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INSPECTOR GENERAL

September 2009

To: George Cannelos, Federal Co-Chair

From: Mike Marsh, CPA, MPA, CFE, Esq., Inspector General

FINAL REPORT

FOR PUBLIC RELEASE

Subject: Inspection of McGrath city hall  
(grant 94-DC-2003-I9, state sub-award 85-0261)

The City of McGrath (pop.  $\approx$  320) lies deep in Alaska's interior between the Bering Sea and the mountains of the Alaska Range. No roads, railroads, or power grids connect McGrath with the rest of the state. It lies near the upriver, barge-accessible end of the long Kuskokwim River,<sup>1</sup> which might be considered analogous to a rural "Route 66" in the Lower 48. Routine access is by small propeller airliners. It is a stop on the annual Iditarod dog sled race. The local school now has about 45 students.

The Denali Commission provided grant funding of \$50,375 for McGrath to renovate its little city hall ( $\approx$  10,000 square feet) that was built 30 years ago. The city matched this with \$16,791 of its own. More technically, Denali provided its funding to the State of Alaska which then administered McGrath's project as a state sub-award.

In May 2009, Denali's Office of Inspector General (OIG) reviewed the state's records concerning the McGrath sub-award. In June 2009, we physically inspected the resulting facility while in McGrath for other matters.

We found the city hall's renovation to be a success story that illustrates what committed local leadership can do with a grant that is quite small by federal standards. Though Denali no longer issues grants for "multi-use" facilities, we noted some lessons worth considering in its continuing programs.

#### WHY WE INSPECTED THIS PROJECT

We recognize that few inspector generals would visit a location as remote as McGrath, Alaska to inspect the use of only \$50,000. However, occasional spot-checking of small grants is desirable since they may easily stay beneath the radar of the four main oversight safeguards.

<sup>1</sup> The popular History Channel television program, *Tougher in Alaska*, has a "Frozen Freeway" episode about the challenge of using the frozen Kuskokwim River to truck fuel to a Denali-funded tank farm at Kwethluk, Alaska.

First, a small grant may be neither material nor sampled by OIG's contract auditor during the routine annual audit of Denali's own financial statements. Second, though the State of Alaska is Denali's largest grantee,<sup>2</sup> an individual grant may not be significant in the state's annual audit of its overall federal funding (not a "major" program for audit purposes). Third, local audits are not required when small towns (like McGrath) receive less than \$500,000 in annual federal assistance. Fourth, both a state's department and a small town may lack the benefit of an internal auditor (the case here).

More specifically, Denali's experiment with "multi-purpose" (or "multi-use") buildings has been a controversial program in the agency's short history of only a decade. In 2007, Denali's CFO notified OIG that she was suspending grant no. 94-DC-2003-I9 to the State of Alaska. The CFO's letter to the state government indicated the following reasons for this administrative action:

*The reasons for the suspension of funds are due to lateness of financial reporting, inaccuracy of financial reporting, no submissions of quarterly estimates, expenses for grants being charged to other grants, inaccuracy on cash versus accrual on financial reports, and inconsistent information from financial versus program staff at [state's department].*

The CFO further notified OIG that construction of the buildings for at least two of the 12 locations had been started but never completed.

In fact, this was only one of seven grants to the State of Alaska that Denali's CFO suspended. While she has the authority to do this under the grant agreements, it seemed to OIG to be an atypical scenario in federal-state relations.

OIG recommended that Denali's CFO contract with a federal franchise fund's internal auditor to assist her staff in reviewing the state's accounting procedures for grant no. 94-DC-2003-I9. In March 2009, this internal auditor issued a brief report to the CFO.<sup>3</sup> His sample included four of the funded multi-use facilities, but not the one at McGrath. He did not attempt to physically inspect any of the facilities, but he noted aspects of the state's monitoring practices which OIG felt warranted further review.

Denali's management also contracted with a local 8(a) corporation for a program evaluation of multi-use facilities. The firm employed a well-respected university researcher, who looked in depth at four facilities that were successfully completed (but not the one at McGrath) and issued broad advice for the future.<sup>4</sup> OIG's recent inspections involved different facilities and a more focused look at some specific state monitoring issues.

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<sup>2</sup> For instance, the State of Alaska received over a third of Denali's funding in FY 2007.

<sup>3</sup> OIG has reviewed this internal auditor's workpapers. We see no reason to duplicate his fieldwork in Juneau concerning the state's bookkeeping procedures for recording Denali funding in the state's accounting system. Rather, OIG has focused on the state's project monitoring records in Fairbanks and visited the facility itself in McGrath.

<sup>4</sup> NANA Pacific, *Multi-Use Facility Program Evaluation*, April 30, 2008.

Finally, OIG received a referral from the federal OMB concerning Denali's accounting for another grant to the same state department that administered grant no. 94-DC-2003-19. OIG ultimately requested a formal determination from the U.S. Comptroller General, which was published last fall (GAO # B-316372, Oct. 21, 2008).<sup>5</sup> In discussing the facts, the Comptroller General noted that the problem began with an error by the state government as grantee:

*In August 2005, Commission staff sent a Financial Assistance Award document to the Alaska Department for signature. The Alaska Department misplaced the award document and, consequently, never returned it to the Commission. After following up with the department in October 2005, Commission staff transmitted a second award document to the department, dated December 2, 2005.*

Given that this additional grant involved the same state department, small sub-awards ("mini-grants"), another suspension by Denali's CFO, and a misplaced grant award for \$400,000, OIG considered it among the factors that suggested further review of the state's monitoring procedures would be beneficial.

## CONCLUSIONS

### The state's desk monitoring satisfied Denali's grant conditions

Congress provided two appropriations to Denali for "multi-purpose community facilities." Denali passed this money on to Alaska's state government as grant #94-DC-2003-19 for \$7.3 million. The McGrath renovation was one of 12 projects across Alaska for which the state issued sub-awards under this Denali grant.

Congress attached no specific monitoring conditions to its appropriations for this purpose. Denali's grant to the state incorporated OMB's standard grant circulars by reference, since Denali has never issued grant regulations of its own in the Code of Federal Regulations. In the grant agreement, Denali required that the state submit quarterly progress reports for each project plus periodic photos taken by the sub-awardees.

The state monitored this grant from its office in Fairbanks. OIG reviewed the extensive file maintained there for the McGrath sub-award (literally 7 pounds in weight and approximately 300 pages of paper). The state charged Denali only \$1,008 for all of this administration. OIG appears to be the first federal official that has examined this state monitoring file.

McGrath's city manager submitted 10 progress narratives to the state, including around 40 photos. Pertinent parts of these narratives were electronically forwarded to Denali. And the photos appear within the public database portion of Denali's website at [www.denali.gov](http://www.denali.gov). OIG noted that the city manager charged the sub-award only \$2,799 for her administrative work (certainly reasonable).

OIG reviewed McGrath's progress narratives in the state's file and found them to contain detailed descriptions of specific construction activities as well as supporting invoices. We noted

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<sup>5</sup> See [www.gao.gov](http://www.gao.gov).

that the state's grant administrator rigorously reviewed each narrative and assured adherence to the sub-award's budget. While three time extensions (grant amendments) were accommodated during construction, the file reflects a continuous stream of meaningful, timely communication (and documentation) between the two officials.

OIG also found that the state's grant administrator had an adequate system for documenting the internal policies and procedures that she applied in monitoring this grant. This included the state's own grant conditions that were far more detailed than those specified by Denali. The state's internal guidance for Denali's multi-use program was physically a two-inch binder of memos documenting institutional knowledge, rather than a formal codification. However, OIG found this to be an adequate and efficient solution for a specialized federal program of such limited size and duration. A cosmetic codification seems unnecessary.

#### The state's monitoring did not include any site visits

The state's grant administrator did not physically visit the funded facility to confirm implementation of the grant. Denali's grant conditions neither required it nor provided the state with the travel funding to do it. We again note that the state charged Denali only \$1,008 for administration of McGrath's sub-award (including the state's 7-pound file of monitoring paperwork).

Our June 2009 visit appears to be the first time that any Denali official has inspected the renovated facility. OIG observed that the remodeled city hall was consistent with McGrath's grant application, progress narratives, and photos.

Given the small amount of Denali's grant and the remoteness of McGrath, the travel costs of periodic site visits would in this case be disproportionate to the risks and benefits. And the city manager's detailed narratives, invoice copies, and numerous photos provided the state with important verification of the use of the grant. And we again note that the city manager charged the sub-award only \$2,799 for her administrative work.

Nevertheless, this is the common "bush" reality in which a project's success hinges on the efforts of a single key local who must wear multiple hats out of necessity. For instance, the grant application shows one person as McGrath's combined city clerk, treasurer, and city administrator. Other small Alaskan towns are able at best to spread the governance tasks among relatives — still an inherent limit on the optimal "segregation of duties" found in larger bureaucracies. And, to further compound the scenario, neither multi-tasking officials nor the public have the reassurance of an outside audit when the funding is so limited (it's not legally required for federal support less than \$500,000).

While these are unavoidable realities of rural Alaska (and McGrath was a successful project), we still see a practical alternative to simply relying upon the recipient's own remote representations.

**Recommendation:** When a grant is too small to warrant site visits, Denali should include a grant condition for periodic, informal "walk-throughs" by a credible local third-party. For instance, both the local state trooper and a state magistrate occupy the McGrath city hall. In such a scenario, the state's grant administrator could conceivably ask either to walk through the

two-story building (only 10,000 square feet) every few months during construction. Either could then offer informal (non-engineering) observations that confirm the remodeling progress.<sup>6</sup> Simple documentation of these phone calls in the state's file would provide some outside reassurance in the absence of site visits.

**Recommendation:** As broadband Internet coverage expands across bush Alaska, live walk-throughs with portable webcams may be the best alternative to site visits.

This sub-award reflects an efficient use of federal funding

Our past OIG reports have cautioned Denali's management about the need to leverage federal funding with local effort. For instance, our May 2007 *Semiannual Report to the Congress* stated:

*The extent to which the Commission's projects should be a shared effort — versus just provided — is a sensitive policy decision that currently varies with the type of facility. Nevertheless, long-run national support may be encouraged to the extent that projects are perceived more as innovative partnerships and community "barn raisings" — and less as seasonal cash injections and entitlements.*

Though we've been critical of this aspect elsewhere in the region,<sup>7</sup> renovation of McGrath's city hall reflected a "barn raising" of community involvement. Unless a task required a specialty contractor, the city manager successfully scheduled local people to accomplish the work. We recognize her talents in coordinating this under the conditions — and without a budget increase (her narratives reflect work in temperatures between 85°F above zero and 51°F below zero).

Key persons at McGrath showed OIG their renovated city hall with great pride. This included the local nurse practitioner,<sup>8</sup> the mayor, and the president of the tribal corporation.<sup>9</sup> Instead of requesting a new \$1 million+ stand-alone building, the community used less than \$70,000 to extend the life of its existing facility and reduce its fuel bills.

While Congress left the boundaries of "multi-purpose" and "multi-use" to Denali's discretion, the continued consolidation of this small town's city council, police, fire, laundromat, water treatment, and even its jail,<sup>10</sup> unquestionably offers efficiencies of scale in this remote setting. And our physical inspection enabled us to verify that — two years after completion of repairs — the facility was being used for the asserted public functions that were the basis for approving the grant application.

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<sup>6</sup> OIG is not suggesting that rural law enforcement officials double as "building inspectors" or "auditors." But there is a long history of miscellaneous public service courtesies by Alaska's rural police that extend beyond the apprehension of criminals.

<sup>7</sup> See OIG's inspection reports for Denali projects at Takotna, Sterling Landing, and Red Devil at [www.denali-oig.org](http://www.denali-oig.org).

<sup>8</sup> The nurse-practitioner is the lead medical provider in McGrath.

<sup>9</sup> MTNT, Limited.

<sup>10</sup> One of Alaska's historical bush challenges has been humane confinement of the dangerous until state troopers can transport them by plane to a state correctional center. See John E. Angell, *Public Safety and the Justice System in Alaskan Native Villages* (Pilgrimage Inc., 1981, ISBN 0-932930-35-2), pages 46-50.

Though McGrath (pop.  $\approx$  320) is a very small city by Lower 48 norms, it serves as the regional center for a historical constellation of much smaller settlements. Schools are the primary publicly-funded institution in the latter, and their populations move as the schools disappear with their associated support services.

For instance, most residents of Telida (pop. now 3) moved down the river to Nikolai (pop. 90) with the departure of the school, clinic, telephone service, and subsidized mail planes.<sup>11</sup> And if Nikolai's school closes, the residents will probably move further down the river to McGrath.

Other area examples with discontinued schools are Lime Village (pop. now 32) and Lake Minchumina (pop. now 17). Takotna's school continues but with only 12 students (10 is the critical threshold for state funding). Even McGrath as the regional center now has only about 45 students, compared to the 130 of a prior decade.

Federal investment in regional hubs like McGrath offers an efficient alternative to migrations from tiny settlements into the urban centers at Anchorage (pop. 285,000) and Fairbanks (pop. 98,000). Public preservation of Alaska's rural hubs is a more reasonable expectation for the long term than the continuation of government services in 200+ isolated settlements.

Ironically, this small-project success story at McGrath would not have occurred had Congress not left Denali some flexibility in the selection of project locations. Denali's staff interpreted the appropriations and associated congressional records as encouraging the construction of multi-purpose facilities in some specific named communities that did not include McGrath.

**Recommendation:** Denali should consider convening one of its quarterly meetings in McGrath to assure that the needs of this remote interior region are considered in the agency's annual statutory work plan. Alternatively, less than a quorum of the commissioners could conduct a public hearing in McGrath concerning the work plan.

#### The delay in fire marshal approval delayed the project

McGrath's facility included its fire department and state trooper, and a further irony was the project's delay due to problems in obtaining approval from the state fire marshal (another state law enforcement official).

Construction work on public buildings cannot begin until the state fire marshal has approved the plans. The McGrath project was delayed for around six months due to problems with an incomplete application to the fire marshal. This is significant given that the city's original grant application optimistically projected that construction itself would only take six months (July to December 2004).

We did not see the fire marshal's approval in the state's file for the McGrath sub-award (though the state's grant administrator obtained a copy at our request). The grant administrator correctly noted that monitoring for fire marshal approval was not a condition of Denali's grant to the state.

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<sup>11</sup> Telida's story was told nationally as one segment of the 1996 PBS/Reader's Digest television program *Incredible Journeys Around the World: From the Amazon to the Arctic*.

The fire marshal's linkage to Denali grants is important at several levels that make approval more than just another bureaucratic hurdle.

Destruction of public buildings by fire is now unusual in the Lower 48, where running water and sprinkler systems are the expected norm. But such tragedies are still too common in the remote areas of Alaska off the road system. At least three of the 12 funded multi-purpose facilities serve uses displaced by burned buildings.

