104TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
104–359

BENCHMARK RAIL GROUP, INC.

NOVEMBER 28, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HYDE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 419]

The Committee on the Judiciary, to whom was referred the bill (H.R. 419) for the relief of Benchmark Rail Group, Inc., having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of H.R. 419 is to compensate Benchmark Rail Group, Inc., for work which, except for a technicality under California State law, would otherwise have been paid for under the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

BACKGROUND

Immediately following the January 1994, earthquake in Northridge, California, the Southern California Regional Rail Authority (SCRRA) approached Benchmark Rail, Inc. (Benchmark) of St. Louis, Missouri about assisting in emergency repair work on rail lines in the Los Angeles area. Five days later, Benchmark was in California performing the work. Several weeks into the work, Benchmark learned of a provision of California State law which mandates that state agencies are allowed only to hire contractors licensed to do work in the State of California. While SCRRA and the State of California were satisfied with Benchmark's work, this provision of State law disqualified Benchmark from receiving payment.

Section 406(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act authorizes the Federal Emergency Management Agency (FEMA) to contribute at least 75 percent of the

net eligible cost of repair, restoration, reconstruction, or replacement of public facilities. In the case of the Northridge earthquake, FEMA's contribution towards such repairs was 90 percent. Routinely, state and local governments or other public entities hire contractors to perform emergency repair work on specific projects. Following the approval by FEMA of a project, funds are obligated to the State (the grantee) for dispersal to other entities (subgrantees) or directly to contractors. The funds may not be drawn down by the state for disbursement to a subgrantee or contractor until the work is completed and documentation supporting the associated costs has been submitted to FEMA.

In the case of the Northridge earthquake, funds in the aggregate amount of $27,517,779.00 were obligated by FEMA through two Damage Survey Reports for various eligible repair/restoration projects undertaken by Metropolitan Transit Authority-related (MTA) transit districts, including SCRRA. Benchmark is owed $583,822.66. The federal share of the work performed by Benchmark is included in this obligation. However, because of the provision of California State law, those funds cannot be paid to Benchmark by the State of California or SCRRA.

This legislation would give FEMA the ability to pay Benchmark Rail what both the State of California and FEMA agree it is owed. Because of the uncertainty that the State of California will change the state law, the bill directs FEMA to pay Benchmark the 10% usually paid by the state as well as the 90% that is owed based on the public assitance provisions of the Stafford Act. In addition, it deobligates the amount obligated to the State of California for the work Benchmark perform.

AGENCY REPORT

In an August 25, 1994, letter to Governor Pete Wilson, the Associate Director of FEMA for Response and Recovery Directorate stated that "* * * it is our understanding that this company, Benchmark Rail Group of St. Louis, Missouri, travelled halfway across the country at the invitation of the Southern California Regional Rail Authority (SCRRA) to help people in dire need of assistance. This action was clearly an example of the concept of people-helping-people at work. The State should take whatever action is appropriate to facilitate reimbursement to Benchmark for these efforts, based upon dollars already obligated by the Federal Emergency Management Agency (FEMA)."

Additionally, the letter stated that "FEMA is precluded from directly paying Benchmark or otherwise effectuating or facilitating payment to Benchmark because of limitations imposed by both State and Federal law." The letter gave two reasons why FEMA cannot pay Benchmark. First, because "the Federal government, in the performance of its duties and responsibilities cannot ignore or abrogate State law. Since the failure to have a particular California license is the obstacle to payment by the State, FEMA is not legally in a position to do what the State of California, the Metropolitan Transit Authority and SCRRA cannot do." Secondly, the Stafford Act and applicable regulations authorize disbursement by FEMA only to the grantee of the Federal share of disaster assistance funds, which, according to Section 406(a) of the Act, must be either

"a State or local government." In this case, the state is the grantee. Benchmark, a private company, "is not an eligible grantee."

COMMITTEE ACTION

During the 103rd Congress, the Senate passed S. 2457 on October 4, 1994. This bill was identical to the now-pending H.R. 419. The House did not act on S. 2457 before adjournment of the 103rd Congress.

In the 104th Congress, on July 13, 1995, the Subcommittee on Immigration and Claims favorably recommended the bill H.R. 419, to the Judiciary Committee.

On October 24, 1995, the Committee on the Judiciary favorably ordered reported by voice vote H.R. 419.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 419, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 7, 1995.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 419, a bill for the relief of Benchmark Rail Group, Inc., as ordered reported by the House Committee on the Judiciary on October 24, 1995. The bill would require the Federal Emergency Management Agency (FEMA) to pay about $600,000 to Benchmark Rail Group (BRG), Inc., for emergency services performed under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. We expect this outlay would occur in fiscal year 1996. Because

the bill would increase direct spending, pay-as-you-go procedures would apply.

