



Consulting & Management

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DEMA Consulting & Management
Response to Agreed-Upon Procedures Report

The associated findings:

Findings under procedure #1

- **DEMA salaried employees are not required to track their time with respect to activities or client jobs or tasks.**

DEMA Response -

We do not concur. DEMA's salaried employees are not required to clock in and out as they are salaried employees and are exempt. However, each site salaried employee is required to send in a daily report of everything done that day in the format of a Site Overview which is reviewed daily by The Director of Operations and Michelle Patino daily. In addition, site salaried employees were required to have their temperature taken due to Covid each time they entered the site which also allowed us to confirm they were on site performing their job duties which are in our Job Descriptions and Policies and Procedures provided to all employees. The Director of Operations also does a checkin everyday. The other salaried employees work in the office daily and either Michelle Patino or Mica Pangborn are present and supervises them. In addition, the office required Temperatures as well as described above and documented on a daily Temp Log which also supports that salaried employees exist and are working their respective sites.

Also, we have since started enforcing the use of time cards to account for Salaried Staff hours of work performed and have been submitted with all recent invoices. In addition, we are now requiring our Subcontractors to provide the location of services on their invoices. Our only client for DEMA Consulting & Management is the County of Sonoma.

- **DEMA does not have a documented process for ensuring that clients are only billed for the time DEMA salaried employees worked for the client.**

DEMA Response -

We do not concur. We were instructed by County Council and CDC staff (including Administration) to submit Activity Logs(214s) as supporting documentation for the hours billed to the County. We were told this was sufficient supporting documentation. We have followed

through with these instructions and provided the supporting documentation requested. However, this finding is completely inaccurate as the instructions given, as part of their contract, to Pisenti & Brinker, LLC for the County Auditor's office were not to account for any time billed to the County was not on a timekeeping system that the employee clocked in and on. Again, salaried employees are not required to clock in and out as they are salaried employees and are exempt.

Both Federal and California do not require exempt employees that are salaried to keep any type of time keeping record. In addition, a timekeeper may keep track of employee times. Please refer to the law codes and information obtained from law sites both federally and the State of California.

1. FLSA's recordkeeping regulations, 29 CFR Part 516

- What About Timekeeping: Employers may use any timekeeping method they choose. For example, they may use a time clock, have a timekeeper keep track of employee's work hours, or tell their

workers to write their own times on the records. Any timekeeping plan is acceptable as long as it is complete and accurate.

2. The federal Fair Labor Standards Act (FLSA), which is enforced by the Department of Labor (DOL), has set no requirements for exempt employees to track hours worked, unlike non-exempt employees who are required to track hours worked.

3. Exempt employee records

- Even though you may have employees who are exempt under the federal FLSA, you are not exempt from keeping records on them under the FLSA. Records are required to determine whether you have met the necessary conditions in classifying an employee as exempt.
- If your employees qualify as exempt because they are classified as executive, administrative, and professional employees, you must keep the following information on them:
 - name
 - home address
 - date of birth, if under 19 (to comply with child labor provisions)
 - gender (to comply with equal pay provisions)
 - occupation
 - time of day and day of week on which the employee's workweek begins
 - total wages paid each pay period
 - date of payment and the pay period covered by each payment

Because these employees are not paid by the hour, you do not — and should not — keep track of the number of hours they put in. Doing so could make it seem to a wage-hour auditor that you are indeed basing pay on the number of hours worked, which would mean that the employee was not exempt and that you might end up being liable for overtime for that employee

We have since, to compromise with Sonoma County Auditor's request, have started enforcing the use of time cards to account for Salaried Staff hours of work performed and have been submitted with all recent invoices. In addition, we are now requiring our Subcontractors to provide the location of services on their invoices. Our only client for DEMA Consulting & Management is the County of Sonoma.

- **The performance of all accounting and billing functions are performed by DEMA management/owners, which does not provide for segregation of duties.**

DEMA Response -

We concur. Due to the fact, we were a startup company responding to the Covid - 19 Emergency, the primary oversight had to be accomplished by the owners due to the lack of manpower available to accomplish the segregation of duties and internal controls. This is common practice among smaller and startup companies. In order to rectify this, we are looking to hire a CPA Firm and bookkeeper from outside once this audit is completed, who will not be employed by DEMA in order to segregate these duties going forward. Regarding the internal controls, DEMA has thus and has been establishing Policies and Procedures that includes a comprehensive outline of how all internal controls are to be performed and the documentation required for reporting.

Findings under procedure #2

- **DEMA invoices did not include the minimum essential detail required under the ACS and NCS contracts.**

DEMA Response -

1. We do not concur. Per Contract No. 2020-1111-A00 and subsequent amendments on page four (4) it states that "The bill shall identify the services completed and the amount charged". Each line item on our invoices stated the position service completed and the amount. In addition, this contract is and was FEMA funded as stated in Exhibit C. Per FEMA ICS 214 (activity logs) and timesheets are the best way to track time and both are acceptable documentation. FEMA also states that other documentation is sufficient as well. In addition, each employee does not have to fill out a 214 and can be done as a team.