Also, widespread summer wildfires are the rule rather than the exception in rural Alaska. We observed two active wildfires from the air during our trip to the McGrath area. One expanse of burned timber ran between the nearby settlements of Nikolai and Telida. The latter, though spared this time, had been almost completely encircled. Summer haze from far distant wildfires is an accepted fact of life in Anchorage on the other side of the Alaska Range.

From the perspective of managing financial risks, destroyed public buildings often trigger replacement at public expense. Further, the state has committed to review public construction plans for fire prevention, and any neglected review may thus subject the state to liability.<sup>12</sup> While the federal government is generally not liable for grantees' mistakes, suits against grantees may raise the disruptive issue as to whether Denali's grants can be charged for grantees' defense costs and court judgments.

Both metaphorically and literally, it's obviously better to prevent fires than to put them out.

**Recommendation:** Denali should include an explicit condition in its grants that the grantee will document the fire marshal's plan approval before construction starts.

**Recommendation:** Denali should coordinate technical assistance from the Cooperative Extension Service when a community has difficulty in meeting the fire marshal's requirements. As an alternative, Denali should include the position of "rural ombudsman" within its staff as OIG has previously recommended.<sup>13</sup>

#### HOW WE REVIEWED THIS PROJECT

A project "inspection," such as this one, is narrower in scope and procedures than the classic financial "audit." One prominent originator of this type of inspector general review described it as follows:

*The idea is to prevent problems before they occur and to avoid vulnerabilities from becoming permanent features of programs. We usually initiate these reviews ourselves, but sometimes senior program managers request that we find out what is happening as grantees or government agencies struggle with the complex tasks of starting a new program — what seems to be working, what is not, what barriers grantees are facing, what, if anything, any of them have been able to do*

<sup>12</sup> See *Angnabooguk v. State*, 26 P.3d 447, 453 n.24 (Alaska 2001); *R.E. v. State*, 878 P.2d 1341 (Alaska 1994).

<sup>13</sup> See OIG's inspection report for Red Devil, Alaska at [www.denali-oig.org](http://www.denali-oig.org).



*about problems which arise, what innovative practices grantees are experimenting with, and whether and how they are measuring progress, etc. . .*<sup>14</sup>

Our review was conducted in accordance with section 2 of Denali's standard grant assurances, sections 4(a) and 6(a) of the Inspector General Act, and the *Quality Standards for Inspections* issued by the federal Executive Council on Integrity and Efficiency.

The agency head was provided a draft of this report. He informally provided us with his thoughtful feedback by email, and we carefully considered his comments before publication.

*Mike Marsh*

MIKE MARSH, CPA, MPA, CFE, Esq.  
INSPECTOR GENERAL

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<sup>14</sup> George F. Grob, "Inspections and Evaluations: Looking Back, and Forward Too," *Journal of Public Inquiry*, (spring/summer 2004), page 11.



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INSPECTOR GENERAL

September 2009

To: George Cannelos, Federal Co-Chair  
From: Mike Marsh, CPA, MPA, CFE, Esq., Inspector General  
Subject: Inspection of Togiak family resource center  
(grant 94-DC-2003-I9, state sub-award 84-0846)

FINAL REPORT

FOR PUBLIC RELEASE

Togiak is a small town (pop.  $\approx$  800) on the seacoast in remote "bush" Alaska. It has both a city government (City of Togiak) and a tribal government. Around 90% of residents are Yupik Eskimos, many of whom harvest local wildlife such as seals, sea lions, whales, and walrus.

Togiak is an isolated place. No roads, railroads, docks, or power grids connect it with the rest of the state. Year-round transportation is by small propeller airplanes that land on a gravel airstrip. Snow machines are used in the winter and private boats in the ice-free summer.

Of the 800 residents, slightly less than half are under 21 years old. The state funds a public school in Togiak ( $\approx$  235 students and 19 teachers).

Over 20 years ago, the City of Togiak (City) acquired a fish plant from a private company that went into bankruptcy. One of the property's buildings was the fish plant's 6,700 square-foot "bunkhouse." In 2003, the Denali Commission (Denali) awarded a grant of \$851,700 for the City to convert this old bunkhouse into a "family resource center" for various social service providers.

More technically, Denali provided its funding to the State of Alaska which then administered the City's project as a state sub-award. The City matched Denali's grant with \$614,000 from three other sources.

Denali's Office of Inspector General (OIG) has reviewed the state's records concerning its monitoring of the City's sub-award. We also physically inspected the resulting facility in Togiak.<sup>1</sup>

We found that the project was successfully completed and that the building was being actively used for the intended public purpose. Though Denali no longer issues grants for "multi-use" facilities, we noted some lessons worth considering in its continuing programs.

<sup>1</sup> Work in the field, including the site visit in Togiak, was conducted by OIG analyst Dawn Bishop-Kleweno.

### WHY WE INSPECTED THIS PROJECT

There were a variety of factors that, taken together, suggested that OIG's review of this project would be beneficial.

The City has for some years obtained an annual audit of its financial statements from a CPA firm. Though these audited financial statements do not explicitly mention Denali, the statements for 2004 and 2005, respectively, report federal revenue of \$349,422 and \$444,879 for "multipurpose renovation." And the CPA offered this caution to the City in the "management letter" associated with the 2004 audit:

*During our audit, we noted that all activity related to the multipurpose building renovation had not been recorded on the City's books. Payments made directly to vendors by the State on behalf of the City were not recorded. These expenses were incurred by the City for the renovation project and should be reflected in the financial records. It is important that all activity be recorded in order to ensure that grant funds are adequately tracked and properly spent.*

OIG further noted that, as part of the CPA's audit of the City for 2007, the CPA issued an "internal control letter" advising the City to make some improvements in its accounting system.<sup>2</sup>

Another factor was an emailed complaint that the head of the Denali Commission received from an identified "tipster," who alleged that unspecified Denali funding had been misused by an unspecified recipient in Togiak. The agency head referred the matter to OIG.

OIG made contact with the complainant, but we were unable to get the complainant to identify the specific Denali-funded project of concern. However, Denali records indicated that the family resource center had been Denali's most significant construction project in Togiak.

There has also been a recent public context of controversy concerning the community's overall capacity to work together. Like the rest of rural America, Togiak has its share of divisive small-town politics. Around 250 residents voted in last year's city government election, which was publicly focused on policy differences between the city and tribal governments. The aggrieved have traded accusations of misconduct and requested intervention by a variety of outside agencies (including the state troopers and FBI). And the press has actively reported all of this, even in tiny Togiak.<sup>3</sup>

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<sup>2</sup> All of these audit materials are publicly posted on the State of Alaska website at [www.commerce.state.ak.us/dca/](http://www.commerce.state.ak.us/dca/). While OIG considered these online materials, readers should realize that the City, not OIG, contracted for these audits and that OIG has not attempted to "re-audit" these materials in any way.

<sup>3</sup> See Mary Lochner, "Monegan to mediate Togiak dispute," *Bristol Bay Times*, May 29, 2008; Mary Lochner, "Togiak mayor tries to oust Ramey from City Council," *Bristol Bay Times*, Oct. 9, 2008; Mary Lochner, "Leadership to change after vote in Togiak," *Bristol Bay Times*, Oct. 16, 2008 (all articles online at [www.thebristolbaytimes.com](http://www.thebristolbaytimes.com)).

Togiak's recent internal struggle demonstrates the interconnectedness of even an isolated hamlet with the rest of the nation. The tribal government issued a "banishment order" directing the city government's police chief to leave town. The state government's public safety commissioner then attempted to mediate the local dispute. In the meantime, the governor fired the public safety commissioner (though on unrelated issues). The state legislature then investigated the commissioner's firing, an inquiry which surfaced on the national level as the governor had her run last year to be the nation's vice-president.

In July 2009, Denali formally closed out grant no. 94-DC-2003-I9. Though we found Togiak's family resource center to have been successfully accomplished, Denali's overall experiment with "multi-purpose" (or "multi-use") buildings has been a controversial program in the agency's short history of only a decade.

In 2007, Denali's CFO notified OIG that she was suspending grant no. 94-DC-2003-I9 to the State of Alaska. The CFO's letter to the state government indicated the following reasons for this administrative action:

*The reasons for the suspension of funds are due to lateness of financial reporting, inaccuracy of financial reporting, no submissions of quarterly estimates, expenses for grants being charged to other grants, inaccuracy on cash versus accrual on financial reports, and inconsistent information from financial versus program staff at [state's department].*

The CFO further notified OIG that construction of the buildings for at least two of the 12 locations had been started but never completed.

In fact, this was only one of seven grants to the State of Alaska that Denali's CFO suspended. While she has the authority do this under the grant agreements, it seemed to OIG to be an atypical scenario in federal-state relations.

OIG recommended that Denali's CFO contract with a federal franchise fund's internal auditor to assist her staff in reviewing the state's accounting procedures for grant no. 94-DC-2003-I9. In March 2009, this internal auditor issued a brief report to the CFO. His sample included four of the funded multi-use facilities, including the one at Togiak. He did not attempt to physically inspect any of the facilities, but he noted aspects of the state's monitoring practices which OIG felt warranted further review.

Denali's management also contracted with a local 8(a) corporation for a program evaluation of multi-use facilities. The firm employed a well-respected university researcher, who looked in depth at four facilities that were successfully completed (but not the one at Togiak) and issued broad advice for the future.<sup>4</sup> OIG's inspections have involved different facilities and a more focused look at some specific state monitoring issues.

## CONCLUSIONS

### The state's desk monitoring had strengths and weaknesses

Congress provided two appropriations to Denali for "multi-purpose community facilities." Denali passed this money on to Alaska's state government as grant #94-DC-2003-I9 for \$7.3 million. Togiak's family resource center was one of 12 projects across Alaska for which the state issued sub-awards under this Denali grant.

<sup>4</sup> NANA Pacific, *Multi-Use Facility Program Evaluation*, April 30, 2008.

Congress attached no specific monitoring conditions to its appropriations for this purpose. Denali's grant to the state incorporated OMB's standard grant circulars by reference, since Denali has never issued grant regulations of its own in the Code of Federal Regulations.

OIG found that the state's grant administrator had an adequate system for documenting the internal policies and procedures that she applied in monitoring this grant. This included the state's own grant conditions that were far more detailed than those specified by Denali. The state's internal guidance for Denali's multi-use program was physically a two-inch binder of memos documenting institutional knowledge, rather than a formal codification. However, OIG found this to be an adequate and efficient solution for a specialized federal program of such limited size and duration. A cosmetic codification seems unnecessary.

In the grant agreement, Denali required that the state submit quarterly progress reports for each project plus periodic photos taken by the sub-awardees. In the case of Togiak, the state electronically submitted brief progress reports to Denali for five successive quarters (including 12 photos). However, four of those five electronic reports did not clearly indicate the current budget status of the City's project. This minimal reporting was a required element of Denali's grant agreement with the state.

The state monitored this grant from its office in Fairbanks. OIG reviewed the file maintained there for the Togiak sub-award. The state's records adequately documented its grant to the City, including the City's monthly reporting of costs with supporting proof. This was especially important since the state's grant manager directly paid outside vendors instead of reimbursing the City.

OIG recommended that Denali's CFO contract with a federal franchise fund's internal auditor to assist her staff in reviewing the state's accounting procedures for grant no. 94-DC-2003-19. Management's contract auditor tested a sample of 27 state payments for the Togiak sub-award. He found all 27 to be supported by adequate documentation, consistent with the grant agreement, properly recorded in the state's accounting system, and paid in compliance with the federal OMB's grant rules on permissible costs (Circular A-87).

Management's contract auditor, of course, was working for management rather than OIG. Nevertheless, OIG reviewed his workpapers in the interest of avoiding duplicative reviews.<sup>5</sup> And we see no reason to duplicate his fieldwork in Juneau concerning the state's bookkeeping procedures for recording Denali funding in the state's accounting system. Rather, OIG has focused on the state's project monitoring records in Fairbanks and visited the facility itself in Togiak.

While the state charged Denali \$16,700 for administering this grant, the state's monitoring did not include any site visits to directly confirm implementation of the grant. And Denali's grant conditions did not require it.

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<sup>5</sup> The ECIE *Quality Standards for Inspections* advise inspector generals that "[a]ny internal reviews performed by the entity to be inspected or by outside professional organizations should be considered and reviewed to determine applicability to the inspection."

OIG's visit appears to be the first time that any Denali official has inspected the new facility. OIG observed that the construction and current use of the family resource center was consistent with the City's grant application, the architect's floor plan, and the monitoring photos submitted to the state.

While Togiak's project was successfully accomplished, site visits are a key safeguard for detecting any problems at an early stage. We appreciate that the state's grant manager was stationed in Fairbanks which, measured directly, is almost 600 miles away along the north side of the Alaska Range (and would necessitate indirect routing through Anchorage as a practical matter). But her state department has a "local government specialist" stationed in Dillingham, which has daily scheduled air service to Togiak from only 70 miles away. Several site visits from this latter official would have been reasonable for the \$16,700 that the state charged Denali for administering Togiak's sub-award.

**Recommendation:** Denali should include a grant condition that requires site visits at specified intervals from some representative of the involved state department.

This sub-award reflects an efficient use of federal funding

Our past OIG reports have cautioned Denali's management about the need to leverage federal funding with local effort. For instance, our May 2007 *Semiannual Report to the Congress* stated:

*The extent to which the Commission's projects should be a shared effort — versus just provided — is a sensitive policy decision that currently varies with the type of facility. Nevertheless, long-run national support may be encouraged to the extent that projects are perceived more as innovative partnerships and community "barn raisings" — and less as seasonal cash injections and entitlements.*

Though we've been critical of this aspect elsewhere in the region,<sup>6</sup> conversion of the old fish plant bunkhouse reflected a "barn raising" of funding collaboration from public and private sources. The conversion cost about \$1.45 million, with Denali's federal funding of \$835,000 representing 58% of the total. In other words, a match of 42% represents a significant effort in this context.

Instead of requesting a new stand-alone building, the City gave its existing facility a new life and reduced its fuel bills. While Congress left the boundaries of "multi-purpose" and "multi-use" to Denali's discretion, the consolidation of nine social service providers, a child care center, and itinerant lodging<sup>7</sup> unquestionably offers efficiencies of scale in this remote setting. And our physical inspection enabled us to verify that — over three years after the renovation — the facility was being used for the asserted public functions that were the basis for approving the grant application.

<sup>6</sup> See OIG's inspection report for a Denali project at Manokotak, Alaska at [www.denali-oig.org](http://www.denali-oig.org).

<sup>7</sup> The availability of overnight housing is significant to the ability of isolated bush settlements to leverage their local capacity with flown-in services. When the family resource center opened, it was Togiak's only lodging for itinerant workers. There is now also a two-room bed & breakfast in this town of 800.

Though Togiak (pop.  $\approx$  800) is a very small city by Lower 48 norms, it serves as the hub for a historical constellation of even smaller settlements. Schools are the primary publicly-funded institution in the latter, and their populations move as the schools disappear with their associated support services. The state stops funding a local school when it serves less than 10 students, and the domino effect of vanishing subsidies for utilities and mail planes is part of the lore of migrating bush Alaska.

