the Office of the State Auditor (OSA) released a forensic audit of expenditures by the Doña Ana County Sheriff's Office under the Operation Stonegarden Grant Program. The Stonegarden program, which is funded by the U.S. Department of Homeland Security, provides support for local, tribal and state law enforcement authorities with respect to border-related activities.

The focus of the audit was to assess whether there was any wrongdoing with respect to program, with an emphasis on overtime paid to management. The audit, which was requested by your office, was performed by Kubiak Melton & Associates, LLC and covered fiscal years 2012 and 2013. The auditors found that there were a lack of internal controls that allowed Lieutenants, Captains and Majors to assign and participate in overtime projects that resulted in a large amount of salary resources, about 30 percent, being consumed by upper management. The actions were consistent with the Sheriff's policy in place at the time, but fell short of best practices and created an opportunity for abuse.

Specifically, managerial employees were allowed to flex their normal work schedules to participate in Stonegarden operations and charge overtime for projects that they oversaw (without having to obtain the additional approval of a supervisor). Four salaried management positions were paid \$73,100 in 2013 and \$61,400 in 2012 in overtime, which is paid at a rate of time-and-a-half. An hourly management employee received \$15,800 in 2013 and \$18,500 in 2012.

The report recommends that corrective action be taken to strengthen internal controls and provide appropriate segregation of duties with regard to approval of schedules and overtime. It is the responsibility of management to ensure that appropriate controls are in place. We appreciate your attention to this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Kevin Sourisseau", with a long horizontal line extending to the right.

Kevin Sourisseau, CPA
Special Investigations Supervisor

STATE OF NEW MEXICO
Doña Ana County Sheriff's Office
FORENSIC AUDIT SERVICES FOR THE
FISCAL YEARS ENDED
JUNE 30, 2012 AND 2013

STATE OF NEW MEXICO
DOÑA ANA COUNTY SHERIFF'S OFFICE
FORENSIC AUDIT
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Forensic Auditors' Report

Honorable Timothy Keller
New Mexico State Auditor
Santa Fe, New Mexico
and
Honorable Enrique "Kiki" Vigil
Doña Ana County Sheriff
Las Cruces, New Mexico

Sheriff Enrique Vigil and the Board of Commissioners,

Thank you for the opportunity to perform the forensic audit consulting procedures for Dona Ana County Sheriff's Office (DASO) and the New Mexico State Auditor. This report summarizes our procedures, findings and recommendations as it relates to our forensic audit.

This engagement was performed in accordance with Standards for Consulting Services established by the American Institute of Certified Public Accountants. The scope of this engagement is outlined in the body of our report. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representations regarding the sufficiency of the procedures described below either for the purposes for which this report has been requested or for any other purpose.

The County and DASO management are responsible for maintaining the accounting records for DASO and for establishing and maintaining effective internal control over compliance with state and federal laws and regulations.

I. Background

On March 17, 2015, Kubiak Melton & Associates, LLC (KMA) was engaged by the Doña Ana County Sheriff's Office (DASO) to conduct a forensic audit (audit) for the fiscal years ending June 30, 2012 and 2013 of the "Operation Stonegarden Grant Program" (OPSG) issued through the U.S. Department of Homeland Security. The purpose of this audit was to identify if there was any wrongdoing by the Sheriff's Office during this time period, specifically how the overtime was allocated to several supervisors within the Office.

Based upon this initial meeting with the Sheriff and his staff, a forensic audit was performed, which included the following procedures:

- Interviews of the Sheriff, employees of the Office and other individuals that have ties to the Sheriff's Office (i.e. former employees, federal agency contacts)
- Reviews of relevant payroll and accounting information
- Reviews of grant awards, grant agreements and other relevant documentation
- KMA obtained a listing of salary expenditures related to OPSG for the Doña Ana Sheriff's Office, which consisted of \$528,000 in salary expenditures.
- KMA conducted interviews of several active duty officers.
- KMA obtained salary and overtime information for the entire DASO and performed analytical procedures on such information.
- Obtained an understanding of OPSG grants for fiscal years 2012 and 2013.
- Reviewed the policies and procedures for DASO with respect to salaries and overtime.
- Reviewed the unofficial procedures related to assigning of overtime to OPSG.
- Reviewed overtime and operation documentation relating to OPSG.
- Interviewed the OPSG point of contact for DASO whom is an agent with the Border Patrol.