A Time & Materials contract guidelines from Acquisition.gov. does not set any guidelines or restrictions on how or what timekeeping system is mandatory to use for reporting and invoicing.

2. Per **Acquisition.Gov. Section:16.601 Time-and-materials contracts.**

Definitions for the purposes of Time-and-Materials Contracts.

Direct materials means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

Hourly rate means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are-

- (1) Performed by the contractor;

- (2) Performed by the subcontractors; or
- (3) Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

- **Of the invoices tested, P&B substantiated that hourly employees were paid by DEMA for the hours charged to the County.**

DEMA Response - We concur.

- **Salaried employees and management did not track their time respective to the hours charged to the County.**

DEMA Response - We do not concur.

As stated under bullet point 1 regarding the findings under procedure #1, we were instructed by County Council and Sonoma County staff both Diedre Duncan and Darrin O'Hara, both Site Managers assigned by the County, to submit Activity Logs(214s) as supporting documentation for the hours billed to the County. We were told this was sufficient supporting documentation. The activity logs (214s) outline the daily tasks performed. Again, we have followed through with these instructions and provided the supporting documentation requested. However, this finding is completely inaccurate as the instructions given, as part of the contract to Pisenti & Brinker, LLC from the County Auditor's office were not to account for any time billed to the County that was not on a timekeeping system that an employee clocked in and out on.

- **Accordingly, P&B was unable to substantiate any charges billed for salaried employees and management as other reconciliations of independent contemporaneous records were not attainable.**

DEMA Response-

We do not concur. There are multiple other documents and records that were accessible and provided. However, again the instructions given, as part of the contract to Pisenti & Brinker, LLC from the County Auditor's office was to not account for any time billed to the County that was not on a timekeeping system that an employee clocked in and out on.

The Agreed Upon procedures limited P&B to only look for payroll related electronic timecards. DEMA tracked hourly employees by timecards. DEMA did not track their salaried employees by any method such as timecards. Though DEMA's owner tracked their salaried employees' time by Form 214 Activity Logs, P&B and the County Auditors decided not to use them in their testing. Though P&B was limited by the County to look for evidence such as timecards, P&B could have used the audit methods of inquiry and confirmation with DEMA's salaried employees. The County Auditors decided not to further audit the existence of the salaried employees by using other audit techniques (such as other types of supplemental documentation and inquiry/confirmation with salaried employees)

The federal Fair Labor Standards Act (FLSA), which is enforced by the Department of Labor (DOL), has set no requirements for exempt employees to track **hours**

- **Of the total invoiced amount P&B tested of \$5,567,201 we were unable to substantiate \$2,310,670 related to salaried employees' time charged to the County.**

DEMA Response -

We do not concur. The difference stated under this bulletin is all salaried employees. As stated under bullet point 1 regarding the findings under procedure #1, we were instructed by County Council and Sonoma County staff both Diedre Duncan and Darrin O'Hara, both Site Managers assigned by the County, to submit Activity Logs(214s) as supporting documentation for the hours billed to the County. We were told this was sufficient supporting documentation. The activity logs (214s) outline the daily tasks performed. Again, we have followed through with these instructions and provided the supporting documentation requested. However, this finding is completely inaccurate as the instructions given, as part of the contract to Pisenti & Brinker, LLC from the County Auditor's office were not to account for any time billed to the County that was not on a timekeeping system that an employee clocked in and out on. Again, salaried employees are not required to clock in and out as they are salaried employees and are exempt. The activity logs clearly outlined the hours worked and the duties performed.

The Agreed Upon procedures limited P&B to only look for payroll related electronic timecards. DEMA tracked hourly employees by timecards. DEMA did not track their salaried employees by any method such as timecards. Though DEMA's owner tracked their salaried employees' time by Form 214 Activity Logs, P&B and the County Auditors decided not to use them in their testing. Though P&B was limited by the County to look for evidence such as timecards, P&B could have used the audit methods of inquiry and confirmation with DEMA's salaried employees. The County Auditors decided not to further audit the existence of the salaried employees by using other audit techniques (such as other types of supplemental documentation and inquiry/confirmation with salaried employees).

The federal Fair Labor Standards Act (FLSA), which is enforced by the Department of Labor (DOL), has set no requirements for exempt employees to track hours worked, unlike non-exempt employees who are required to track hours worked. FLSA's recordkeeping regulations, 29 CFR Part 516

- **What About Timekeeping:** Employers may use any timekeeping method they choose. For example, they may use a time clock, have a timekeeper keep track of employee's work hours, or tell their workers to write their own times on the records. Any timekeeping plan is acceptable as long as it is complete and accurate.