For instance, nearby Twin Hills (pop. 75) now has only 14 students in its school. Clark's Point (pop. 54) has only 11 students. Ekwok (pop.  $\approx$  120) has only 22. Aleknagik (pop.  $\approx$  240) has 33. And Portage Creek (pop. now 7) had a school that closed in 2005. In contrast, much-larger Togiak (pop.  $\approx$  800) has the largest school ( $\approx$  235 students) in the state-supported school district that includes all of these small settlements.

Federal investment in hubs like Togiak offers an efficient alternative to migrations from tiny settlements into the urban centers at Anchorage (pop. 285,000) and Fairbanks (pop. 98,000). Public preservation of Alaska's rural hubs is a more reasonable expectation for the long term than the continuation of government services in 200+ isolated settlements.

Ironically, this success story at Togiak would not have occurred had Congress not left Denali some flexibility in the selection of project locations. Denali's staff interpreted the appropriations and associated congressional records as encouraging the construction of multi-purpose facilities in some specific named communities that did not include Togiak.

#### HOW WE REVIEWED THIS PROJECT

A project "inspection," such as this one, is narrower in scope and procedures than the classic financial "audit." One prominent originator of this type of inspector general review described it as follows:

*The idea is to prevent problems before they occur and to avoid vulnerabilities from becoming permanent features of programs. We usually initiate these reviews ourselves, but sometimes senior program managers request that we find out what is happening as grantees or government agencies struggle with the complex tasks of starting a new program — what seems to be working, what is not, what barriers grantees are facing, what, if anything, any of them have been able to do about problems which arise, what innovative practices grantees are experimenting with, and whether and how they are measuring progress, etc. . . .*<sup>8</sup>

Our review was conducted in accordance with section 2 of Denali's standard grant assurances, sections 4(a) and 6(a) of the Inspector General Act, and the *Quality Standards for Inspections* issued by the federal Executive Council on Integrity and Efficiency.

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<sup>8</sup> George F. Grob, "Inspections and Evaluations: Looking Back, and Forward Too," *Journal of Public Inquiry* (spring/summer 2004), page 11.

The agency head was provided a draft of this report. He informally provided us with his thoughtful feedback by email, and we carefully considered his comments before publication.

*Mike Marsh*

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INSPECTOR GENERAL

September 2009

To: George Cannelos, Federal Co-Chair

From: Mike Marsh, CPA, MPA, CFE, Esq., Inspector General

FINAL REPORT

FOR PUBLIC RELEASE

Subject: Inspection of Port Graham police and fire station  
(grant no. 94-DC-2003-19, state sub-award no. 84-0843)

Congress provided two appropriations to the Denali Commission for "multi-purpose community facilities." Denali passed this money on to Alaska's state government as grant #94-DC-2003-19 for \$7.3 million. In July 2009, Denali formally closed out this grant.

The state government issued sub-awards for 12 projects across Alaska. One of these projects was a \$765,000 sub-award to construct a police and fire station in the tiny, unincorporated settlement of Port Graham (pop.  $\approx$  135). In August 2009, the Office of Inspector (OIG) conducted an inspection of the resulting facility.

The purpose of this inspection was to evaluate (1) the result's consistency with the grant agreement and (2) the state's process for monitoring its sub-award. Though Denali no longer issues grants for such "multi-purpose" (or "multi-use") facilities, we noted some lessons worth considering in its continuing programs.

#### PROJECT'S CONTEXT

Port Graham is a small coastal settlement (pop.  $\approx$  135) south of Anchorage. Access is mainly by small planes (hourly scheduled air service by two carriers) that cross about 30 miles of water to connect with the state highway system at Homer, Alaska.

Port Graham is not incorporated as a city. Rather, the settlement has a tribal government. Less than half of the 300 members of the Port Graham tribe currently live there. The tribe's 2008 financial statements list 12 types of federal grants.

There is a publicly-funded school (14 students, 2 teachers) and a state-maintained gravel airstrip. An aerial photo shows around 70 homes that are clustered within several blocks of the airstrip. There are 72 post office boxes in the little contract post office. The phone book has 66 listings. There is Internet access but no cell phone coverage.

In 2003, Denali awarded a grant of \$765,000 for the tribal government to construct a new building (3,600 square-feet) that would house the local police station and volunteer fire department. The building opened in May 2005.

More technically, Denali provided its funding to the State of Alaska which then administered the tribal government's project as a state sub-award. Denali paid the state \$15,300 to administer this sub-award. The tribal government matched Denali's grant with around \$84,000 plus the underlying land.

### WHY WE INSPECTED THIS PROJECT

In July 2009, Denali formally closed out grant no. 94-DC-2003-I9 for "multi-purpose" (or "multi-use") buildings constructed around the state.

Denali's experiment with "multi-purpose" (or "multi-use") buildings has been a controversial program in the agency's short history of only a decade. In 2007, Denali's CFO notified OIG that she was suspending grant no. 94-DC-2003-I9 to the State of Alaska. The CFO's letter to the state government indicated the following reasons for this administrative action:

*The reasons for the suspension of funds are due to lateness of financial reporting, inaccuracy of financial reporting, no submissions of quarterly estimates, expenses for grants being charged to other grants, inaccuracy on cash versus accrual on financial reports, and inconsistent information from financial versus program staff at [state's department].*

The CFO further notified OIG that construction of the buildings for at least two of the 12 locations had been started but never completed.

In fact, this was only one of seven grants to the State of Alaska that Denali's CFO suspended. While she has the authority do this under the grant agreements, it seemed to OIG to be an atypical scenario in federal-state relations.

OIG recommended that Denali's CFO contract with a federal franchise fund's internal auditor to assist her staff in reviewing the state's accounting procedures for grant no. 94-DC-2003-I9. In March 2009, this internal auditor issued a brief report to the CFO.<sup>1</sup> His sample included four of the funded multi-use facilities, but not the one at Port Graham. He did not attempt to physically inspect any of the facilities, but he noted aspects of the state's monitoring practices which OIG felt warranted further review.

Denali's management also contracted with a local 8(a) corporation for a program evaluation of multi-use facilities. The firm employed a well-respected university researcher, who looked in depth at four facilities that were successfully completed (but not the one at Port Graham) and

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<sup>1</sup> OIG has reviewed this internal auditor's workpapers. We see no reason to duplicate his fieldwork in Juneau concerning the state's bookkeeping procedures for recording Denali funding in the state's accounting system. Rather, OIG has focused on the state's project monitoring records in Fairbanks and visited the facility itself in Port Graham.

issued broad advice for the future.<sup>2</sup> OIG's recent inspections involved different facilities and a more focused look at some specific state monitoring issues.

### HOW WE REVIEWED THIS PROJECT

The state monitored this grant from its office in Fairbanks. OIG reviewed the file maintained there for the Port Graham sub-award (which was approximately 200 pages of paper). OIG appears to be the first federal official that has examined this state monitoring file. The state's grant manager answered our questions concerning these records.

OIG visited Port Graham and compared the funded facility to the architect's floor plan, the sub-award's terms, and the photos submitted with progress reports. OIG's visit appears to be the first time that any Denali official has inspected the new police and fire station.

To understand the context of the inspected facility, we briefly visited other local facilities while in Port Graham: clinic, community center, fish cannery, residential treatment center (tsunami evacuation point), barge dock, post office, museum, church, cemetery, and airstrip. Denali had previously funded a photo-based map of Port Graham (and numerous other rural settlements) that OIG found helpful in efficiently planning this part of the visit.<sup>3</sup>

And, last but not least, we appreciated our cordial discussions with Port Graham's tribal chief, fire chief, clinic staff, postmaster, and lead teacher — as well as the helpful information we received from staff of the state troopers, state fire marshal, and Chugachmiut Inc.

However, it's important for readers to recognize that a project "inspection," such as this one, is narrower in scope and procedures than the classic financial "audit." One prominent originator of this type of inspector general review described it as follows:

*The idea is to prevent problems before they occur and to avoid vulnerabilities from becoming permanent features of programs. We usually initiate these reviews ourselves, but sometimes senior program managers request that we find out what is happening as grantees or government agencies struggle with the complex tasks of starting a new program — what seems to be working, what is not, what barriers grantees are facing, what, if anything, any of them have been able to do about problems which arise, what innovative practices grantees are experimenting with, and whether and how they are measuring progress, etc. . . .<sup>4</sup>*

Our review was conducted in accordance with section 2 of Denali's standard grant assurances, sections 4(a) and 6(a) of the Inspector General Act, and the *Quality Standards for Inspections* issued by the federal Executive Council on Integrity and Efficiency.

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<sup>2</sup> NANA Pacific, *Multi-Use Facility Program Evaluation*, April 30, 2008.

<sup>3</sup> Denali grant no. 74-DC-2002-I27. These maps are publicly available online at [www.commerce.state.ak.us/dca/profiles/profile-maps.htm](http://www.commerce.state.ak.us/dca/profiles/profile-maps.htm).

<sup>4</sup> George F. Grob, "Inspections and Evaluations: Looking Back, and Forward Too," *Journal of Public Inquiry* (spring/summer 2004), page 11.

The agency head was provided a draft of this report. He informally provided us with his thoughtful feedback by email, and we carefully considered his comments before publication.

### CONCLUSIONS

#### The building was successfully completed

We found in our inspection that construction of the building was successfully completed consistent with the architect's floor plan, the sub-award's terms, and the photos submitted with progress reports.

Construction was completed in 2005. We have some concerns about the building's current use that we discuss below.

The projected need for this building in little Port Graham was based on predictions in the grant application that didn't materialize. The town's economic core has long been its fish cannery. The tribe incorrectly assumed that its modern \$4.5 million replacement plant ( $\approx$  15,000 square feet) would reopen and result in a population increase. Instead the cannery has been idle since 2001, the population has fallen to around 135, and the school now has only 14 students for its five classrooms. (Ten students is the critical threshold for continued state funding.) In fact, less than half of the 300 members of the Port Graham tribe now live there.

#### Use as a police station has not materialized

An architect designed the tribe a classic American small-town police and fire station. A fourth of the two-story building was designed for a police department, complete with plumbed jail cell, evidence room, firearms storage, cuff bar, investigative record-keeping, and computer work stations with Internet access.

The 2003 grant application asserted that there would be three users for a Denali-funded police station: (1) Alaska State Troopers on routine patrol, (2) a local law enforcement official known as a VPSO (trained and supervised by the troopers), and (3) a tribal employee known as a VPO (limited duties under Alaska law).

The Alaska State Troopers are the lead police presence in rural Alaska. We consulted that agency's management and the state trooper that has been assigned to Port Graham calls since 2003. The troopers have never used the Denali-funded police station. The assigned trooper periodically calls on Port Graham, and he then stays overnight there on his patrol boat that he ties up to the dock. He was unaware that the tribe even had a police station. And the troopers' database shows that they have had to visit Port Graham less than 20 times over the years since the building was completed back in 2005.

The state trooper who visits Port Graham also has the responsibility for oversight of any VPSOs that tribes establish in his service area. The trooper indicates that Port Graham has not had a VPSO in the years since the new police station opened. In fact, the perception of the Alaska State Troopers is that the tribe has not had any local law enforcement in those years.

We also consulted the tribal chief, the Chugachmiut corporation (who funds tribes' VPSOs), and the local VPO at the time of the tribe's 2003 grant application (who left before the new police station opened). It appears that a VPSO candidate used the station as his office for some months in 2008, but left before he was able to complete the required training at the state's VPSO academy. This anecdote seems to be the closest that the tribe has come so far to use as a police station.

All of this is consistent with our inspection observations that the space in question seemed in use for storage rather than daily activity as a police station. It is also consistent with the tribe's aspirations to police itself through traditional social sanctions (tribal court, education, respected chief) rather than Western criminal procedures (arrest, booking, custody).

Alaska law conditions state funding for a local VPSO on the community's provision of "*a place to temporarily hold individuals under arrest.*"<sup>5</sup> However, the plumbed jail cell in the new police station has never been used. The tribal chief recognizes that it would be legally problematic to leave a prisoner in an isolated building unless a trained jailer was present. Any confinement of a juvenile would be especially sensitive. In fact, the rationale for including this feature in the application seems uncertain given the existence of a secure room in the clinic and the short flight distance to Homer and Seldovia.

**Recommendation:** Denali should consult the Alaska State Troopers prior to funding construction of a rural police station. Denali could request to accompany the area's trooper on a patrol shift to better understand the context of the requested facility. Just as Denali reviews the staffing capacity for proposed clinics, any applications that involve local jail cells should consider the personnel needed to assure prisoner safety.

#### Extent of use as a fire station is uncertain

The extent of use as a fire station (including EMTs) was more difficult for us to assess.

We note again that the architect designed the tribe a classic American small-town police and fire station. Three-fourths of the 3,600 square-foot building was designed to serve as the fire station (including EMTs) with a four-vehicle garage, three training areas, a kitchen, and 200 square feet of office space dedicated to "fire prevention."

During our inspection, we observed that the office areas largely appeared to be either unused or dedicated to long-term storage (piles) of items not routinely accessed. The four garage bays were occupied by a small pumper truck needing repairs, a small truck converted to carry a gurney, and a four-wheeler.

Port Graham is understandably sensitive to fire risks. Its fish cannery has dominated the settlement for a century, and that major structure was destroyed by fire in both the 1960s and 1990s. However, fire calls appear to be quite rare in Port Graham. Records kept by the state fire marshal report only two fires in Port Graham since 2000 (one chimney fire and one building fire,

<sup>5</sup> See 13 AAC 96.040(a)(1)(C).

with total estimated loss of only \$5,000). Both the tribal chief and the fire chief estimate that the 20 volunteers with their aging pumper truck respond to an actual fire call every year or two.

The tribe's clinic is operated by Chugachmiut Inc. We contacted the latter but were unable to determine the number of actual EMT runs with an ambulance, versus overall service calls associated with the clinic. However, the need for ambulance runs is probably limited to some degree by the settlement's compact geography. Almost all residents of tiny Port Graham live within 700 feet of its runway, and the clinic itself lies abeam the runway's southern third. Hourly scheduled air service from two air carriers connects the settlement in 30 minutes with Homer's regional hospital, or at least the physician-staffed clinic at Seldovia (8 miles east of Port Graham). (In fact, during the course of OIG's brief visit, one emergency medevac patient flew out to the Homer hospital for treatment and then back home to Port Graham before we departed.)

OIG does not question the community spirit of the tribal leaders and their volunteer firefighters and rescuers. Local anecdotes indicate that the dedicated group has over the years engaged in significant services, including night aerial medevacs, sea rescue, missing person searches, school presentations, house-to-house safety briefings, and transportation of patients to the clinic. There is also anecdotal support that some EMT training has occurred in the new building since it opened in 2005.

Nevertheless, we left the new building with an overall impression that it currently functions more as a tribal warehouse than as a fire station in active daily use.