The objective of OPSG is as follows:

“Operation Stonegarden (OPSG): OPSG supports enhanced cooperation and coordination among local, tribal, territorial, State, and Federal law enforcement agencies in a joint mission to secure the United States’ borders along routes of ingress from international borders to include travel corridors in States bordering Mexico and Canada, as well as States and territories with international water borders.”

The expenses incurred under the OPSG by the County are for the purpose of conducting border-centric, intelligence-driven operations with the goal of reducing or eliminating the threat, risk and vulnerability along our Nations’ borders.

Concepts of paramount importance in this report relate to the components of Internal Control:

Internal Control is a process for assuring achievement of an organization’s objectives in operational effectiveness and efficiency, reliable financial reporting and compliance with laws, regulations and policies.

There are five components of internal control, as follows:

1. Control Environment

The control environment sets the tone of an organization and influences the control-consciousness of its employees. It is the foundation for all other components of internal control, because it provides discipline and structure. Control environment factors include the integrity, ethical values and competence of the people associated with the entity, including management and employees; management's philosophy and operating style; the methods by which management assigns authority and responsibility, and organizes and develops its employees; and the attention and direction provided by the Sheriff and Under Sheriff.

2. Risk Assessment

Every entity faces a variety of risks from external and internal sources that must be assessed. A precondition to risk assessment is establishment of objectives, which should be linked at different levels and be internally consistent. Risk assessment is the identification and analysis of relevant risks to achievement of the entity's objectives, which includes forming a basis for determining how the risks should be managed. Economic, industry, regulatory and operating conditions will inevitably continue to change in any environment, therefore, mechanisms are needed to identify and deal with the special risks associated with such changes.

3. Control Activities

Control activities are the policies and procedures that help ensure management directives are carried out. They help ensure that necessary actions are taken to address risks, in order to achieve the Sheriff's Department's objectives. Control activities occur throughout the organization, at all levels and in all functions. They include a range of activities including approval, authorization, verification, reconciliation, and review of operating performance, security of assets, and segregation of duties.

4. Information and Communication

Pertinent information must be identified, captured, and communicated in a form and timeframe that enables employees and management to carry out their responsibilities. Information systems produce reports containing operational, financial and compliance-related information, making it possible to run and control the Sheriff's Department. These information systems deal not only with internally generated data, but also information about external events, activities, and conditions necessary to make informed decisions and to comply with necessary external reporting. Effective communication must also occur in a broader sense, flowing down, across, and up the organizational chain. All personnel must receive a clear message from top management that control responsibilities must be taken seriously. Employees must understand their own role in the internal control system, as well as how individual activities relate to the work of others. There must be a means of communicating significant information upstream. There also needs to be effective communication with external parties, such as customers, suppliers, regulators and constituents.

5. Monitoring

Internal control systems need to be monitored through a process that assesses the quality of the system's performance over time. This is accomplished through ongoing monitoring activities, separate evaluations, or a combination of the two. Ongoing monitoring occurs in the course of operations. It includes regular management and supervisory activities, and other actions personnel take to perform their duties. The scope and frequency of separate evaluations depends primarily on an assessment of risks and the effectiveness of ongoing monitoring procedures. Internal control deficiencies should be reported upstream, with serious matters reported to top management and the Sheriff.

II. Executive Summary

The forensic audit commenced when KMA obtained documentation from the DASO and met with various individuals from, or associated with DASO. The objective of DASO's was as follows:

- To identify whether there was any wrongdoing related to OPSG expenditures during the fiscal years 2012 and 2013 (July 1, 2011 through June 30, 2013)
- To correct and implement internal controls in order for DASO to ensure compliance with OPSG budgeted expenditures in an effort to be more transparent in its operations.

KMA interviewed relevant individuals at the DASO, performed forensic audit procedures in order to provide DASO with a report identifying the results of our procedures.

III. Scope

The scope of the forensic audit team was as follows:

- To perform a forensic audit for the fiscal years ending June 30, 2012 and 2013 related to OPSG expenditures.
- Identify and investigate causes of concern that individuals connected to DASO have expressed as it related to OPSG.
- Identify and investigate areas of internal control weaknesses and recommend proper corrective action.

