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February 8, 2013

Mr. Charles K. Edwards
Deputy Inspector General
United States Department of Homeland Security
245 Murray Drive, SW, Building 410
Washington, DC 20528

Re: OIG-13-23

Dear Mr. Edwards:

I write today to take exception to the central findings of the Final Report issued by the Inspector General of the Department of Homeland Security (OIG/DHS) regarding Erie County's grant resulting from the 2006 October Storm (OIG-13-23).

The central finding of the report is that the County instituted a preference for local contractors, and that this is disallowed by federal regulations (specifically, CFR 13.36(c)(2)). Regardless of whether the County did or did not in fact institute a preference for local contractors in this instance, OIG/DHS knows, or should know, that the Stafford Act – the legislation which authorizes FEMA's response to disasters generally – clearly and unequivocally allows for and encourages a preference for local contractors. The Act states, in relevant part:

> *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. (42 USC § 5150)*[1]

To the extent that regulations promulgated by FEMA or another federal agency are inconsistent with the law of the land, they are invalid. OIG/DHS must know this, and therefore they must know

[1] This language amending the Stafford Act was part of the DHS Appropriations Act of 2007, which was signed into law by President Bush on October 4, 2006 and effective for all subsequently declared disasters. The disaster in question was declared on October 24, 2006.

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that they will never be able to recover these funds. I support the efforts of the various Inspectors General throughout the federal government to root out the misuse of public resources; in this case, however, I must conclude that this attempt to foist this bill on the property-taxpayers of Erie County is misguided, as it is inconsistent with applicable law. From all appearances it seems that the auditors were either unfamiliar with the applicable provisions of the Stafford Act or disregarded them. Whichever is the case, this shortcoming on the part of the auditors at the OIG/DHS must be addressed.

Thank you.

Sincerely,

Brian Higgins
Member of Congress