**Recommendation:** Denali should consult the state fire marshal prior to funding construction of a rural fire station.

The state's monitoring was quite limited for its \$15,300 charge to Denali

Congress attached no specific monitoring conditions to its appropriations for this purpose. Denali's grant to the state incorporated OMB's standard grant circulars by reference, since Denali has never issued grant regulations of its own in the Code of Federal Regulations. In the grant agreement, Denali required that the state submit quarterly progress reports for each project plus periodic photos taken by the sub-awardees.

Port Graham's tribal government submitted 11 progress narratives to the state, including 25 photos.<sup>6</sup> The state then electronically submitted progress reports to Denali for six successive quarters. And the state charged Denali \$15,300 for administration of Port Graham's sub-award.

The state's "job description" was defined by the very limited expectations that Denali specified in its grant agreement. Though the state was paid \$15,300 to administer Port Graham's sub-award, five of the following six monitoring safeguards were simply not included in what Denali required the state to do.

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<sup>6</sup> These photos appear within the public database portion of Denali's website at [www.denali.gov](http://www.denali.gov).

1. Missing from the monitoring: appraisal for contributed land

A key monitoring safeguard is the grant administrator's verification of the matching contribution promised by the grantee.

Denali's funding for Port Graham was conditioned on the tribe's commitment to provide a cash match of at least \$75,000 plus the underlying land which the tribe asserted was worth \$10,000. Denali's grant to the state allowed contributed land as local match, but it was silent as to how the land's value was to be documented.

To protect all concerned, federal agencies commonly require that the value of contributed land be set by an independent professional with credentials as a certified real estate appraiser. The essence of the appraiser's service is to select a series of "comparables" that collectively enable a professional opinion on the examined tract.

For instance, USDA grants to tribes are covered by this regulation:<sup>7</sup>

*If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. . . [T]he Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.*

Similarly, a uniform OMB rule<sup>8</sup> provides the following for grants to universities, hospitals, and nonprofits:

*The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.*

However, Denali's grant conditions didn't require an appraisal of the contributed land — and the state didn't require the tribe to get one. Instead, the state accepted the tribe's assertion of \$10,000 value based on submission of an appraiser's opinion done four years earlier for a different lot in a different town. This shortcut of convenience diluted the basic professional assumptions, and public reassurance, of the independent appraisal process.

Beyond this, we note that the funded building of 3,600 square-feet is just one of several tribal facilities spread around a much-larger lot of approximately 70,000 square feet. Given this complexity in the allocation of value, public confidence in the tribe's match would have been promoted by asking a public agency (such as BIA) or a private appraiser to do an original appraisal through the usual professional process.

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<sup>7</sup> See 7 CFR 3016.24(f), (g).

<sup>8</sup> See 2 CFR 215.23(h)(1).

Given the brief hourly flights between Homer and Port Graham, a professional appraisal of the contributed land would have been a reasonable expectation within the \$15,300 that the state charged Denali for administration of Port Graham's sub-award.

**Recommendation:** Denali should include a grant condition that requires the value of contributed land to be established by an independent real estate appraiser. Denali may wish to follow the approach of other federal agencies and issue a grants management "common rule" in the Code of Federal Regulations.<sup>9</sup> Like other agencies, Denali could also issue its own "compliance supplement" with expected steps for a grant's audit under OMB Circular A-133.

2. Missing from the monitoring: review of major contract

A key monitoring safeguard is the grant administrator's review of grantee contracts that will document major payments to vendors. For Port Graham's project, the state and the tribe agreed that the grant administrator would dispense Denali's entire grant as direct payments to the construction contractor. The project budget showed a "contractual" line that included the entire \$765,000 of Denali funding.

Denali's grant to the state didn't require the grant administrator to review the terms of this construction contract — and she didn't attempt to do it. But the state's silence concerning the terms of this major contract came back to haunt its monitoring when a billing dispute between the contractor and the grant administrator escalated into an acrimonious work stoppage. The state's letter describes the serious misunderstanding as to who had to provide what to whom to get a progress payment from the state system:

*I was contacted by our fiscal department who were working on getting [the contractor] paid, but needed more information on the invoices as they were not adequate invoices per their standards and regulations to make the payment. . . The owner mentioned to this person he would be "shutting down the project" until these invoices were paid. . . [We] have been unsuccessful with [the contractor] in getting what we need to pay them, which is a more detailed invoice of services completed.*

*I am attaching a copy of the Department's state requirements and what should be on a vendor's invoice when the Grantee is requesting for the Department to pay the vendor directly. . . Although our office paid the previous request of \$119,205.00, at that time our fiscal department was short staffed, and the lack of information on [the contractor's] invoice was not caught. This has been corrected and the requirements on these newer invoices do need to be added in order for our Department to make the payments to [the contractor].*

The contractor stopped working, and the state stopped paying. This impasse resulted from a lack of coordination between the tribal and state governments. It could have been prevented by a contract provision that detailed the mechanics of the direct billing relationship between the state

<sup>9</sup> Denali need not draft an original rule from scratch. Rather, Denali could potentially incorporate by reference another agency's existing CFR common rule as of a particular point in time.



and the contractor. And the grant administrator could have reinforced this had she been included telephonically in a post-award conference between the tribe and its contractor.

The state's review of a single construction contract for \$765,000+ would have been a reasonable expectation within the \$15,300 that the state charged Denali for administration of Port Graham's sub-award. The state government employs numerous engineers and construction managers that should be available to assist the grant administrator with a brief technical review as needed.

**Recommendation:** Denali should include a grant condition that requires the monitoring agency to review contracts that will document major payments to vendors.

### 3. Missing from the monitoring: site visits

A key monitoring safeguard is periodic site visits to directly confirm implementation of the grant. Though we found that this project was successfully completed, the remoteness of many Denali projects leaves some risk that virtual, photographic, or narrative reporting will not fully reflect the reality of how the funding is used.

However, the state's monitoring did not include any site visits to Port Graham. And Denali's grant conditions did not require it.

OIG's visit appears to be the first time that any Denali official has inspected the new facility. OIG observed that construction was consistent with the architect's floor plan, the sub-award's terms, and the photos submitted to the state with progress reports.

While Port Graham's building was successfully constructed, site visits are a key safeguard for detecting any problems at an early stage. The above difficulty in verifying the contractor's work constituted a red flag that should have triggered some state visits to the project site.

We appreciate that the state's grant manager was stationed in Fairbanks, which is 400 miles north of Port Graham. But her state department has a "local government specialist" who works out of Anchorage to serve communities on the Kenai Peninsula. Several site visits from this latter official would have been reasonable for the \$15,300 that the state charged Denali for administering Port Graham's sub-award.

**Recommendation:** Denali should include a grant condition that requires site visits at specified intervals from some representative of the involved state department.

### 4. Missing from the monitoring: review of annual CPA firm audits

A key monitoring safeguard is the grant administrator's review of the annual financial audits that sub-awardees must obtain from a CPA firm when their annual federal funding reaches \$500,000.

For the past 12 years, the tribe at Port Graham has obtained an annual audit of its federal funding from the same CPA firm. And the firm has consistently issued the tribe an "unqualified opinion" over that time period.

The tribe's audited financial statements for 2004 and 2005 note that Denali awarded a \$765,000 grant under its "multi-use facilities program." The addition of a depreciable capital asset valued at \$765,000 is shown in the 2005 financial statements (the year the building was completed and placed in service). And the CPA didn't note any problems concerning Denali's grant (no "findings").

However, OIG notes that the Denali-funded expenditures shown in these audits for 2004 (\$561,483) and 2005 (\$84,312) together total \$119,205 less than the \$765,000 that the state's records indicate it sent the tribe. There are a variety of possible explanations for this apparent difference of over \$100,000, but the state's grant administrator didn't notice it — and didn't investigate it — because she didn't analyze the annual audits issued by the tribe's CPA firm.

In fact, the state's grant administrator indicated to OIG that her unit lacks the expertise to review the annual audit reports issued by CPA firms. This is unfortunate since a clear summary of the tribe's audits for the past 12 years appears on a well-known public website offered by the federal system.<sup>10</sup> Further, the public website for the state's own "single audit coordinator"<sup>11</sup> indicates that her office has received the tribe's audit reports of federal funding for the years 1999 to 2006. An annual phone call by the grant administrator to this latter state official would seem a valuable monitoring step. We also note that the "local government specialists" and RUBA advisors in the grant administrator's department have financial skills that may be helpful in analyzing sub-awardee audits.

The state's review of sub-awardees' audit reports was a requirement of Denali's grant agreement, where the state committed to the requirements of OMB Circular A-133 as a condition of receiving Denali's money. Section 400(d) of that rule requires that the state monitor the results of audits that CPAs perform on federal funding that the state passes through to others:

*A pass-through entity shall perform the following for the Federal awards it makes*

*(3) Monitor the activities of subrecipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.*

*(4) Ensure that subrecipients expending \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year.*

*(5) Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.*

<sup>10</sup> See <http://harvester.census.gov/fac/>.

<sup>11</sup> See <http://fin.admin.state.ak.us/dof/ssa/otherinfo.jsp>.

*(6) Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records. . .*

In other words, the monitoring of sub-awardee audits is part of the state's responsibility in dispensing Denali's money. The state's grant administrator can't effectively accomplish this unless she analyzes the annual audit reports.

Analysis of the two audit reports for 2004-2005 was a reasonable expectation for the \$15,300 that the state charged Denali for administering Port Graham's sub-award.

**Recommendation:** Denali should require that the state's grant administrator, per OMB Circular A-133 section 400(d), resolve the \$119,205 reporting uncertainty discussed above.

**Recommendation:** Denali should include a grant condition that requires the monitoring agency to implement an internal procedure for its annual review of a sub-awardee's audit report.

5. Missing from the monitoring: fire marshal approval

Construction work on public buildings cannot begin until the state fire marshal has approved the plans. While the sub-award funds Port Graham's fire station, we ironically did not see the fire marshal's approval in the state's file (though the state's grant administrator obtained a copy at our request). The grant administrator correctly noted that monitoring for fire marshal approval was not a condition of Denali's grant to the state.

The fire marshal's linkage to Denali grants is important at several levels that make approval more than just another bureaucratic hurdle.

Destruction of public buildings by fire is now unusual in the Lower 48, where running water and sprinkler systems are the expected norm. But such tragedies are still too common in rural Alaska. At least three of the 12 funded multi-purpose facilities serve uses displaced by burned buildings. Port Graham's largest building, its fish cannery, burned down in 1960 and again in 1998. Also, summer wildfires are common on Alaska's Kenai Peninsula where Port Graham is located.

From the perspective of managing financial risks, destroyed public buildings often trigger replacement at public expense. Further, the state has committed to review public construction plans for fire prevention, and any neglected review may thus subject the state to liability.<sup>12</sup> While the federal government is generally not liable for grantees' mistakes, suits against grantees may raise the disruptive issue as to whether Denali's grants can be charged for grantees' defense costs and court judgments.

Both metaphorically and literally, it's obviously better to prevent fires than to put them out.

**Recommendation:** Denali should include an explicit condition in its grants that the monitoring agency will document the fire marshal's plan approval before construction starts.

<sup>12</sup> See *Angnabooguk v. State*, 26 P.3d 447, 453 n.24 (Alaska 2001); *R.E. v. State*, 878 P.2d 1341 (Alaska 1994).

*6. Missing from the monitoring:  
Long-term public notice of facility's status*

Federal construction grants such as this one carry an implied legal promise (continuing federal interest) that the resulting facility will be used for its assumed public purpose. A key monitoring safeguard is long-term notice to the community of the property's restricted status.

Denali's grant agreement with the state includes a 165-word provision that details a particular sign that Denali expects will be displayed on each completed building. Like the monuments placed by land surveyors, the colorful sign is intended to put the public on perpetual notice that the building was financed by a Denali grant.<sup>13</sup>

The tribal chief at Port Graham wrote Denali, stating that "[t]he facility is scheduled to be completed by March 31, 2005 and the sign will be installed on the exterior of the front of the building."

However, during OIG's inspection, we noted that Denali's sign was less than prominently displayed on the building. It was on the back of the building, rather than facing the street. This was no new development, though. One monitoring photo that the state sent Denali at completion clearly shows the sign by the back door.<sup>14</sup>

To the extent that the 165 words of the grant provision reflect true concern,<sup>15</sup> the sign's potential viewers at Port Graham seem limited to the trees in the woods and, ironically, an old nearby truck bearing a federal government license plate from some prior life. And, in contrast, we noted a metal storage container (connex) with street-side signage that unquestionably credits a senator and others for funding its contents.

Unlike the other monitoring safeguards discussed above, Denali's grant agreement explicitly absolves the state from any responsibility for installing the sign. The state commits only to alert sub-awardees of Denali's expectation.

While OIG will leave it to Denali to pick its sign battles with Port Graham and others, the issue is symptomatic of a larger one that requires attention. Publicly-recorded land records should include an agreement with the sub-awardee as to the range of future permissible uses for a facility. Some latitude for eventual unanticipated public uses may be acceptable to Denali, as well as some time frame of concern that falls short of perpetuity. In other words, there would be seem to be some point short of forever when a building has fully served out its public life.

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<sup>13</sup> The popular History Channel television program, *Tougher in Alaska*, has a "Frozen Freeway" episode about the challenge of using the frozen Kuskokwim River to truck fuel to a Denali-funded tank farm at Kwethluk, Alaska. Careful viewers will vaguely see the required Denali signage on the tank farm's fencing.

<sup>14</sup> See the photos submitted April 19, 2005 for this facility in the online public database of Denali projects at [www.denali.gov](http://www.denali.gov).

<sup>15</sup> Denali is hardly the first representative of a national government to be "sign challenged" in attempting to give the world notice of its property rights around Port Graham. In the 1700s, Russian explorers established a nearby trading post and buried a metal "possession plate" that remains an unrecovered holy grail of Alaska history. The tribe's chief remembers a visiting Russian historian who searched in vain for it about 15 years ago, proving again that Western bureaucracies are often better at preserving their records than their public works. See Mary Foster and Steve Henrikson, *Symbols of Russian America: Imperial Crests & Possession Plates in North America*, Technical Paper No. 5 (Juneau: Alaska State Museum, April 1995), page 6.

For instance, rigidly insisting that Port Graham must always use its building as a police station is probably unrealistic given that the tribe doesn't have a local police force. On one hand, the tribe's eventual use for education, a library, a teen center, or a museum (merely examples) would seem consistent with the original spirit of the "multi-use" program. On the other, simply allowing a private individual to use it for a home or business would not. Gifts or abandonment of funded facilities pose similar issues.

But our point is only that Denali needs to explicitly put the public on notice of the boundaries for the agency's continuing federal interest (both duration and type of use) in the land records associated with a funded facility.

***Recommendation:*** Denali should include a grant condition for publicly recording a Notice of Federal Interest in the land records for a funded facility. This notice should define the parameters of permissible use over time — and the solution for an unneeded, misused, or abandoned building. For instance, a facility's ownership could by advance agreement revert to the local school district if all permitted use was discontinued within the prescribed time frame. Or Denali could agree in advance to release its federal interest after some years have elapsed.

