

# FLASH Newsletter



Volume 2  
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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. For more information on our services please visit our website at [www.fema-law.com](http://www.fema-law.com).

## Message From the President of FEMA Law Associates

This Newsletter is another in our series summarizing recent amendments to Federal emergency management statutes. This issue principally discusses provisions in the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (PL 110-28, May 25, 2007, 121 Stat. 112, and referred to herein as the "2007 War Supplemental"). Previous issues of our Newsletter can be obtained on the FEMA Law website, [www.fema-law.com](http://www.fema-law.com) (click on "e-Newsletters"). – *Ernie Abbott*

## Increased Federal Share for Disaster Assistance

Congress has determined that the federal cost share should be 100% in both the Public Assistance Program and the Assistance to Individuals and Households Program, for damage caused by Hurricanes Katrina, Wilma, Rita, and Dennis in the States of Louisiana, Mississippi, Florida, Alabama, and Texas. Slipped into the Iraq War funding supplemental appropriation (as Section 4501 of the 2007 War Supplemental was a short provision stating that "the Federal Share for disasters is increased to 100 percent of the eligible costs under [Sections 403, 406, 407 and 408] of the Robert T. Stafford Disaster Relief and Emergency Assistance Act in connection with Hurricanes Katrina, Wilma, Dennis, and Rita. This 100% Federal share "shall apply to disaster assistance applied for before the date of enactment of this Act", and "shall be limited to projects for which a 'request for public assistance form' has been submitted."

Under the Community Disaster Loan Act of 2005 (PL 109-88), Congress designated up to \$750,000,000 in the "Disaster Relief Fund" to be used for Community Disaster Loans authorized under section 417 of the Robert T Stafford Disaster Relief and Emergency Assistance Act. Normally, loans under Section 417 can be cancelled when communities were unable to manage operating budgets due to insufficient revenues, but cancellation was prohibited for loans funded under the Community Disaster Loan Act of 2005. **Sec. 4502** of the 2007 War Supplemental amends section 2(a) of the Community Disaster Loan Act of 2005 (PL 109-88) to restore communities' ability to have loans cancelled as provided under section 417(c)(1) of the Stafford Act.

Last year, in another emergency supplemental appropriation (the "Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006" (PL 109-234), Congress had authorized FEMA to reimburse State and local governments, for a 12 month period, the cost of utilities in temporary housing units provided for evacuees of Hurricane Katrina and other 2005 hurricanes – as long as the government had agreed to provide those utilities in a lease signed before February 7, 2006. Section 2503 of the 2007 War Supplemental extends the 12 month term to 24 months. Most of these leases had already been assigned back to a FEMA contractor, so it is not clear what how many communities will take advantage of this extension. However, it is clear that FEMA regulations (which had limited payment of utilities for temporary housing) proved to be impractical given the housing needs created by Hurricane Katrina and other 2005 hurricanes.

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## Update on Implementation of Stafford Act Amendments – Contracting

The General Services Administration (GSA) has amended its Acquisition Regulation (GSAR) to allow use of its Federal Supply Schedules by State And Local Governments when acquiring “Goods and Services for Recovery from Natural Disasters, Terrorism, or Nuclear, Biological, Chemical, or Radiological Attack;” these amendments implement section 833 of the John Warner National Defense Authorization Act for FY 2007 (PL 109-364)(See our FLASH Newsletter, Issue 7). GSA’s policies and procedures applicable to State and local governments are found at 48 CFR Subpart 538.7100, and both a list of GSA Supply Schedule Contractors available for state and local governments, and very helpful answers to “frequently asked questions” about how this program works can be found at <http://www.gsaelibrary.gsa.gov>. (Click on “disaster recovery purchasing”.) Two key features deserve mention. First, these Supply Schedules can be used before a disaster event, either as ‘pre-disaster contracts’ or to acquire goods and services prior to an event that will facilitate disaster recovery. Second, when state and local governments follow the GSA Schedule Ordering Procedures—i.e., the [Ordering Procedures for Supplies, and Services Not Requiring a Statement of Work](#) (Federal Acquisition Regulation (FAR) 8.405-1) or the [Ordering Procedures for Services Requiring a Statement of Work](#) (FAR 8.405-2)—use of the GSA Schedules Program is considered to be a “competitive procedure” under the Competition in Contracting Act of 1984 (CICA). These procedures call for streamlined competitions among a number of supply schedule contractors. These State and local entities may include terms and conditions required by statute, ordinance, regulation, or order to the extent that these terms and conditions do not conflict with the terms and conditions of the GSA Schedule contract.

Other regulations to implement statutory changes remain pending. For example, the Department of Homeland Security’s Regulatory Calendar merely states that there is a proceeding to amend its Acquisition Regulation (48 CFR Chapter 30) to implement two restrictions on federal contracting that were enacted in the Post –Katrina Emergency Management Reform Act (PL 109-295). These two provisions are Section 692, Limitations on Tiering of Subcontractors, and Section 695, Limitation on the Length of Certain Noncompetitive Contracts. Refer to FLASH Newsletter Issue 5 for more information on these provisions. Update on implementation of these statutes will be provided in a subsequent Newsletter upon release.

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