

# PTAC Link

PROCUREMENT TECHNICAL ASSISTANCE CENTER – CONNECTING BUYERS & SUPPLIERS

Progress Through Regional Cooperation In The Alleghenies

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### Events at the SAP&DC PTAC

The PTAC at Southern Alleghenies was happy to co-sponsor two events this past April, in collaboration with SEDA-COG PTAC. On April 12th, we had our COSTARS seminar, where attendees learned about the PA COSTARS program and the requirements therein. The event was put on by Claire Osborne of PA DGS.



COSTARS April 12th

The second event, on April 14th, was "Doing Business with Penn State," hosted by Duane Bullock and Vernon Davis. They demonstrated how the University purchases goods and services from companies to over their 24 campuses and facilities in the

## Labor Department Invites Comments on Regulations Governing Paid Sick Leave

Following up on President Obama's Labor Day release of an [executive order](#) requiring government contractors to offer paid sick leave to employees, the Labor Department issued [proposed implementing regulations](#) and invited comments by April 12. Contractors with service contracts should consider submitting comments, especially if they already offer paid sick leave and rely on that leave to meet their fringe benefit obligations under the Service Contract Act.

Under the SCA, contractors cannot take credit for offering benefits that they are legally required to provide. By setting a minimum required level of paid sick leave, the proposed regulations convert seven days of those benefits into legal requirements, rendering them ineligible for bona fide fringe benefit status under the SCA. Contractors would remain free to continue to account for the value of excess paid sick leave in discharging their SCA obligations, but not the base requirements. As a result, contractors may have to recalculate their fringe benefit packages by extracting the value of current paid sick leave benefits, and then offer some other offsetting bona fide fringe benefit or an equivalent cash payment. In sum, the paid sick leave executive order could have the effect of penalizing contractors who were already offering the very same benefit that the government now requires.

The coverage of these proposal rules is similar to that of the recent minimum wage rules, but paid sick leave also applies to "white collar" employees who qualify for an exemption under FLSA. The Department has specifically invited comments whether the final regulations should expand beyond the current proposed coverage. As written, the proposed regulations apply to SCA-covered contracts. Certain service contracts, however, are excluded from the SCA if they involve services performed "exclusively by bona fide executive, professional, or administrative employees." The Department is considering whether to extend the paid sick leave requirements to those contracts. (In the context of SCA regulations, the Department does not interpret the term "exclusively" literally. As long as the vast majority of the workers - at least 80 or 90 percent - are executive, professional, or administrative employees, the

Commonwealth.



Doing Business w/PSU April 14th

Coming up, the Southern Alleghenies PTAC is looking forward to the 26th annual Johnstown Showcase for Commerce, May 31 through June 2. More details on the event can be found [by clicking here](#):

If you have any questions, or would like to see a course put on, these events, please contact [James Gerraughty](#) or (814) 949-6428 with your ideas.

### HHS Official: Social Media Listening a "Routine" Part of Emergency Response

Tweets are essential data points when mapping out federal emergency response, a group of government officials told an audience Thursday.

In the first few days after Hurricane Sandy in 2012, government response teams scanned the microblogging platform for mentions of especially dire situations -- including hospitals without power, nursing homes that needed to evacuate residents, and elderly people trapped in high-rise buildings -- to target aid. There were about 20 million tweets related to the storm, said Nancy Nurthen, a director within the Department of Health and Human Services' Office of Emergency Management, speaking at a monthly AFCEA Bethesda breakfast.

On the 50th anniversary of Martin Luther King Jr.'s march on Washington, HHS also checked Twitter for geolocated tweets mentioning people suffering from heat exhaustion so Nurthen's office could dispatch response teams to treat those patients.

Department will typically agree that the SCA does not apply, even if non-exempt employers are also included in the labor mix.)

The proposed regulations include enforcement sanctions for "interference" with an employee's accrual or use paid sick leave, and for "discrimination" in carrying out the requirements. Contractors should be aware of two nuances in this section of the regulations.

- **First**, "interference" sweeps broadly. It includes "discouraging use of paid sick leave, transferring an employee to a non-covered contract in order to frustrate accrual of leave, miscalculating accrual rates.
- **Second**, the Labor Department takes the position that non-discrimination rules apply to job *applicants* and former employees, and protects them "from retaliation by a prospective or former employer that is a covered contractor." The Department concedes that this interpretation contradicts case law in the Fourth Circuit with respect to applicants, and accordingly "would not enforce its interpretation on this issue in that circuit." The Fourth Circuit's jurisdiction covers a wide range of government contractors in the Hampton Roads and Northern Virginia regions, inviting patchwork enforcement and forum shopping.

Contractors have little time to respond to these regulations, but thoughtful comments now could help minimize the impact of difficult compliance burdens in the coming years.

*Article posted courtesy of:  
Jeff Bozman, Jennifer Plitsch and Scott A. Freling*

## Busy Employee "Skims" SBA Size Protest Email - What Could Go Wrong?

A contractor's "frantically busy" employee, who was listed as the firm's contact in SAM, skimmed through an email from the SBA containing a size protest, and took no action to respond.

In a recent size appeal decision, the SBA Office of Hearings and Appeals held that the SBA had properly issued an adverse size determination against the contractor in question after receiving no reply to the size protest-and the fact that the employee who received it was "frantically busy" was no excuse.