One potential model for Denali's grant condition is the detailed OMB rule at 2 CFR 215.32 that applies to federal funding for universities, hospitals, and nonprofits. Denali may wish to follow the approach of other federal agencies and issue a grants management "common rule" in the Code of Federal Regulations.<sup>16</sup> Like other agencies, Denali could also issue its own "compliance supplement" with expected steps for a grant's audit under OMB Circular A-133.

#### COMMENT

The Alutiiq name for this scenic settlement is Paluwik, which one archeologist has translated as "where the people are sad." But the tribal chief and postmaster assure us that a more correct translation would refer to the frequently overcast weather rather than the disposition of the residents.

Nevertheless, there are certainly reasons for this settlement to be very concerned about its future. Less than half of the 300 members of the Port Graham tribe still live there (pop. now ≈ 135). And the chief noted that its elders are dying of cancer as we walked through the tribe's cemetery.

The settlement has always had some form of Western school since one opened in a pool hall back in 1931. However, the current five-classroom school is down to only 14 students (with 10 being the critical threshold for continued state funding).

For a century, the economic core of Port Graham has been its fish cannery. The cannery's main plant was destroyed by fire in 1960 and again in 1998. The tribe constructed a modern \$4.5 million replacement plant (≈ 15,000 square feet) in 1999 that unfortunately became idle by 2001. Seventy workers worked there during the peak of the new plant's short life.

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<sup>16</sup> Denali need not draft an original rule from scratch. Rather, Denali could potentially incorporate by reference another agency's existing CFR common rule as of a particular point in time.

In 2003, Denali provided \$29,695 for a feasibility study of options for reopening the cannery.<sup>17</sup> The study discussed various seafood-related possibilities, but Port Graham's dominant facility remains vacant and closed to this day.

The national health care debate suggests a potential retooling of the idle cannery that the tribe may care to consider as an economic opportunity. Consumer options for non-traditional (alternative) medical treatments are increasingly popular, marketed, and lucrative in the Lower 48.

Twenty years ago, Robert Fortuine MD drew on his quarter-century with the Indian Health Service and authored his extensive catalog in *Alaska Medicine* entitled "The Use of Medicinal Plants by the Alaska Natives."<sup>18</sup> The National Park Service also published *Tanaina Plantlore* detailing such plants used by the tribes of southcentral Alaska.<sup>19</sup>

Government programs have since continued a serious look at these remedies. The Alaska Native Tribal Health Consortium markets online its *Traditional Food Guide for Alaska Native Cancer Survivors*.<sup>20</sup> The University of Alaska has published an extensive study, *Medicinal Flora of the Alaska Natives*.<sup>21</sup> And next year the state's Division of Agriculture plans to open its public Ethnobotany Garden at the Plant Materials Center in Palmer, which will display tribal plants "traditionally and presently used for food, medicine, and other uses."<sup>22</sup>

The small tribe at Port Graham has a long history with plant remedies, which the tribe continues to actively use today as a medical option. This was documented in detail in the 1991 Pratt Museum study, *English Bay and Port Graham Alutiiq Plantlore*.<sup>23</sup> And this research drew upon an earlier oral history project jointly conducted by Port Graham's students, teachers, and elders.<sup>24</sup>

Packaged herbal remedies from the rain forests of Alaska may be attractive to the national chains that serve this popular niche market in the Lower 48. Port Graham has hourly air freight service to Homer, which is connected by road to the Anchorage airport (one of the busiest air cargo hubs in the nation). The combination of small size, light weight, non-perishable, high markup, and Internet access would seem to support feasible distribution logistics.

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<sup>17</sup> Denali issued grant no. 99-DC-2002-E2 to the state, who issued a sub-award to Port Graham's tribe. The tribe arranged for Indian Valley International to issue *A Feasibility Report for a Fish & Meat Processing Venture [at] Port Graham, Alaska* (Sept. 30, 2003). This report is available online at [www.commerce.state.ak.us/dca/plans/PortGraham-FS-2003.pdf](http://www.commerce.state.ak.us/dca/plans/PortGraham-FS-2003.pdf).

<sup>18</sup> *Alaska Medicine*, vol. 30, no. 6, November-December 1988, pages 185-226.

<sup>19</sup> Priscilla Russell Kari, *Tanaina Plantlore*, 4<sup>th</sup> ed., 1995.

<sup>20</sup> Alaska Native Tribal Health Consortium, Office of Alaska Native Health Research, Cancer Program (Anchorage, 2008). See [www.anthc.org/chs/crs/foodguide.cfm](http://www.anthc.org/chs/crs/foodguide.cfm).

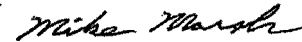
<sup>21</sup> Ann Garibaldi, *Medicinal Flora of the Alaska Natives* (University of Alaska Anchorage, July 1999), now available online at [http://alnhp.uaa.alaska.edu/traditional\\_use/Med\\_Flora\\_AK\\_Natives.pdf](http://alnhp.uaa.alaska.edu/traditional_use/Med_Flora_AK_Natives.pdf).

<sup>22</sup> See the Alaska Plant Materials Center's 2008 Annual Report, page 16, at <http://dnr.alaska.gov/ag/AnnualReport2008.pdf>.

<sup>23</sup> Priscilla N. Russell, *English Bay and Port Graham Alutiiq Plantlore* (Homer, Alaska: Pratt Museum, 1991).

<sup>24</sup> *Fireweed Cillqaq: Life and Times in Port Graham* (Kenai Peninsula School District, 1981), pages 66-71, 81-75.

If the tribe is interested in exploring this suggestion further, it may wish to ask the national office of the USDA Cooperative Extension Service to detail a specialist under the federal Intergovernmental Personnel Act.<sup>25</sup>



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<sup>25</sup> See 5 USC §§ 3371(2)(C), 3372, 3373.



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INSPECTOR GENERAL

October 2009

FINAL REPORT

FOR PUBLIC RELEASE

**Inspection of Tanacross community center**  
(grant 94-DC-2003-I9, state sub-award 84-0845)

Congress provided two appropriations to the Denali Commission for “multi-purpose community facilities.” Denali passed this money on to Alaska’s state government as grant 94-DC-2003-I9 for \$7.3 million. In July 2009, Denali formally closed out this grant.

The state government issued sub-awards for 12 projects across Alaska. One of these projects was a \$349,817 sub-award to construct a community center in the tiny, unincorporated settlement of Tanacross (pop.  $\approx$  190). In September 2009, the Office of Inspector (OIG) conducted an inspection of the construction site.

The purpose of this inspection was to evaluate (1) the present status of the construction site and (2) the state’s process for monitoring its sub-award. Though Denali no longer issues grants for such “multi-purpose” (or “multi-use”) facilities, we noted some lessons worth considering in its continuing programs.

PROJECT’S LOCATION

Tanacross is a small Alaskan settlement (pop.  $\approx$  190) about 70 miles west of the Canadian border. It lies on the state’s main highway system, 12 miles from the major intersection (Tok Junction) of the Alaska Highway (goes to Fairbanks) and the Glenn Highway (goes to Anchorage). In other words, Tanacross is connected via hard-surface highways to Alaska’s two largest cities and to the Lower 48.

Tanacross also has an airport with a paved 5,000-foot runway, which remains from World War II and is still used by aircraft that fight wildfires. And it lies on the navigable Tanana River (Tanacross is the historical shorthand for “Tanana Crossing”).

While Tanacross is less isolated than many Alaskan settlements, its long winters can drop to a harsh 75°F below zero. However, the average low temperature in January is a “warmer” 22°F below zero. The drive to Fairbanks is 200 miles. And the drive to Anchorage, though scenic, takes a full day.



Tanacross is not incorporated as a city. Rather, the settlement has a tribal government. BIA counted 169 tribal members in 2005 but considered only 124 to actually live in Tanacross. The tribe claims 92,000 acres under the Alaska Native Claims Settlement Act. The tribe's financial statements for 2003 to 2005 (the years involved in Denali's grants) show that it annually received funding from 12 to 18 types of federal grants during that time period.<sup>1</sup>

The settlement has approximately 50 households that are clustered around a 14-block town site. There is a publicly-funded school with 17 students, 2 teachers, and a principal.

### PROJECT'S FUNDING HISTORY

At various points over the past decade, HUD and the Denali Commission have awarded grants for the tribe<sup>2</sup> to build itself a community center at Tanacross. The awarded grants totaled around \$1.5 million, but the tribe has actually received \$843,898.

The tribe originally asserted that the building would cost just under \$670,000, and HUD responded with a \$500,000 grant in 2001. Based on the tribe's final grant report in 2004, HUD assumed that the tribe had completed the building and the agency then closed out the grant. HUD was thus surprised to discover in 2006 that the only progress was a concrete foundation (which remains the case to this day).

In 2003, Denali awarded the tribe a grant of \$671,424 to continue construction on this building. This grant was passed through the Alaska Native Tribal Health Consortium under Denali's health facilities program. In contrast to HUD's misassumption of completion, Denali's program manager mistakenly assumed for some time that construction had not yet started (it was actually well under way).

In 2004, Denali awarded the tribe a further grant of \$349,817 for the building. This grant was passed through the State of Alaska under Denali's program to construct "multi-use" buildings (grant 94-DC-2003-I9). The state then applied this money to Tanacross' project as state sub-award 84-0845 — the subject of this report. Denali paid the state \$6,996 to administer this sub-award.

By June 2005, the tribe determined that the planned building would actually cost \$4.4 million. Denali discontinued its funding in view of the confused construction and escalating estimates. By August 2005, the tribe's progress report to the state described the project's status with a single sentence: "*The project has been halted by the Denali Commission.*"

However, the state had already paid out \$340,098 of Denali's money under "multi-use" sub-award 84-0845. Over 70% of this (\$253,089) was for two direct payments to a Colorado vendor that delivered structural steel to the construction site.

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<sup>1</sup> The 2003-2005 financial statements are the ones issued for the Tanacross Village Council as reported on the federal government's public online database at <http://harvester.census.gov/fac/>.

<sup>2</sup> More specifically, these grants were made to the Tanacross Village Council (the "tribe" for purposes of this report).

### WHY WE INSPECTED THIS PROJECT

In July 2009, Denali formally closed out grant 94-DC-2003-I9 to construct 12 “multi-purpose” (or “multi-use”) buildings around the state.

Denali’s experiment with such facilities has been a controversial program in the agency’s short history of only a decade. In 2007, Denali’s CFO notified OIG that she was suspending grant 94-DC-2003-I9 to the State of Alaska.<sup>3</sup> The CFO’s letter to the state government indicated the following reasons for this administrative action:

*The reasons for the suspension of funds are due to lateness of financial reporting, inaccuracy of financial reporting, no submissions of quarterly estimates, expenses for grants being charged to other grants, inaccuracy on cash versus accrual on financial reports, and inconsistent information from financial versus program staff at [state’s department].*

OIG learned that construction of the buildings for at least two of the 12 locations had been started but never completed. One of the uncompleted buildings was at Tanacross.

### CONCLUSIONS

#### Construction stopped five years ago, with the building never completed

The national norm for grant-financed buildings is construction by a contractor selected through arms-length competitive bidding. Grant-making agencies assume that the risk of an unfinished project will be minimized by a fixed price and a performance bond (unless the owner requests additional work, or the contractor encounters unforeseen site conditions).

However, the federal government will sometimes allow other approaches, and sub-award 84-0845 to Tanacross was one of them. The grant application was premised on the tribe’s use of its own subsidiary company (Dihthaad) and its own local workers (“force account labor”). The motivation was understandable, given the tribe’s high unemployment and the struggle with its subsistence (non-cash) economy. BIA’s latest online statistics (for 2005) show employment for less than half of the 67 tribal members available for work in Tanacross.

While Denali granted the tribe’s wish to do the job themselves, the tribe’s assertions of the building’s cost grew from just under \$670,000 (in 2001) to \$4.4 million (in 2005). In the end, the tribe spent over \$840,000 in federal funds but obtained only a concrete foundation and a pile of structural steel.

The tribe completed the building’s concrete foundation in the fall of 2004. The tribe’s November 2004 progress report to the state described the project’s status as follows:

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<sup>3</sup> In fact, this was only one of seven grants to the State of Alaska that Denali’s CFO suspended. While she has the authority to do this under the grant agreements, it seemed to OIG to be an atypical scenario in federal-state relations.

*Foundation is complete. All footings, pilasters, grade beams and anchor bolts are installed. We are ready to receive and erect the building. The steel building has been paid for and arrangements for pick up and shipment are currently under way by our management & procurement contractor, Dihthaad Global Services, LLC.*

In September 2009, OIG visited Tanacross and observed that no further construction has occurred in the past five years. Our photos (Exhibits 1 thru 5) show the unused foundation today.<sup>4</sup>

Over 70% (\$253,089) of the state's Denali-funded sub-award was paid to a Colorado vendor that supplied the structural steel frame for the building. That steel was delivered by truck to Tanacross in April 2005.

It is important to realize that this costly steel was not a raw material that required further processing before use in a building. Rather, the many pieces arrived in Tanacross as a custom-manufactured "kit" ready for assembly as the frame of a specific building (essentially a metallic barn-raising in waiting).

During OIG's September 2009 visit, we observed the many pieces from this steel purchase to be stacked amidst the weeds on the edge of Tanacross.<sup>5</sup> The collection appears to have been left unused and undisturbed as the winters have come and gone over the past 4½ years. Our photos (Exhibits 6 thru 11) show this field of steel.

The tribe apparently has no plans to use the steel unless a government agency provides further funding. This expectation is not surprising given the tribe's past success in receiving federal grants. The tribe's financial statements for 2003 to 2005 (the years involved in Denali's grants) show that it annually received funding from 12 to 18 types of federal grants during that time period.<sup>6</sup>

In other words, though the \$253,089 kit lies in the weeds waiting for assembly, the tribe has no plans to raise its own barn unless paid to do so.

During OIG's visit, the tribe's president<sup>7</sup> indicated that he did not even have a set of the architect's plans for constructing the building. He considers responsibility for the building's lack of completion to lie with prior leaders.

Grant recipients that receive over \$500,000 in annual federal funding are required to have an audit by a CPA firm. A summary of these audits appears on a well-known public website offered

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<sup>4</sup> Our GPS reading shows the foundation to be located at N 63° 22' 43.1" W 143° 21' 31.7" datum NAD 1927.

<sup>5</sup> Our GPS reading shows the steel to be located at N 63° 22' 47.9" W 143° 21' 49.7" datum NAD 1927. A connex (metal storage container) at this same location contains related building materials, such as bales of insulation (see Exhibits 12-13).

<sup>6</sup> The 2003-2005 financial statements are the ones issued for the Tanacross Village Council as reported on the federal government's public online database at <http://harvester.census.gov/fac/>.

<sup>7</sup> More specifically, the current president of the Tanacross Village Council.

by the federal system.<sup>8</sup> This public website indicates that the tribe<sup>9</sup> at Tanacross had such audits for its fiscal years 1998 thru 2005. The website notes that the reporting CPA firm for the last audited year (2005) included a “going concern” explanatory paragraph in its audit report.