It should be noted that DEMA Consulting & Management did not bill the County for any materials and supplies provided by DEMA. Therefore, there were no receipts to be provided.

- **For the invoices tested, the hours captured in DEMA's time keeping system for employees did not match by position to DEMA invoices.**

DEMA Response -

We partially concur. All DEMA employees worked at every site and were not assigned to

a specific location. As P&B noted that the hours captured in DEMA's timekeeping system for employees did not match by position to DEMA invoices, is correct. Many times an over qualified employee would work a shift in a less qualified position that needed to be covered for many reasons. For example, a Paramedic may have covered an EMT shift. An RN may have covered an EMT shift or even a caretaker shift that needed coverage. We only billed for the actual position they worked during that shift and did not bill based on their credentials. In reality we paid out more for those shifts then we could recover and bill the county in order to keep our contractual obligations and keep our community members we were servicing safe. In addition, many employees were crossed trained even though they may be credentialed

Findings under procedure #3:

- **P&B successfully agreed all amounts charged to the County for third-party security invoices passed through to the County at cost.**

DEMA Response - We concur.

- **For one of the third-party contractors filling a budgeted position with assigned billing rates within the ACS and NCS contract, the contractor invoices did not identify where the services were performed and did not identify who the services were performed for (i.e. the County).**

DEMA Response -

We do not concur. We were unaware that the subcontractor invoices needed to have this information on the invoice. There have never been given instructions from the County that their invoices needed to specify the location. The invoices submitted to DEMA Consulting & Management by the subcontractors were for work in Sonoma County only. We have since rectified this and all subcontractor invoices now have the location of service.

- **Total charges to the County for the months tested from the third-party contractor whose invoices did not meet the minimum standard documentation detail was \$457,149.**

DEMA Response -

We do not concur. There have never been given instructions from the County on what the minimum standard documentation detail was to include or necessary. The scope of work performed is clearly outlined in the contract and included on the 214 (activity log). The work performed and hours by third-party contractors can be substantiated through our electronic charting system, daily overviews described previously, a private secure calling communication system (PMD), employee testimonies, County employee testimonies, H & P's, etc. There are multiple documents and documentation that clearly substantiates this. Again, the instructions given, as part of the contract to Pimenti & Brinker, LLC from the County Auditor's office were not to utilize any other documentation except a time keeping system. The invoices submitted to DEMA Consulting & Management by the third-party contractors were for work in Sonoma

County only.

- **P&B obtained evidence that third-party contractors received payment from DEMA for their services provided to the County.**

DEMA Response - We concur.

Findings under procedure #4:

- **P&B noted discrepancies between the billed rates and the ASC and NCS contract rates for 11 positions across 10 invoices.**

DEMA Response -

We do not concur. During the time the extensions and amendments were being extended we were asked to provide additional budgets. Yet, many times the amendments were not executed in a timely manner and we continued billing based on the prior contract budgets. There was no way of us knowing whether the new budgets were approved for the amendments and therefore did not have any other way to bill for services due to the delayed amendments. There are plenty of emails to substantiate this.

- **For invoices tested, the total value of underbillings due to budget rate discrepancies was \$1,699 and the total value of overbillings was \$2,058.**

DEMA Response

We partially concur. We have made errors in billing and at times overbilled by mistake. However, we have underbilled on multiple invoices as well. There are many invoices after the date of 06/06/2021 that have been underbilled by us including not billing for the Medical Director/Physician services at a cost of \$27,312.00. For example invoice # 1163 does not include any charges for the Physician services. We are happy to review every invoice and send in an invoice for these services with the supporting documentation for payment.

- **Other than the discrepancies noted above, observed rate charges on DEMA invoices were in accordance with contract rates.**

DEMA Response - We concur.

Complete Response from DEMA: Overall, DEMA Consulting & Management does not agree with most of the findings in this report. The List of Agreed-Upon Procedures stated in Exhibit A of Pisenti & Brinker contract are as follows:

Exhibit "A"

List of Agreed-Upon Procedure

1. Obtain an understanding of DEMA's accounting processes and evaluate the design of DEMA's internal control environment relevant to the billing processes used under the

ACS and NCS contracts with the County of Sonoma.

2. Select five separate months of charges billed to the County, at least one in each calendar year, from June 2020 to June 2023, from a population of all charges billed to the County under the agreements. From this sample of invoices, review appropriate support for all charges, including but not limited to, timecards or other time keeping records, canceled checks, payroll register reports, and other support to validate the occurrence and valuation of each charge.

3. Compare support received under item #2 to other contemporaneous records such as invoices, bank statements and payroll tax returns to substantiate occurrence and valuation of payments made by DEMA to third parties that were charged to the County.