IV. Auditors' Concerns

Auditors' Concern #1 – DASO's overtime policy allows exempt - salaried employees to incur overtime at time-and-a-half compensation

During fieldwork we noted that an overtime policy implemented starting March 3, 2009 allowing for:

“an exempt level law enforcement employee, DASO Lieutenant and/or DASO Captain, who works a special project that is funded by sources outside of the County's General Fund, will be compensated at one and one-half (1 ½) times the employee's hourly rate for any time worked on such projects when the agreement reimburses the County for this rate.”

This policy coupled with management oversight of OPSG allows for the opportunity to assign and partake in overtime at their discretion. Although this was made allowable, it is not consistent with best practices as it gives opportunity to those in charge (Lieutenants or Captains) to assign the overtime, partake in the overtime, and not require an approval of their own overtime.

Auditors' Concern #2 – Opportunity to supplant OPSG Funds and misuse of DASO resources

Due to the absence of effective internal controls, KMA noted the following concerns:

- Management had the ability to charge time to OPSG while performing their normal duties for DASO.
- Management used hourly employees fill in for management while management worked OPSG overtime opportunities.

Due to the fact that management has the ability to:

- Work overtime without tracking and recording their daily time worked (i.e. clock in or out).
- Flex their schedules to work different hours other than a set schedule.
- Schedule their own overtime with no approval of overtime worked or their daily schedule worked (operational oversight).
- Have hourly employees cover for management so management can work overtime.

There was an opportunity to submit false claims to the Federal Government for reimbursement of work that was not performed. Furthermore, the County would have to pay additional resources to hourly employees to fill in for management in salaried positions.

Auditors' Concern #3 – Assignment of Special Project Overtime

While interviewing officers at DASO, KMA noted that the management charged with administering OPSG was giving preference to individuals in management positions to work on special projects. When assigned to these projects, individuals were paid overtime at time-and-a-half. This resulted in management being paid at a higher salary rate and consuming a disproportionate share OPSG resources.

V. Findings

Finding #1 – Exempt - salaried employees are collecting overtime, assigning overtime, and their overtime was paid without supervisor approval.

Condition: It was noted during fieldwork that exempt - salaried employees with the ranks of Lieutenant, Captain and Major who are in management positions with the DASO were allowed to charge overtime to OPSG projects in which they were charged to oversee. KMA further noted the following to be what we considered apparent conflicts of interest within DASO:

- Individuals in salaried management positions were earning large amounts of overtime. The average overtime earned by four (4) of the Officers in management positions was approximately 41% of their annual salary expense.
- Officers in management or in positions that had the ability to assign OPSG project were consuming a disproportionate share of OPSG salary resources. During fiscal years 2012 and

2013, five individuals in positions to assign OPSG projects consumed approximately 30% (\$169,000) of OPSG salary resources.

- Supervisors assigned to OPSG operations, were not required to receive supervisor approval on their overtime worked.
- One instance was noted where an individual in a management position charged 27 hours to an overnight OPSG operation with no internal controls in place to require a supervisor's approval.
- Management was given the ability to shift their regular work schedules in order to participate in OPSG operations with no internal controls in place or oversight that management was working their required forty hour work week.

Criteria: Management is responsible to ensure that the policies and procedures are properly carried out and that necessary actions are taken to address risk in order to ensure the achievement of the DASO's objectives. Furthermore, management is responsible for the oversight of employees and operations in a fiduciary manner to ensure public resources are deployed to their most efficient use.

Cause: A memorandum dated March 29, 2009 and signed by the former Sheriff, allows exempt level law enforcement employees, Lieutenant, Captains, and Majors, to participate in overtime of special projects that they were typically charged to oversee.

Effect: Due to the lack of the *control environment* and *control activities* discussed above; management has been allowed to assign themselves overtime, not require approve their OPSG overtime and have no accountability to their daily schedules.

Recommendation: It is our recommendation that the policies and procedures of DASO be implemented so management functions and field operations are not comingled to the extent possible. Individuals in management positions should not have the authority to flex their own schedules in order to assign themselves overtime, or participate in overtime projects. Furthermore, any overtime worked should be approved by a supervisor.

The policy should include specifications to require any overtime to be approved by a supervisor. Management should act in a fiduciary capacity so even the appearance of abuse of public funds does not exist, such as the payment of overtime for salaried employees.