OIG obtained a copy of the CPA firm’s 2005 audit report from the records maintained by the State of Alaska’s single audit coordinator. The audit report states in part:

*[T]he Council’s current liabilities exceed current assets by \$587,167 including deferred revenue in excess of cash by \$110,188. In addition, the Council’s liability, if any, for the unpaid debts of Dihthadd Global Services, LLC is not presently determinable. These conditions raise substantial doubt about its ability to continue as a going concern.*

The 2005 financial statements that the CPA audited further indicate that Dihthaad has “ceased operations.”

The CPA firm was hired by the tribe — not OIG — and OIG has not attempted to “re-audit” that firm’s work. However, the tribe’s grant application was premised on use of its subsidiary, Dihthaad, to manage construction of the building funded by Denali. The last audit report filed with the federal system is further indication that the tribe is now unlikely to use the funded materials for their intended purpose.

**Recommendation:** Denali retains a reversionary interest in the unused steel that was purchased with a quarter-million federal dollars.<sup>10</sup> However, Denali’s enabling act does not authorize the agency to directly dispose of federal property interests and reapply any proceeds to further projects. Congress would explicitly need to add such authority to Denali’s legislation.

Denali should thus do an MOU with GSA (the presumed servicer for federal property) to recover the reversionary interest. If GSA decides to do a public sale of the steel as “surplus,” the law appears to require deposit of the proceeds into the general U.S. Treasury as “miscellaneous receipts.” However, GSA may find that the Department of Defense can use the “excess” steel in military projects down the highway at Fort Greely (100 miles north) or at Gakona (100 miles west). Tanacross also has a mile-long airstrip that could support such logistics. Or, with GSA’s technical assistance, Denali could conceivably find a good home for this steel at another grantee.

#### The steel’s pricing warranted further scrutiny under federal cost standards

The state committed to the requirements of OMB Circular A-87 as a condition of receiving Denali’s money. That rule specifies the permissible purchases (“allowable costs”) under a federal grant. One key provision is that the cost for an item be “reasonable” in amount under the circumstances, an analysis that the rule discusses in its Attachment A, section C(2).

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<sup>8</sup> See <http://harvester.census.gov/fac/>.

<sup>9</sup> These were audits of the 1998-2005 financial statements of the Tanacross Village Council.

<sup>10</sup> See *City of Hydaburg v. Hydaburg Co-Op*, 858 P.2d 1131 (Alaska 1993); *In re Joliet-Will County Community Action Agency*, 847 F.2d 430 (7th Cir. 1988).

The tribe's application for sub-award 84-0845 was a lengthy one of over 150 pages. A section on the project's "design approach" included the following description:

*With the Native Village of Tanacross subsidiary, Dihthaad Global Services, LLC, taking the lead, a relatively new concept for arctic building construction was selected and refined by their architect [firm name]. The key element of the building system is the use of Structural Insulated Panels, or SIP, over a "red iron skeleton" for a pre-engineered building. . . SIP panels will be attached to the "red iron" skeleton which will rise from a concrete slab on grade. . .*

The grant application indicated the tribe's intent to spend \$49,000 on the 9,600 square-foot "red iron skeleton" for the building's "superstructure." Yet, at the tribe's request, the state's grant administrator approved payments of \$253,089 for this single item, that is, over 70% of the entire amount of the sub-award. In fact, the sub-award's entire budget line for "supplies and materials" was \$253,102.

A further red flag occurred when the Colorado attorney general represented customers, including the tribe, in a class-action consumer protection lawsuit brought against the steel manufacturer. The tribe accepted the offered settlement of about \$9,000, and the state's grant administrator then forwarded the settlement money on to Denali.

We understand the pressures on a tiny tribe in remote Alaska to accept any cash infusion offered by any branch of government. However, as noted above, Denali retained a reversionary interest in the steel that was purchased with a quarter-million of federal dollars. Neither Denali's staff nor the state's grant administrator apparently understood the need to consult the U.S. Department of Justice regarding the settlement offered by the Colorado attorney general.

**Recommendation:** Denali should request that GSA consult the Colorado attorney general and assess the extent to which a potential federal claim was compromised by the tribe's acceptance of the offered settlement.

**Recommendation:** In consultation with GSA, Denali should develop a grant condition that requires immediate notification of any litigation involving a Denali-funded project.<sup>11</sup> Denali should consider issuing this as part of a grants management "common rule" in the Code of Federal Regulations.

#### HOW WE INSPECTED THIS PROJECT

The state monitored this grant from its office in Fairbanks. OIG reviewed the extensive file maintained there for the Tanacross sub-award (literally 9½ pounds in weight and approximately 500 pages of paper). The state charged Denali \$6,996 for this administration. The state's grant manager answered our questions concerning these records.

OIG visited Tanacross in September 2009. The current president of the Tanacross Village Council showed us the construction site and related materials. OIG compared these observations

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<sup>11</sup> OIG has previously recommended such a grant condition in our inspection reports for the Buckland power plant (2006) and the Sterling Landing tank farm (2007). These prior reports are available online at [www.denali-oig.org](http://www.denali-oig.org).

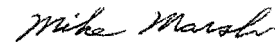
to the architect's floor plan, sub-award terms, payment documentation, and photos submitted with progress reports. OIG's visit appears to be the first time that any Denali official has inspected the construction site.

It's important for readers to recognize that a project "inspection," such as this one, is narrower in scope and procedures than the classic financial "audit." One prominent originator of this type of inspector general review described it as follows:

*The idea is to prevent problems before they occur and to avoid vulnerabilities from becoming permanent features of programs. We usually initiate these reviews ourselves, but sometimes senior program managers request that we find out what is happening as grantees or government agencies struggle with the complex tasks of starting a new program — what seems to be working, what is not, what barriers grantees are facing, what, if anything, any of them have been able to do about problems which arise, what innovative practices grantees are experimenting with, and whether and how they are measuring progress, etc. . . .*<sup>12</sup>

Our review was conducted in accordance with section 2 of Denali's standard grant assurances, sections 4(a) and 6(a) of the Inspector General Act, and the *Quality Standards for Inspections* issued by the federal Executive Council on Integrity and Efficiency.

Denali's management was provided a draft of this report, and we considered management's comments before publication of this final report.



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INSPECTOR GENERAL

(EXHIBITS 1 THRU 14 APPEAR ON THE FOLLOWING TWO PAGES)

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<sup>12</sup> George F. Grob, "Inspections and Evaluations: Looking Back, and Forward Too," *Journal of Public Inquiry* (spring/summer 2004) page 11





EXHIBIT 1 — FOUNDATION (SEPT. 2009)



EXHIBIT 2 — FOUNDATION (SEPT. 2009)



EXHIBIT 3 — FOUNDATION (SEPT. 2009)



EXHIBIT 4 — FOUNDATION (SEPT. 2009)



EXHIBIT 5 — FOUNDATION (SEPT. 2009)



EXHIBIT 6 — FIELD OF STEEL (SEPT. 2009)



EXHIBIT 7 — FIELD OF STEEL (SEPT. 2009)



EXHIBIT 8 — FIELD OF STEEL (SEPT. 2009)





EXHIBIT 9 — FIELD OF STEEL (SEPT. 2009)



EXHIBIT 10 — FIELD OF STEEL (SEPT. 2009)



EXHIBIT 11 — FIELD OF STEEL (SEPT. 2009)



EXHIBIT 12 — STORAGE CONNEX (SEPT. 2009)



EXHIBIT 13 — STORAGE CONNEX (SEPT. 2009)



EXHIBIT 14 — SUBSIDIARY'S SHED (SEPT. 2009)





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INSPECTOR GENERAL

October 2008

To: George Canelos, Federal Co-Chair

FINAL REPORT

From: Mike Marsh, CPA, MPA, CFE, Esq., Inspector General

FOR PUBLIC RELEASE

Subject: Inspection of Chitina clinic (grant nos. 100-DC-2003-I13 and 146-DC-2004-I29)

In July 2008, my office conducted an inspection of the clinic that was constructed at tiny, unincorporated Chitina, Alaska (est. pop.  $\approx$  100) using \$1 million of funding from the Denali Commission. Denali presumed a 30-year lifespan for the clinic when the grant was awarded. However, the owner-tribe<sup>1</sup> temporarily closed the clinic last spring after less than three years of use.

During our inspection, we found that the clinic is open again. Services are very reduced, though, and unlikely to increase given the lack of capacity that the small tribe ( $\approx$  250 members nationwide) has to operate a public clinic on its own.

The purpose of this inspection was to evaluate (1) how this clinic's closure was ultimately resolved for the community and (2) what "lessons learned" exist for Denali's funding of future clinics around Alaska.

### WHY THIS PROJECT MATTERS

The Denali Commission serves as a national "experimental field station" that explores different possibilities for providing basic facilities in remote settlements (clinics, power plants, fuel tanks, places to wash clothes and take a shower). In this search, the commission has tried grants to every form of recipient entity: municipal, nonprofit,<sup>2</sup> tribal, cooperative, educational, state, and corporate. And the size of its grantees has ranged from a schoolhouse with 11 pupils<sup>3</sup> to a large, multinational, publicly-traded corporation.<sup>4</sup>

<sup>1</sup> The clinic's owner is the Chitina Traditional Indian Village Council.

<sup>2</sup> Both secular and faith-based.

<sup>3</sup> See our report for Red Devil, Alaska at the inspector general home page at [www.denali.gov](http://www.denali.gov).

<sup>4</sup> See our report for the Agrium corporation's project (Nikiski, Alaska) at the inspector general home page at [www.denali.gov](http://www.denali.gov).

In the inspected project, Denali explored the outer limits of the envelope as to what a small tribe could do on its own in an isolated place where winters can reach  $-50^{\circ}$  F. The tribe hired a grant writer, and Denali responded by building them a \$1 million clinic.

Often these experiments work; sometimes they don't. In this case, the clinic failed less than three years after completion. The key in such instances is to candidly advance the public understanding of what went wrong.

### WHY THIS PROJECT FAILED

Earlier this year, the Chitina tribe announced that it could no longer afford to keep the clinic open. However, during our inspection, we found the clinic to be open again with very limited services — a sole, unsupervised health-aide who, while caring and well-meaning, can't write prescriptions.

Like Chitina, around half of Alaska's rural settlements have less than 350 people. Several parameters seem to control the ability of clinics in such small places to provide the types of medical treatment that the Lower 48 would consider "normal:"

- Staffing by a certified "physician assistant" (PA) who is authorized to act under the general supervision of a distant physician.
- Periodic visits by physicians and dentists ("itinerant" services).
- Consultations with distant physicians via "telehealth" diagnostic equipment.
- Staffing by a financial manager who can supplement the basic Indian Health Service operating grant with other funding, such as Medicaid and Medicare reimbursement, federal grants for low-income clinics, and the traditional billing of private insurance companies.
- Economies of scale by sharing overhead, such as billing services or office space.

Problems in all five of these areas contributed to the failure of Chitina's clinic. To put it another way, the small tribe lacks the capacity to operate a public clinic on its own.

As in many of these tiny settlements, the sustainability of a publicly-funded facility is often linked to the sustainability of one or two key residents. The founder of the Chitina clinic was the physician assistant who provided its treatment as a part-time contractor. He ironically died from a continuing illness on the day after he spoke in detail to Denali's program manager about the downfall of his institution. This clinic was his passion, and he was willing to live under conditions that make recruitment of any replacement difficult (a one-room cabin without running water).

The owner-tribe has terminated the common arrangement for consultations with physicians from the statewide Alaska Native Tribal Health Consortium (ANTHC). Sophisticated "telehealth"

equipment for remote diagnosis lies unused, despite an annual federal payment of around \$200,000 for this clinic to access the network.

Termination of the clinic's billing staff has eliminated the cash flow from Medicaid and private insurance. (An estimated 60% of Chitina's users were billable under these options.) And the potential federal subsidy for a low-income clinic has not been pursued by the tribe.

As requested by the tribe in its application to Denali, the clinic was implemented as a stand-alone structure five miles away from Chitina itself. Despite the small size of the settlement, we found considerable uncertainty among the locals as to what services are still available, and for whom.

In fact, this appears to be somewhat of an "absentee owner" situation. Three of the five tribal board members told us that they live in Anchorage (300 miles from Chitina). And at least two of these three have never personally used the Chitina clinic.

#### HOW WE REVIEWED THIS PROJECT

Our review was conducted in accordance with section 2 of the commission's standard grant assurances, sections 4(a) and 6(a) of the Inspector General Act, and the *Quality Standards for Inspections* issued by the federal Executive Council on Integrity and Efficiency.

A project "inspection," such as this one, is narrower in scope and procedures than the classic financial "audit." One prominent originator of this type of inspector general review described it as follows:

*The idea is to prevent problems before they occur and to avoid vulnerabilities from becoming permanent features of programs. We usually initiate these reviews ourselves, but sometimes senior program managers request that we find out what is happening as grantees or government agencies struggle with the complex tasks of starting a new program — what seems to be working, what is not, what barriers grantees are facing, what, if anything, any of them have been able to do about problems which arise, what innovative practices grantees are experimenting with, and whether and how they are measuring progress, etc. . . .*<sup>5</sup>

In conducting this inspection, our main procedures included (1) an on-site field visit to the clinic and surrounding community, (2) interviews of the clinic's owner, staff, and users, (3) interviews of state and federal officials, (4) interviews of Denali Commission personnel, and (5) qualitative analysis of records and reports.<sup>6</sup>

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<sup>5</sup> George F. Grob, "Inspections and Evaluations: Looking Back, and Forward Too," *Journal of Public Inquiry* (spring/summer 2004), page 11.

<sup>6</sup> Michael Ketover (JD) of my staff was the primary field reviewer and contributed substantially to this report. I much appreciate the assistance of the inspector general for the U.S. Department of Commerce in providing my office with a temporary interagency detail of this senior program analyst under Denali Commission Act §§ 306(d), 305(a).

Our detailed interview of Denali's program manager and director of programs was memorialized in a 105-page transcript. At the exit conference, the agency's COO and director of programs offered us their input on a preliminary inspection report. The agency head was provided an opportunity to comment either formally or informally at his discretion on our final report.

### *LESSON LEARNED NO. 1*

#### THE FEDERAL CO-CHAIR SHOULD ADD A "RURAL OMBUDSMAN" TO DENALI'S STAFF

Denali funds the construction of facilities, not their operation. Nevertheless, the public seems to expect that they can return to the Denali Commission for intervention if a project disappoints in the years after they get the keys. And, instead of retreating to bureaucratic silos, Denali has accepted its implicit mantle as the "great convener," or Alaska's de facto federal ombudsman.

The Chitina clinic was completed years ago, but we observed during our inspection that all parties seem to respect Denali's management as the legitimate mediator (and meetings of the commissioners as the legitimate forum). We have previously recommended that the agency head formalize this honor by adding the position of "rural ombudsman" to Denali's staff.<sup>7</sup>

Denali's management envisions a more active role by the state government in the agency's work. The state's commerce commissioner has now stationed an experienced "bush" specialist at the commission, and that individual — fluent in both Yupik and English — could potentially be detailed to serve as Denali's first "rural ombudsman" under the Intergovernmental Personnel Act.