4. Compare charges selected under item #2 against contract budgets and contract budget rates by positions to ensure total billings and billed rates comply with ACS and NCS contract budgets.

The County will provide all budget information once the months have been selected under item #2.

Deliverables

1. Once the agreed-upon procedures are conducted, Pisenti & Brinker will issue findings in the form of a report. The report is expected to be issued around the end of January 2024.

Conclusion:

These instructions did not allow for any other documentation or time keeping systems in place to substantiate our invoices to the County. There are multiple ways and documentation that substantiate all charges billed to the County. We have provided 214's (activity logs) that clearly outline the activities performed. In addition, every staff member, including salaried staff, are required to sign in at every shift and location they are working that day on a sign in sheet Temperature log before they are allowed to enter the site or office. Their temperatures are and have been taken and recorded by a third party security company. This has been occurring since day one prior to security contracting under DEMA. These logs could have easily provided additional documentation for work and hours performed by salaried staff and third-party contracts. Additional documentation could have been provided as well such as site overviews, logged meetings and schedules, electronic charting, emails to county, phone calls, incident reports, camera footage, etc. However, this suddenly became a financial investigation and the auditor's office refused to allow any other substantiated documentation or evidence to be submitted on our behalf.

The Agreed Upon procedures limited P&B to only look for payroll related electronic timecards. DEMA tracked hourly employees by timecards. DEMA did not track their salaried employees by any method such as timecards. Though DEMA's owner tracked their salaried employees' time by Form 214 Activity Logs, P&B and the County Auditors decided not to use them in their testing. Though P&B was limited by the County to look for evidence such as timecards, P&B could have used the audit methods of inquiry and confirmation with DEMA's salaried employees. The County Auditors decided not to further audit the existence of the

salaried employees by using other audit techniques (such as other types of supplemental documentation and inquiry/confirmation with salaried employees).

The federal Fair Labor Standards Act (FLSA), which is enforced by the Department of Labor (DOL), has set no requirements for exempt employees to track hours

I would like to address what appears to be the biggest issue stemming from the Press Democrat's articles regarding the Director of Nursing ("DON") position. When the contract started in July, 2020 we were only operating 1 site, the ACS. We then added the NCS side of Sonoma State University due to a death on site and the former operators unable to perform their contractual duties. At this time, due to the lack of manpower available, the owner performed this position for these sites and worked 16-18 hours a day to accomplish the necessary duties required of the position. As the need from the County and community members increased and additional sites were stood up, additional manpower was needed. We then hired another DON. As we continued to add sites and with the increased workload we employed more staff to assist with the DON job duties. All hours are accounted for that have been billed to the County for the position of DON. The contract budget only allowed for the position of DON to be billed for. However, an Assistant DON (solely based on title) was performing the duties of DON as well. These hours have been billed correctly and we have plenty of documentation that can substantiate this.

I would like to address the production of the 214's(activity logs). It appears that an issue has arised due to the 214's done by one person. Per FEMA, each employee does not have to fill out a 214 and can be done as a team. We were also informed from CDC staff and Susan Keller that the completion of the 214's does not have to be filled out by each employee as long as the hours and duties are verified. And they were in multiple ways.

1. FLSA's recordkeeping regulations, 29 CFR Part 51

What About Timekeeping: Employers may use any timekeeping method they choose. For example, they may use a time clock, have a timekeeper keep track of employee's work hours, or tell their workers to write their own times on the records. Any timekeeping plan is acceptable as long as it is complete and accurate.

2. The federal Fair Labor Standards Act (FLSA), which is enforced by the Department of Labor (DOL), has set no requirements for exempt employees to track hours

In conclusion, the Agreed-Upon Procedures has been directed from the Auditor's office. The directions given to P&B are stated above titled Exhibit A. Attached is a status report that summarizes the findings of a report provided by Mallan & Associates, Inc., an independent forensic auditor retained by DEMA Consulting & Management to assess the findings from Pisenti & Brinker LLP contracted to perform Agreed-Upon Procedures and contracted by the County of Sonoma Auditor's office. Included is all supporting documentation substantiating the status report from Mallan & Associates, Inc. In addition, attached are the Temperature Logs of selected date ranges as supporting documentation to my responses above. All daily logs totalling over 7000 logs can be provided if requested.

DEMA Consulting & Management does thank the County of Sonoma for the opportunity to provide these essential and emergent services to the citizens and community members of this great County. Despite, this audit we are proud to serve this community and partner with the County of Sonoma in further achieving the mitigation of the homeless crisis. We appreciate your

partnership and hope to continue serving in every way where we are needed.

Should you have any questions regarding our responses, please contact Michelle Patino RN, Owner, at michelle.patino@demacm.com or Mica Pangborn, co-owner, at mica.pangborn@demacm.com at your earliest convenience.

Sincerely,



Michelle Patino RN

Owner

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