Finding #2 – Mismanagement of DASO's Human Resources

Condition: One instance was specifically reported to KMA in which a Lieutenant requested for a Sergeant to fill in for the Lieutenant, resulting in overtime charged to DASO by the Sergeant. The request was made by the Lieutenant so that he was able to work on OPSG operation in which he acquired overtime pay at the rate of time-and-a-half. This resulted in DASO incurring an additional cost of paying the Sergeant approximately \$140 of overtime. The Lieutenant was paid approximately \$400 by OPSG for that operation on that particular day.

Criteria: Management should be deploying DASO's resources for their highest and best use.

Cause: Salaried management employees are able to assign themselves overtime, paid at time-and-a-half and have lower ranking hourly employees cover their work shift.

Effect: DASO bears an increased salary burden because work and duties that salaried management were originally assigned to perform were instead performed by an hourly employee.

Recommendation: KMA recommends that internal controls be implemented so salaried management are not able to reallocate human resources and shift additional financial burden onto DASO. Furthermore, KMA recommends that management responsible for the operational oversight of OPSG should not participate in overtime of operations that they are charged to oversee.

Finding #3 – Assignment of Special Project Overtime

Condition: The administration of the OPSG – specifically the assigning of DASO employees to the OPSG operations has been a point of contention throughout DASO. This is due to the fact that the assignment of OPSG operations is subjective and management who are charged in overseeing operations are also charged with assigning overtime, and appear to be giving preference to other individuals in management positions.

Specifically, four individuals in salaried management positions were paid an OPSG overtime of approximately \$73,100 and \$61,400 in 2013 and 2012, respectively. Furthermore, an hourly employee who worked on OPSG operations in a management capacity was paid approximately \$15,800 and \$18,500 in 2013 and 2012, respectively.

Criteria: Proper segregation of duties should be implemented in every organization so resources are allocated to their highest and best use. Management who are paid at higher hourly rates should not have the opportunity to allocate overtime in which they are charged to oversee.

Cause: Due to the lack of internal controls, management had the opportunity to allocate overtime in a manner that was beneficial to themselves.

Effect: Management was able to allocate a substantial amount of OPSG resources to individuals in management positions, while flexing their schedules and collecting their regular salaries.

Recommendation: KMA recommends that management is not given the opportunity to allocate OPSG resources to benefit themselves or others in management positions.

VI. Conclusion

Based on all audit work performed, KMA concludes that during the period under audit, there was a control environment which allowed for the *auditors' concerns* and *findings* listed above. It appeared that DASO

had a lack of internal controls, specifically - control activities which gave management the opportunity to assign and participate in overtime projects. This resulted in:

- Management flexing their normal work schedules to participate in OPSG operations.
- Management assigning themselves to OPSG operations.
- Large amounts of OPSG's salary resources being consumed by DASO's upper management.
- OPSG operation supervisors not requiring approval of their overtime.
- DASO being exposed to the risk of supplanting OPSG funds.

KMA further noted; since the new Sheriff was elected and became aware of these issues, he promptly contracted with KMA to perform forensic audit procedures to identify weaknesses so that he can implement corrective action.

The duties of management are to supervise the operations and individuals within an organization in an effort to employ internal resources to their highest and best use. Management is also charged with the implementation and operation of internal controls. A memorandum signed by the former Sheriff on March 3, 2009 allowed management (Lieutenant, Captains, and Majors) to participate in overtime funded from sources outside of the County's General Fund. This thereby eliminated segregation of duties necessary for effectively operation of DASO.

An exit conference was held on June 8, 2015 to discuss the results of the audit. Because the forensic audit report was not yet released by the Office of the State Auditor, the meeting was a closed session. Attending were the following:

Representing DASO:

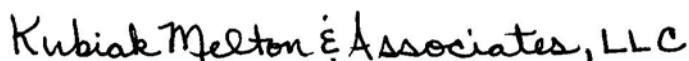
Enrique "Kiki" Vigil, Sheriff
Edward Lerma, Under Sheriff
Dennis Montoya, Administrative Executive
Paul Martinez, Special Investigator
Eugene Alvarez, Special Investigator

Representing the Auditors:

Robert Peixotto, CPA

This report is intended solely for the use of the DASO and the New Mexico State Auditor. This report should not be disclosed to, used or relied upon by any other third party.

Sincerely,



Kubiak Melton & Associates, LLC
Auditors – Business Consultants - CPAs
Albuquerque, New Mexico
June 8, 2015