Given Denali's role as an experimental station that tests the untested, some projects will be initially unsuccessful and require course corrections. A recent study of Denali-funded facilities recommended retention of talented contractors to shepherd derailed projects.<sup>8</sup> The rural ombudsman would seem the appropriate position to coordinate such intervention.

### *LESSON LEARNED NO. 2*

#### DENALI SHOULD EXPLORE SCHOOL DISTRICT OPERATION OF NON-REGIONALIZED CLINICS

Clinics in tiny, unincorporated settlements like this frequently operate as part of a regional health corporation. The Chitina tribe, however, wanted its own clinic — and Denali allowed it. Given the tribe's current inability to implement the underlying assumptions of the grant, Denali needs to salvage the project with some form of creative, mediated solution.

We note that the public school is usually the dominant public facility in remote Alaskan communities. Unlike the Lower 48, many rural schools are directly funded by the state

<sup>7</sup> See our report for Red Devil, Alaska at the inspector general home page at [www.denali.gov](http://www.denali.gov).

<sup>8</sup> See Brian Saylor, *Multi-Use Facility Program Evaluation* (NANA Pacific, April 30, 2008), page 56.

government due to the lack of a local tax base. And the state by law funds a school, complete with running water and electricity, for every place with at least 10 students.

However, Chitina does not even have its own school — a signal in itself that this isolated spot may not be a good home for a \$1 million clinic. The nearest school (130 students, 10 teachers) is 25 miles down the road at Kenny Lake, where its more-centralized location allows it to serve various unincorporated settlements.

We recommend that Denali's state co-chair (the state's former deputy commissioner of education) attempt to negotiate a transfer — both physical and organizational — of this failed clinic to the Kenny Lake School. And, if successful, we recommend that Denali's federal co-chair (the former general in command of the Alaska National Guard) attempt to arrange military assistance in moving the structure down the road. (The military has quite the reputation for community service here in moving everything from dinosaur fossils,<sup>9</sup> to a historic biplane,<sup>10</sup> to an Italian statue,<sup>11</sup> to a local elephant at the zoo that recently needed to retire in a warmer climate.<sup>12</sup>)

Direct operation of clinics by local schools presents quite symbiotic opportunities for all parties. The school district's business office can profit from additional federal funding and the processing of insurance billings. The school is the one place in the community with the most reliable utilities (including electricity, Internet, and running water). The same housing used to recruit rural teachers can entice the skilled physician assistant and itinerant doctors that are critical to clinic success. No target population is more important for health care than the next generation (and the parents raising it). Both the popular educational video-conferencing network and the underused telehealth diagnostic system are funded through the same national excise tax on phone bills. And, last but not least, physical inclusion within a local school is the best insurance of some well-maintained, continuing public use if Denali's hope for three decades of use as a clinic turns out to be overly optimistic.

This type of solution will definitely require agencies at all levels to dismantle their "silos." And that dismantling would seem squarely within the Denali Commission's inherited coordination role as the "great convener."

### *LESSON LEARNED No. 3*

#### DENALI'S EVALUATION MANAGER SHOULD NEGOTIATE A DATA-SHARING AGREEMENT TO ASSESS SMALL CLINIC USE OF TELEHEALTH SERVICES

Consumers pay a national excise tax on their phone bills to support the Universal Service Fund. Rural "telehealth" networks are one service subsidized out of these nationwide collections.

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<sup>9</sup> North Slope to Fairbanks.

<sup>10</sup> Montana to Anchorage.

<sup>11</sup> Seattle to Fairbanks.

<sup>12</sup> Anchorage to California.

And no state gets subsidized more than Alaska for rural telehealth. The FCC's monitoring report shows that 58% of the entire nation's \$34.4 million subsidy went to Alaskan providers, with Alaska's average subsidy of \$54 per rural person dwarfing the next-highest of less than \$2 per person in North Dakota.<sup>13</sup>

However, Alaska's appetite for telehealth is not surprising given both the lack of rural doctors and the lack of rural roads compared to most of America. The basic theory is that a local paraprofessional will examine a patient using a kiosk of sensors and imaging devices that enable diagnosis by a distant physician. This equipment is found in over 200 of Alaska's bush clinics, and it's a key component in Denali's basic paradigm for their construction. A study by the University of Alaska shows, overall, lots of provider use and lots of provider satisfaction with the telehealth system.<sup>14</sup>

However, we continue to encounter anecdotes of small clinics that simply don't use the provided equipment. Chitina's telehealth equipment lies unused, despite an annual federal payment of around \$200,000 for this clinic to access the network. Our prior report on tiny, unincorporated Takotna (pop.  $\approx$  50) noted the same lack of use.<sup>15</sup> And the agency head himself recently noted the lack of use at Huslia (pop.  $\approx$  250).

Denali aspires to provide a clinic in each Alaskan settlement of at least 50 people. These anecdotes initially suggest a need for Denali to revisit its paradigm that presumes a telehealth capability in every clinic. For instance, the \$200,000 federal payment for unused service at Chitina hypothetically could have instead sent 20 residents to the Mayo Clinic — or brought several Mayo Clinic doctors to Chitina for a summer of treatment (and fishing).

But telehealth remains a promising technological answer for remote health care. We thus recommend that Denali's evaluation manager execute a data sharing agreement with the agency that tracks the exact use of the network by every clinic in Alaska. While that detail was obscured within aggregated regional statistics in the university study, the underlying data is kept by the Alaska Federal Health Care Access Network (AFCHAN) office at ANTHC in Anchorage.

Denali's evaluation manager should analyze the telehealth usage patterns for every clinic funded in settlements of less than 150 people. Any pattern of nonuse at tiny clinics may be symptomatic of the recurring need to emphasize the sustainability of local skills as much as the sustainability of local buildings.

#### ***LESSON LEARNED NO. 4***

##### **DENALI SHOULD TRY A PILOT PROJECT THAT TRAINS LOCALS IN THE FINANCIAL MANAGEMENT OF SMALL CLINICS**

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<sup>13</sup> Federal Communications Commission, *Universal Service Monitoring Report*, docket no. 98-202 (2007), page 5-14, Table 5.4.

<sup>14</sup> University of Alaska, *Evolution & Summative Evaluation of the Alaska Federal Health Care Access Network Telemedicine Project* (November 2004). We note that one member of the study's evaluation team was a university official who is now appointed as the university's commissioner on the Denali Commission.

<sup>15</sup> See our report for Takotna, Alaska at the inspector general home page at [www.denali.gov](http://www.denali.gov).

The above challenges underscore the Faustian bargain that small clinics make if they sacrifice the support of a financial management staff. To use an aviation analogy, service will suffer if the aces in the cockpit aren't backed by the mechanics in the hangar.

While Chitina lies at the very end of Alaska's paved road system, this didn't need to be the little clinic that got left behind. Given the larger context, the clinic's inability to bill private insurance and pursue diversified federal funding reflect wasted opportunities for lucrative self-support.

Chitina is the gateway to one of the most spectacular national parks (Wrangell-St. Elias), a favorite recreational destination for the fearless and affluent. Visitors make the 300-mile drive from Anchorage for everything from first-ascent climbing, to extreme skiing, to world-famous fishing, to bungee jumping,<sup>16</sup> to exploring the state's best-preserved ghost town.<sup>17</sup> These hoards of adventurous visitors get sick, get hurt, fill prescriptions, and never leave home without the plastic evidence of their credit and their health insurance.

But Chitina is just one of several settlements in the area that seek Denali funding for clinics. We thus recommend that Denali attempt a pilot project that would train a dozen or so residents in the financial management of small, publicly-funded clinics. For instance, Denali could conceivably implement this by convening an inspiring coalition of faculty from these organizations that have various degrees of past connection with the agency:

- Association of Government Accountants (AGA), which offers its Certified Government Finance Manager (CGFM) course throughout the nation.
- Foraker Group, which develops grant management skills within Alaskan nonprofits.
- Alaska Department of Health & Social Services, which supports small clinic efforts to bill for Medicaid.
- Anchorage's Career Academy, a local vocational school which offers training to be an "insurance coding and billing specialist."
- Alaska Native Tribal Health Consortium, which offers billing services of its own and trains in billing for telehealth through its AFHCAN affiliate.

Such a pilot project in local capacity would emphasize that Denali projects are as much about the sustainability of people as the sustainability of buildings. In fact, the outgrowth of this project might be a consolidated billing entity similar to that which Denali has supported for rural utilities.

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<sup>16</sup> The old McCarthy railroad trestle.

<sup>17</sup> McCarthy and its historic Kennecott mine.

***LESSON LEARNED No. 5*****DENALI SHOULD TRY A PILOT PROJECT THAT TESTS ITS OPEN DOOR POLICY WITH "MYSTERY SHOPPERS"**

The tribe at Chitina obtained Indian Health Service funding to provide clinic services to its members. However, Denali approved the tribe's construction grant based on its representations that the \$1 million clinic would serve the public at large. In fact, Denali's grants are conditioned on the agency's "open door policy:"

*The Denali Commission requires that all health care facilities that it funds be open to all who seek service and can pay for this service. We recognize that some organizations are not set up to handle third-party billing (i.e., Medicaid/Medicare, and other insurance forms). At a minimum, however, we expect the clinic to provide health care services to anyone who can pay for those services. All applicants must have appropriate and necessary resolutions and support letters to acknowledge their responsibility for compliance with this policy.*

Nevertheless, local debate continues — as it has since the original opening in 2005 — as to whether Chitina's only clinic is equally available to non-tribal users. Denali's staff has fielded periodic complaints, with the tribe always promising Denali that all paying customers will be served.

Our inspection interviews provided anecdotes that were, overall, ambiguous on the issue. And, regardless of who is now getting treated, it's operating as a clinic that doesn't bill its users.

The classic method to test for disparities in customer service is a "mystery shopper" program, such as that used by large retailers and the U.S. Postal Service. If Denali's management is concerned about equal access in its clinics, we recommend that it try a pilot project of this nature. The pool of unknown, visiting "customers" could potentially be drawn from the university's nursing or public health students, or from the Career Academy's medical assistant program. And this experience may even inspire some students to work in rural Alaska as part of the larger solution.

***LESSON LEARNED No. 6*****DENALI SHOULD REVISIT ITS OPEN DOOR POLICY**

At first glance, Denali's "open door policy" seems an unquestionable tenet of a pluralistic society that aspires to eliminate discrimination — including the specter of reverse discrimination. However, the sensitive, Alaskan version of this issue is more complex in practice, and Denali should revisit its policy in light of several years of experience with the nuances.

For some small clinics like the one at Chitina, the grantee may have committed to serve the general public as an argument in support of its proposal's "sustainability." An estimated 60% of Chitina's patients were not members of the tribe.



However, small clinics in some other locations may see few non-tribal members. If such a clinic relies solely on an annual Indian Health Service operating grant, the economies of scale could potentially not warrant establishment of a billing system for the occasional non-tribal visitor. And the absence of any rural clinic might mean that tribal patients would travel at greater public expense to urban Alaska for treatment. Or that communicable disease would go untreated until the patient eventually arrived at a population center.

Federally-funded health facilities vary in the degree to which they are open to the general public rather than restricted to a target population. Military clinics serve military personnel and their dependents. The Capitol's clinic serves senators and representatives elected to Congress. Veterans Administration facilities obviously have their limited user group.

Such familiar examples, of course, involve boundaries that are not defined by ethnicity. But Denali's clinics in western Alaska form the backdrop for a recent landmark court decision based squarely upon the federal mission to serve tribal patients. Tribal entities trained "dental therapists" to perform procedures (fillings, extractions) that have traditionally been conducted only by dentists. The Alaska Superior Court found that the federal responsibility for tribal health trumped any objections based on state licensing laws.<sup>18</sup> To the extent that Denali's open door policy might require a dental therapist to extract a non-tribal tooth at a tribal clinic, the policy seems on a collision course with the uncharted edges of the landmark case.

Similarly, tribal leaders sometimes argue that continuing health care is an expected part of last century's compensation for transfer of the areas historically occupied before the U.S. purchase of Alaska. For instance, a recent publication of tribal viewpoints states that "[i]n essence, health care for indigenous peoples in the United States has been 'prepaid' through trades of land and resources owned by indigenous nations for basic services from the United States government."<sup>19</sup>

And one well-known corporate president has asserted that "[t]he health, housing and other benefits that are conferred on the Alaska Natives as partial payment for the past takings of land are of importance, not only to the Native community but to the economy of the state itself."<sup>20</sup>

Other Alaskan leaders counter that the Alaska Native Claims Settlement Act transferred land and cash in full, complete, and final satisfaction of everyone's historical claims. We note this very polarized, longstanding issue only because Denali may be unintentionally enmeshing itself in a larger political controversy beyond its control.

Once Denali gives an owner the keys to its clinic, Denali has little practical ability to police what happens there. The most potent motivator may just be what Professor Axelrod theoretically calls

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<sup>18</sup> *Alaska Dental Society v. State of Alaska*, case no. 3AN-06-4797 Civil (Alaska Superior Court, June 27, 2007). See Erik Bruce Smith, "Dental Therapists in Alaska: Addressing Unmet Needs and Reviving Competition in Dental Care," 24 *Alaska Law Review* 105-143 (2007).

<sup>19</sup> University of Alaska and Alaska Pacific University, *Do Alaska Native People Get Free Medical Care?* (2008), page 78.

<sup>20</sup> Roy M. Huhndorf, *Reflections on the Alaska Native Experience* (CIRI Foundation, Anchorage, Alaska, 1991), page 36.

“the shadow of the future,”<sup>21</sup> that is, the perceived risk that Denali will have a long memory the next time the same community wants a grant.

On the other hand, civil rights statutes already exist to protect against discrimination in any facility that serves the public. Regardless of whether Denali has an open door policy, any victims of reverse discrimination have recourse to civil rights regulators at the Justice Department and the Alaska Human Rights Commission (who would then have to reconcile the tension between the federal objectives of nondiscrimination and service to a target population).

In short, Denali’s well-meaning policy may be unenforceable, redundant, or trumped by other federal interests.

In view of all these complicating nuances, Denali’s management should revisit its assumption that every clinic, no matter where located or how funded, should set up a billing system that enables it to serve every potential visitor. An intended bar on reverse discrimination may be having unintended effects in practice.

Tribal lands in the Lower 48 are far more accessible from the national highway system, and Denali may wish to compare how the tribes there have agreed to care for the health issues of their many non-tribal visitors. This comparison may become especially pertinent if a viable, transcontinental shipping channel continues to open up in the arctic over the next decade. If that long-sought “Northwest Passage” materializes as projected, health facilities along Alaska’s northern and western coasts will be part of the action.