OHA's decision in *Oxyheal Medical Systems, Inc.*, [SBA No. SIZ-5707 \(2016\)](#) involved an Air Force RFQ for hyperbaric chamber maintenance support services. The solicitation was issued as a small business set-aside under NAICS code 811219 (Other Electronic and Precision Equipment Repair and Maintenance).

After evaluating competitive proposals, the Air Force awarded the contract to Oxyheal Medical Systems, Inc. An unsuccessful competitor then filed a SBA size protest, challenging Oxyheal's small business status.

Social Media is a "routine" information source in emergency response, Nurthen said, noting that her office especially follows "verified sources" such as local aid organizations, news reporters and politicians for news.

The Agriculture Department's emergency response agency is training to understand social media listening techniques, according to Cora Russell, acting director at the Food and Nutrition Services' Office of Emergency Management within USDA.

But the government must separate the relevant tweets from the rest, said Scott Shoup, the Federal Emergency Management Agency's chief data officer.

"Things can spin way out of control really quickly," he said.

A tweet about a fallen tree blocking a road may no longer be relevant if the tree has been cleared by the time a response team gets to the scene, he said.

Sometimes, he said, "no information is better than some information."

[Article posted courtesy of Mohana Ravindranath](#)

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An individual known as "Employee 1" was apparently listed as Oxyheal's primary point of contact on SAM. The SBA Area Office notified Oxyheal of the size protest by next-day UPS and by email to Employee 1. The SBA Area Office requested a response that Oxyheal provide those documents by November 2, 2015.

On October 27, the SBA Area Office received confirmation that Employee 1 had received and read the email. UPS delivered the hard copy of the SBA's notification to Oxyheal on October 28, and provided confirmation of delivery to the SBA Area Office.

November 2 came and went without a response. On November 3, the SBA Area Office sent Employee 1 an email. It stated that no response had been received, and warned, "If I don't receive your response by 3 p.m. today, I will assume that your firm is not responding to the protest." The email also noted that, under the SBA's adverse inference" rule, the SMA may issue an adverse size determination if the protested company does not respond to a size protest (or fails to provide a complete response).

Oxyheal still did not respond. November 12, the SBA Area Office issued a size determination finding Oxyheal to be ineligible for award of the Air Force contract. The size determination stated that, under the adverse rule, the SBA had presumed that Oxyheal's failure to respond meant that it was not small.

After receiving the size determination, Oxyheal contracted the SBA Area Office in an effort to belatedly respond to the size protest. The SBA Area Office refused to retract its size determination. Oxyheal then filed a size appeal with OHA. Oxyheal alleged, in part, the Employee 1 was filling multiple roles due to recent vacancies in those positions. She was "frantically busy, and was only skimming emails sent to the three accounts for the three full-time positions she held." She took action only on those emails flagged "high importance," which apparently was not the case with the SBA Area Office's email transmittal of the size protest.

Oxyheal pointed out that its SAM profile listed two other individuals as alternate points of contact. Oxyheal argued that the SBA Area Office had acted improperly by not reaching out to those other points of contact when it did not receive a response from Employee 1.

OHA disagreed. It noted that, in its prior size appeal decisions, it has held that an SBA Area Office may not apply the adverse inference rule where "the challenged concern's failure to respond was due to some error by the area office," such as a chase in which the SBA Area Office typed in the wrong email address.

However, "that was not the case here." Rather, "there is no question [Oxyheal] received the Area Office's communications. The problem was that [Employee 1] was too overwhelmed to respond to them ." OHA continued: *[Oxyheal's] argument that the Area Office should have done more is also wrong as a policy matter. It is worth emphasizing*

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*that the Area Office properly addressed its communications to [Oxyheal] and [Oxyheal] received them. To hold that the Area Office erred here would be to require area offices to go on extended rounds of contacting official after official at challenged concerns when they do not receive a response to their communications. This neither required by due process nor practical. The real error here was [Oxyheal's], in failing to properly monitor its communications.*

OHA denied Oxyheal's size appeal, and upheld the SBA Area Office's adverse size determination.

In the modern world, it's not unusual for a busy professional to become temporarily overwhelmed with the volume of email traffic in his or her email accounts. But, as the *Oxyheal* case demonstrates, that's no excuse for not reading and responding to a communication from the SBA. When an individual is listed as a company's point of contact in SAM, the company must be prepared for the government to contact the company through that individual-and must be prepared to face the consequences if that individual doesn't respond.

*Article posted courtesy of  
Steven Koprince*

## About Us

The PTAC at SAP&DC is an economic development entity that bridges the gap between supplier and buyer in the government marketplace. The PTAC stands ready to support businesses in the Alleghenies region in their pursuit to secure contracts with local, state and/or federal government agencies nationwide by:

- Identifying niche government markets and specific contract opportunities
- Assisting with bid and proposal preparation
- Preparing the required vendor registrations
- Navigating your company through the requirements and procedures of government contracting
- Enhancing competition by obtaining applicable socio-economic certifications
- Providing guidance to ensure successful post-award contract performance

**Due to the generous support of our Commonwealth and Federal funding partners, services provided by the PTAC are free of charge.**

Whether you are an experienced contractor or new to the government marketplace, the PTAC will provide one-on-one counseling utilizing the following program resources to increase your share of contact awards.

**PTAC Resources**

- Electronic Bid Matching for products and services
- Military/Commercial specifications and standards
- Past procurement information and pricing histories
- State and Federal regulations guidance
- Professional training and outreach events
- Quality assurance and packaging guidance

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