H.R. 419 would require FEMA to compensate BRG for work it performed in the state of California after a 1994 earthquake. Because BRG was not licensed by the state, California is prevented from paying the company for its work, including paying out federal funds covered under the Disaster Relief Act. The bill would require that FEMA pay BRG directly for reimbursable cost covered under the Disaster Relief Act and for costs owed by the state of California.

The bill also would require FEMA to deobligate an equal amount of disaster relief funds designated for payment to the state of California to cover the cost of the work performed by BRG. However, because California is prevented by law from paying BRG, FEMA would not have outlayed these funds under current law. Hence, enacting the bill would result in outlays that would not occur otherwise. CBO estimates that direct spending would increase by about $600,000 in fiscal year 1996.

Enactment of H.R. 419 would not affect the budgets of state or local governments. Under state law, California cannot pay BRG, an unlicensed contractor, this bill would not require it to do so.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John R. Righter.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

AGENCY VIEWS

The comments of the Federal Emergency Management Agency concerning the claim of Benchmark Rail, Inc. are as follows:

FEDERAL EMERGENCY MANAGEMENT AGENCY,
Washington, DC, September 13, 1994.

Hon. JOHN C. DANFORTH,
U.S. Senate,
Washington, DC.

DEAR SENATOR DANFORTH: This is in response to your letters of May 18, and July 12, 1994, to James L. Witt, Director, Federal Emergency Management Agency (FEMA), on behalf of your constituent, Mr. Steve C. Goggin, President of Benchmark Rail Group, Incorporated (Benchmark). Benchmark performed repair and restoration work at the request of Southern California Regional Rail Authority (SCRRA) soon after the Northridge Earthquake. However, due to complications arising from the fact that it did not have the required California license, it was unable to obtain reimbursement for its work.

I apologize for the amount of time it has taken to respond in writing, but, as you know, we have been working diligently with the staffs of both your St. Louis and Washington D.C. offices in an attempt to achieve a successful resolution of this matter with the State of California. Indeed, your staff should be complimented on their efforts to seek legislative or executive measures through which Benchmark might be paid. As you requested, we have kept Karla Roeber of your St. Louis office informed of the outcome of our

activities. It is unfortunate that our combined efforts to encourage the State of California to pay Benchmark did not meet with success. As you are aware, FEMA is precluded from directly paying Benchmark or otherwise effectuating or facilitating payment to Benchmark because of limitations imposed by both State and Federal law. First and foremost, payment to Benchmark is prevented because of the State's licensing requirement. Further restrictions came into play by way of applicable grant administration regulations.

For your reference we have included a brief explanation of why FEMA is unable to effect payment to Benchmark. The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act—the enabling legislation for our disaster assistance program) and applicable grant administration regulations authorize the provision by FEMA to the grantee of the Federal share of disaster assistance funds for eligible subgrantee projects and costs. The State, as grant administrator, then disburses these funds to the subgrantee based on documented costs of eligible work. The subgrantee then pays its contractors. In this case, the eligible subgrantee is the Metropolitan Transit Authority (MTA), an umbrella organization for several transit districts, including SCRRA.

The provisions of the Stafford Act and the above-mentioned regulations provide that funds will be obligated (i.e., made available to the State) upon approval of a project by FEMA. These funds may not, however, be drawn down by the State for disbursement to the subgrantee until the work is completed and documentation supporting the associated costs has been submitted by the subgrantee. Accordingly, the State, as grant administrator, may not disburse grant funds to the subgrantee for work for which it has not incurred any costs, as is the case until Benchmark can be (and is) paid by the MTA.

In addition, the provisions of the Stafford Act would prohibit us from providing such funds directly to Benchmark, since the company is not an eligible grantee. Beyond these strict considerations of enabling legislation, the Federal government, in the performance of its duties and responsibilities, cannot ignore or abrogate State law. Since the failure to have a particular California license is the obstacle to Benchmark's obtaining payment for its work, FEMA may not legally do what the State of California, MTA and SCRRA cannot do. FEMA has, however, fully supported efforts of the State that would enable Benchmark to receive payment.

On August 23, 1994, funds in the aggregate amount of $27,517,779 were obligated by FEMA through two Damage Survey Reports (DSRs) for various eligible repair/restoration projects undertaken by the MTA-related transit districts, including SCRRA. This means that funds are now reserved and available to the State (and represent the 90 percent Federal share of eligible costs for the project) for reimbursement of the subgrantee's eligible costs, subject to the scope of work parameters set forth in the DSR and within the parameters of State law. It is our understanding that work performed by Benchmark is included within the scope of work recognized as eligible in the Damage Survey Reports.

We hope that this information is helpful in responding to your constituent and again I apologize for the length of time it took to

respond. If you need additional information, or if we may assist in other efforts to enable Benchmark to be paid, please have a member of your staff contact our Office of Congressional and Governmental Affairs.

Sincerely,

RICHARD W. KRIMM,
Associate Director,
Response and Recovery Directorate.

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