



FEMA LAW ASSOCIATES, PLLC
Latest FEMA Law Developments At a Glance

FEMA Law Associates is a private law firm that specializes in Emergency Management and Homeland Security issues. As a private firm, it is of course not affiliated with or endorsed by the Federal Emergency Management Agency. For more information on our services please visit our website at www.fema-law.com.

Message From the President

It is only a few months into the new year and already we have seen several potentially significant changes in Federal disaster law. This issue of our newsletter briefly summarizes them. Previous issues of our Newsletter can be obtained on the FEMA Law website, www.fema-law.com (click on “e-Newsletters”).

-Ernest Abbott

The American Recovery and Reinvestment act of 2009, Pub. L. 111-5, February 17, 2009

Congress slipped two substantive provisions affecting the Stafford Act into the Economic Stimulus Bill – though they are limited to Hurricane Katrina and Rita assistance. First, reflecting Congressional belief that the appeal process for FEMA’s Public Assistance program was broken, Congress provided a new mechanism for resolving disputes in that program. The new statutory section reads as follows:

SEC. 601. Arbitration Panel – Notwithstanding any other provision of law, the President shall establish an arbitration panel under the Federal Emergency Management Agency public assistance program to expedite the recovery efforts from Hurricanes Katrina and Rita within the Gulf Coast Region. The arbitration panel shall have sufficient authority regarding the award or denial of disputed public assistance applications for covered hurricane damage under section 403, 406, or 407 of the [Stafford Act] for a project the total amount of which is more than \$500,000.

Thus, the law now provides that arbitration is available to resolve Katrina/Rita public assistance disputes. Exactly how this arbitration process will work is unclear, however. The “President” must determine who will be on the arbitration panel, and what the procedures should be for the conduct of arbitration proceedings. Since arbitration is available “notwithstanding any other provision of law” it appears FEMA cannot require that an applicant go through the Stafford Act appeals process

before availing itself of arbitration, and (presumably) the results of the arbitration will be binding both on the applicant and on FEMA. There will be some challenges in implementing this provision....

Second, Congress concluded that it would be appropriate for FEMA to make retroactive grants under the Stafford Act’s Hazard Mitigation Grant Program. New Section 602 of the Stimulus Act provides:

SEC. 602. The [FEMA] Administrator . . . may not prohibit or restrict the use of funds designated under the hazard mitigation grant program for damage caused by Hurricanes Katrina and Rita if the homeowner who is an applicant for assistance under such program commenced work otherwise eligible for hazard mitigation grant program assistance under section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c) without approval in writing from the Administrator.

In other words, under this section, if a homeowner elevated his or her storm-damaged home when rebuilding after Katrina or Rita, and this work had not yet been approved for HMGP funding, FEMA cannot deny funding even though the work was performed without approval. Can FEMA require that the homeowner had at least applied for assistance when work commenced? The statute doesn’t say.

FEMA Law Associates, PLLC
805 15th Street, N.W.
Suite 1101
Washington, D.C. 20005
Phone: 202-326-9319
Fax: 202-326-9323
info@fema-law.com



FEMA LAW ASSOCIATES, PLLC
Latest FEMA Law Developments At a Glance

Federal Supply Schedules, Omnibus Appropriations Act FY2009, PL 111-8, 3/11/09

In several of our previous newsletters (Issues 8 and 9), we highlighted congressional efforts to allow state and local governments to use – during response to federally declared disaster events – standing contracts in the Federal Supply Schedules. This was one part of a congressional initiative to encourage pre-disaster contracting. Apparently Congress really wants to ensure broad availability of the ‘pre-approved’ contracts on GSA’s Federal Supply Schedule. SEC. 517 of the Omnibus Appropriations Act, states that, “in furtherance of the emergency management policy set forth in [the Stafford Act]”, these contracts can also be used by “the American Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations” as long as the contracts are used only “in preparation for, response to, and recovery from hazards as defined in section 602 of [the Stafford Act].” (Section 602, in turn, provides an exceptionally broad definition of hazards – natural, accidental, or man-caused.) It is not clear that the procurement practices of these relief organizations are so complex that use of Federal Supply schedules will help them – or whether government contractors are lobbying to increase the potential sales that could result from the not insignificant efforts required to become listed on the Federal Supply Schedule.

