



**OIG 12-23
US DEPARTMENT OF
HOMELAND SECURITY
OFFICE OF INSPECTOR
GENERAL
AUDIT OF OCTOBER 2006
STORM**

Code of Federal Regulations, 44 CFR 13.36(c)(2)

- The OIG auditors have cited this section of the Code of Federal Regulations concerning procurement in disasters to demand repayment of \$39 million of federal disaster funds.
- 44 CFR 13.36(c)(2) states: “Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, ***except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference***” (emphasis added).

Robert T. Stafford Disaster Relief and Emergency Assistance Act

- The Stafford Act is the federal law governing disaster relief and Federal Emergency Management Agency funds in federally-declared disasters.
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, PL 100-707, signed into law November 23, 1988 amended the Disaster Relief Act of 1974, PL 93-288.
- This Act constitutes the statutory authority for most Federal disaster response activities especially as they pertain to FEMA and FEMA programs.

Local Community Recovery Act of 2006

- Signed into law by President George W. Bush on April 20, 2006, this law amended Section 307 of the Stafford Act to specifically authorize set-asides for major disaster or emergency assistance acquisitions for businesses "***that reside or primarily do business in the area affected by the disaster or emergency***."
- Following Hurricane Katrina, Congress decided to amend the law to specifically direct local preferences to help the local economy recover.

Department of Homeland Security Appropriations Act of 2007

Section 694 of the Department of Homeland Security Appropriations Act of 2007 (Public Law 109-295, signed into law by President Bush on October 4, 2006) specifically required justifications for federal disaster expenditures made to *non-local firms or individuals*.

Section 694 states: "In the expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, ***preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster or emergency***" (emphasis added).

Erie County Attorney Legal Opinion

- On February 8, 2013, the date that the federal audit embargo ended, the Erie County Attorney's Office rendered a legal opinion regarding the amendments to the Stafford Act.
- The legal opinion sought to answer the question of do the Stafford Act amendments supersede the Code of Federal Regulations provision?
- The County Attorney opined: "The rule that the Inspector General's Office based its objection to local contracting on was first adopted in 1988 and last amended in 1995 - before the local preferences laws were adopted. At the time of the October 12, 2006 storm, both the Local Community Recovery Act of 2006 (signed into law by President Bush on April 20, 2006) and Section 694 of the Department of Homeland Security Appropriations Act of 2007 (signed into law by President Bush on October 4, 2006) were in effect, therefore, making the County of Erie's actions appropriate and legal."