New Program for Volunteers in Disasters – the “Serve America Act”

On March 31, 2009, Congress passed the “Serve America Act” – it had not yet been signed by President Obama when this Newsletter went to press so it is not yet law. Previously, the Corporation for National And Community Service was authorized to have its youth and other volunteer service programs “involved” in disaster relief efforts. The new law adds a provision stating that it could provide support to communities experiencing disasters “including through mission assignments under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5121 et seq.)” (Serve America Act §1305). In addition, the new act calls for FEMA to establish a “National Service Reserve Corps” of trained volunteers or veterans – directly or through “organizations with demonstrated experience in responding to disasters or emergencies, including through using volunteers.” The statute goes on to provide for deployment of this National Service Reserve Corps as follows:

- (1) **Major Disasters or Emergencies** – If a major disaster or emergency is declared by the President pursuant to section 102 of the Robert T. Stafford Disaster Relief and Assistance Act (42 USC 5122), the Administrator of the Federal Emergency Management Agency, in consultation with the Corporation, may task the National Service Reserve Corps to assist in response.
- (2) **Other Disasters or Emergencies** – For a disaster or emergency that is not declared a major disaster or emergency under section 102 of the Robert T. Stafford Disaster Relief and Assistance Act (42 USC 5122), the Corporation may directly, or through a grant or contract, deploy the National Service Reserve Corps. (Serve America Act §1806). Implementation of this provision will be worth observing closely.

Finally, the Service America act includes a new provision specifying that priority in use of grant funds should be given to carrying out activities in areas in which the President has declared a major disaster – including a past disaster such as Hurricane Katrina or Rita (§1841).

FEMA Law Associates, PLLC
805 15th Street, N.W.
Suite 1101
Washington, D.C. 20005
Phone: 202-326-9319
Fax: 202-326-9323
info@fema-law.com

FLASH Newsletter



Volume 4
Issue 11
April 2009
Page 3

FEMA LAW ASSOCIATES, PLLC
Latest FEMA Law Developments At a Glance

Community Disaster Loan Cancellation

FEMA has also published a proposed rule providing for cancellation of “Special Community Disaster Loans” (Special CDLs). The ‘normal’ Community Disaster Loan Program of the Stafford Act (§417) had allowed cancellation, but the normal program, which has an individual loan limit of \$5 million, was not able to address the enormous impact of Hurricanes Katrina and Rita. Congress responded in 2005 with the “Special Community Disaster Loan Program” (under which over 1,270,000,000 in loans were advanced to communities) – but the 2005 legislation expressly prohibited cancellation of these massive loans. Congress eliminated this prohibition last fall. The proposed rule would extend to Special Community Disaster Loans the same criteria applicable to cancellation of the regular (Stafford Act §417) Community Disaster Loans.

Federal Register 15228-01; Comments on the proposed rule are due on or before June 2, 2009.

Important Regulatory Developments

FEMA has published a complete technical revision of Title 44 Federal Register, effective April 1, 2009. FEMA states that this revision does not make any substantive changes in the regulations (that’s why it could go into effect immediately, without notice or comment.) I recommend using the on-line edition Title 44 rather than use your trusty printed copy, since the printed copy is now obsolete.

If you would like to be removed from our mailing list, please reply to this email with “unsubscribe” in the subject line.

FEMA Law Associates, PLLC
805 15th Street, N.W.
Suite 1101
Washington, D.C. 20005
Phone: 202-326-9319
Fax: 202-326-9323
info@fema-law.com