#### *LESSON LEARNED No. 7*

##### DENALI SHOULD REQUIRE AN IN-KIND CONTRIBUTION OF STAFF HOUSING FROM COMMUNITIES WANTING A CLINIC

Chitina lost its physician assistant who was willing to live in a one-room cabin with no running water. The difficulties in recruiting a replacement are the same as those faced by rural schools in retaining their teachers. This is the reason that Denali has been a significant player in the construction of teacher housing around the state.

Where a Denali-funded clinic does not include its own housing, the community needs to offer it as part of its 20% contribution to the project. Since students and their parents will be major users of any clinic, the community may be able to negotiate the joint use of teacher housing. State government representatives to the Denali Commission may be able to assist with such agreements in the case of rural school districts that are directly funded by the state as REAAs.

We have previously recommended that Denali give priority to communities that emphasize grant leveraging rather than grant harvesting. Long-run national support for the agency’s programs may be encouraged to the extent that projects are perceived more as innovative partnerships and community “barn raisings” — and less as short-term cash injections and entitlements. In this era,

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<sup>21</sup> See, generally, Robert Axelrod, *The Evolution of Cooperation* (Basic Books, 1984), pages 126-132.

we would expect public patience to be worn pretty thin by any Denali clinics that can't be staffed, plumbed, or heated.

### ***LESSON LEARNED No. 8***

#### **DENALI'S DIRECTOR OF PROGRAMS SHOULD EXPLORE THE CLINIC'S POTENTIAL USE AS A MEDICAL SCHOOL FIELD STATION**

The Denali Commission serves as a national experiment that explores diverse possibilities for providing basic facilities in remote settlements. And, at Chitina, Denali explored the outer limits of the envelope as to what a small tribe could do on its own in an isolated place.

Over the past several years, Denali has increased the technical sophistication with which it screens grant requests for small clinics. Under this improved process, failures like Chitina should be rare. Operation under the supportive umbrella of a regional health corporation will probably be the norm.

One "salvage" possibility for this clinic might be its use as a medical school field station. We recommend that Denali's director of programs (an MPH herself) contact the deans of medical schools that focus on public health (such as Johns Hopkins) and explore the potential assignment of students serving rotations, residencies, and fellowships. Any doctors-in-training who appreciate mountain climbing, fishing, skiing, and flying may find this a more than tolerable way to serve their professional rites of passage.

### ***LESSON LEARNED No. 9***

#### **DENALI'S GRANT AGREEMENTS SHOULD ADDRESS THE CONTINGENCY OF FAILED PROJECTS**

Idealistic Denali Commission insists that grantees commit to operate the funded facilities for a period of 30 years (an entire generation). Denali requires grant writers to submit a "business plan" that demonstrates this capacity but, in reality, the "business" is largely a projection of the continued willingness of other federal agencies to fund operations in the decades after Denali provides the keys.

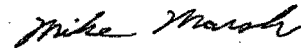
Failure is indeed an option when the bar is set this high, and the Chitina experience underscores the need for Denali to write its grant agreements with terms that anticipate the contingency in a constructive manner.

For example, Denali requires the constructing entity (usually ANTHC) and the ultimate owner to sign the "cooperative project agreement" that implements the grant (gets the building built). However, unless the clinic is under the umbrella of a regional health corporation, there is no advance arrangement for any agency to intervene if the clinic derails after opening. Denali should remedy this ambiguity by insisting that either ANTHC or the state health department sign the cooperative project agreement with a commitment of continuing technical assistance over the optimistic 30-year lifespan of any clinic going it alone.

On the other hand, should Denali find in screening projects that ANTHC, the state health department, and the regional health corporation are all hesitant to make such a commitment, that would in itself be a troubling signal as to a clinic's prospects for long-term success.

More specifically, Denali should explore with its lawyer how recorded real estate documents could structure an automatic transfer of a closed facility to a government entity who can give it a good home for a public use. The local school district would seem an ideal candidate for such a reversion if a clinic fails. When ANTHC or the state agrees to provide long-term technical assistance, the cooperative project agreement should indicate that entity's responsibility to negotiate a voluntary transfer or pursue the legal action to quiet title.

Expecting Denali to personally police a facility's fate over 30 years is unrealistic for obvious reasons. The handwriting is on the wall that the future of the Denali Commission lies in an increasing financial partnership with the State of Alaska. The state's written commitment to shepherd lonely clinics would be an important advancement.



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INSPECTOR GENERAL

September 2008

To: George Canelos, Federal Co-Chair

FINAL REPORT

From: Mike Marsh, CPA, CFE, Esq., Inspector General

FOR PUBLIC RELEASE

Subject: Inspection of Agrium corporation's coal gasification research (grant no. 249-06)

In June 2008, our office conducted an inspection of the Agrium corporation's use of a Denali grant at Nikiski, Alaska (approximately 50 air-miles south of Anchorage). The purpose of this inspection was to evaluate (1) how the project advanced Denali's understanding of energy alternatives and (2) what "lessons learned" exist for Denali's funding of future research projects.

#### WHY THIS PROJECT MATTERS

The national struggle with escalating fuel prices is exacerbated in bush Alaska, where many remote settlements still depend upon diesel fuel for basic heating and electricity. In contrast, no state would seem more blessed with the natural resources to solve its own energy problems. Beyond the well-known oil fields, it's all here: natural gas, coal, rivers, waterfalls, volcanoes, timber, dramatic tides, hot springs, howling winds, and long hours of summer daylight.

Our previous inspection work has criticized the Denali Commission for perpetuating the paradigm of diesel dependency in its project selections (a past emphasis on replacing fuel tanks and diesel generators).<sup>1</sup> Under new leadership in the last several years, the commission has made significant progress in reversing this funding paradigm. With one possible exception,<sup>2</sup> the commission has explored all the alternatives for small communities somewhere in Alaska.<sup>3</sup> (Denali's online, public database<sup>4</sup> shows 182 projects categorized as "Other Energy.")

<sup>1</sup> See our report for Sterling Landing at the Inspector General home page at [www.denali.gov](http://www.denali.gov).

<sup>2</sup> One rural Alaskan community has received national attention for its efforts to obtain a small "nuclear battery." See "10 Audacious Ideas to Save the Planet," *Popular Science*, July 2008, pages 42-43, and Gwyneth Cravens, *Power to Save the World: The Truth About Nuclear Energy* (Knopf 2007), page 363. On the other hand, the federal government's first environmental impact statement arguably surfaced during a public controversy over a nuclear project in bush Alaska a half-century ago. See William Hedman and Charles Diters, *The Legacy of Project Chariot* (Bureau of Indian Affairs, ca. 2005), page 11, and Dan O'Neill, *The Firecracker Boys* (Basic Books, 2007), page 293. Though rural communities vary greatly in their positions on this option, the agency head has invited them to approach the commission with any proposals.

<sup>3</sup> Denali's repertoire of projects so far has included wind turbines, geothermal, run-of-the-river hydro, waste heat recovery, diesel efficiency, natural gas, tidal, interties, in-river turbines, underwater cable, and steam from a wood boiler.

<sup>4</sup> See [www.denali.gov](http://www.denali.gov).

The Agrium project is an important chapter in the commission's effort to reverse the diesel paradigm and explore the options. Alaska has abundant coal around the state, and the commission gave Agrium a \$2 million grant to research technology that could convert this coal into "syngas" (coal gasification).

This project also represents the classic struggle to keep a small town from losing a dominant, resource-based industry. Agrium operated one of the nation's largest fertilizer plants in little, unincorporated Nikiski (pop.  $\approx$  4000) — at the end of the road about 50 air-miles south of Anchorage. Despite Alaskans' efforts to farm everything from giant vegetables to moose, Agrium's shipments of its fertilizer to Asia and Mexico were arguably the state's most successful agricultural product.

The basic raw material for Agrium's plant was locally-extracted natural gas that it could no longer afford to buy. Commission-funded research showed Agrium that syngas wouldn't save the plant, and it had finally to close in the past year after four decades of use. Around 100 workers had to find other work.

However, the largest employer in Alaska is the military rather than anything related to agriculture. Conversion of coal into a liquid or gas is one option being studied in hopes of reducing both military fuel costs and the need to close ("realign") northern bases. In that sense, the fates of Agrium's research and the rest of the state are linked.

#### HISTORICAL TIMELINE

The plant was originally constructed by Unocal in 1967. Agrium purchased the plant from Unocal in 2000, with the necessary natural gas continuing to be supplied from Unocal's local wells as a term of the sale. A dispute erupted between the two corporations over this supply arrangement. Litigation was settled with an arbitration award of around \$35 million to Agrium, but Agrium still lost this key source of natural gas in 2005. Short-term arrangements were made with other suppliers.

On August 8, 2005, Congress enacted its Energy Policy Act that directed the Denali Commission to "*carry out energy programs, including . . . projects using coal as a fuel, including coal gasification projects.*"

On September 25, 2006, Agrium signed its agreement with Denali for a \$2 million grant to explore the possibility of retooling the plant for gas produced from Alaskan coal.

On September 25, 2007, Agrium publicly announced that it was closing the plant.

On March 13, 2008, Agrium publicly announced its decision that the Denali-funded research had not resulted in a feasible alternative to "mothballing" the plant.

On April 29, 2008, the inspector general notified Denali of this inspection.

On May 23, 2008, Agrium's CPA firm issued an audit report verifying the total federal and state grant expenditures (for the past calendar year).

On June 19, 2008, staff from the inspector general visited the facility for this inspection.

### WHY WE REVIEWED THIS PROJECT

The grant was awarded to the Agrium corporation in September 2006. However, in March 2008, the company publicly announced its decision to "mothball" the plant that would have applied the funded research.

Our past reports on other projects have recommended that the Denali Commission apply its funding to find alternatives to the paradigm of diesel dependency that is troubling rural Alaska. The Agrium funding appears to be just such an effort, and it deserves a public epilogue as the project is closed out and the physical facility decommissioned.

### HOW WE REVIEWED THIS PROJECT

Our review was conducted in accordance with section 2 of the commission's standard grant assurances, sections 4(a) and 6(a) of the Inspector General Act, and the *Quality Standards for Inspections* issued by the federal Executive Council on Integrity and Efficiency.

A project "inspection," such as this one, is narrower in scope and procedures than the classic financial "audit." One prominent originator of this type of inspector general review described it as follows:

*The idea is to prevent problems before they occur and to avoid vulnerabilities from becoming permanent features of programs. We usually initiate these reviews ourselves, but sometimes senior program managers request that we find out what is happening as grantees or government agencies struggle with the complex tasks of starting a new program — what seems to be working, what is not, what barriers grantees are facing, what, if anything, any of them have been able to do about problems which arise, what innovative practices grantees are experimenting with, and whether and how they are measuring progress, etc. . . .*<sup>5</sup>

We conducted our review using a three-person inspection team (a "committee of visitors"),<sup>6</sup> whose main procedures included (1) an on-site field visit to Agrium's facility in Nikiski, (2) interviews of Agrium personnel (both individual and focus group), (3) interviews of Denali Commission personnel, and (4) qualitative analysis of records and reports.

<sup>5</sup> George F. Grob, "Inspections and Evaluations: Looking Back, and Forward Too," *Journal of Public Inquiry* (spring/summer 2004), page 11.

<sup>6</sup> Michael Ketover (JD) of my staff was the primary field reviewer and contributed substantially to this report. I much appreciate the assistance of the inspector general for the U.S. Department of Commerce in providing my office with a temporary interagency detail of this senior program analyst under Denali Commission Act §§ 306(d), 305(a).

Anthony Nakazawa (PhD) of my staff provided valuable insights during the field review at the Agrium facility. I much appreciate the assistance of the University of Alaska in providing my office with a temporary interagency detail of this professor of rural development under the Intergovernmental Personnel Act, 5 U.S.C. §§ 3372, 3374.

Our detailed interview of Denali's program manager and chief operating officer was memorialized in a 105-page transcript. At the exit conference, Denali's program manager and director of programs offered us their input on a preliminary inspection report. The agency head provided helpful comments for a draft of this final report.

### *LESSON LEARNED NO. 1*

#### DENALI SHOULD CONTINUE TO RISK PROJECTS WITH VERY DIVERSE GRANTEES.

The Denali Commission serves as a national "experimental field station" that explores different possibilities for providing basic local facilities in remote settlements (clinics, power plants, fuel tanks, places to wash clothes and take a shower). In this search, the commission has tried grants to every form of recipient entity: municipal, nonprofit,<sup>7</sup> tribal, cooperative, educational, state, and corporate.

The size of the commission's grantees has ranged from a schoolhouse with 11 pupils,<sup>8</sup> to a state energy authority, to the huge, multinational, publicly-traded corporation involved in this project. As is frequently the case, Denali's money was leveraged with a grant from another agency. Of the \$4.8 million in "total outlays" that Agrium (per its final report) spent on the project, Denali provided \$1.3 million and the state government provided at least \$2.8 million. However, had the project continued, the grant agreement was premised upon an ultimate, nongovernmental contribution of \$15 million by "Agrium, partners & others."

Nevertheless, there is always an inherent tension in the commission's screening for a grantee's capacity to successfully execute its projects — and for the capacity of intended beneficiaries to keep them going after getting the keys. Tiny settlements most in need of basic public facilities may have the least capacity. And, while major corporations like Agrium may involve far less risk, their desires for capital must be matched with the niche, strengths, and statutory purpose of the Denali Commission.

There is also ambiguity as to what projects appropriately reflect Denali's mission to assist "rural" Alaska. The Agrium facility is on the road system, a half-day drive south of the state's most urban area at Anchorage. While Agrium's location is not as remote as the road-less "bush," the latter would certainly benefit from any solution discovered for escalating fuel prices.

As would be expected from a corporation accountable to shareholders, Agrium did not hesitate to close the plant and stop the research when it no longer looked profitable. And the technology considered in the research certainly involved some potential public controversies.<sup>9</sup> The assumption was that the major waste byproduct, carbon dioxide, could be pumped down oil wells

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<sup>7</sup> Both secular and faith-based.

<sup>8</sup> See our report for Red Devil, Alaska at the inspector general home page at [www.denali.gov](http://www.denali.gov).

<sup>9</sup> For instance, material distributed last month at the Alaska State Fair carries such titles as *The Dirty Truth About Coal: Why Yesterday's Technology Should Not Be Part of Tomorrow's Energy Future; Fighting the Alaska Coal Rush* (subtitle "The Myth of Clean Coal"); and *Liquid Coal: A Bad Deal for Global Warming*. Presumably, the authors of such publications would not be fans of the Agrium project in any public conversation.



instead of added to the atmosphere. The coal to be gasified was to be dug from the foothills of the Alaska Range, possibly requiring a new mine. Agrium also intended to install a new power plant that would directly burn the coal. And, though there's lots of coal in Alaska, it's still one of the "nonrenewable" fuels.

This does not mean for a moment that Agrium, a Canadian corporation, lacked concern for Alaskans. To the contrary, Agrium accepted only \$1.3 million of the \$2 million that the Denali Commission offered. And we were impressed by the transition center that Agrium implemented, with little fanfare, to place the unemployed in other jobs. Agrium officials at Nikiski seemed genuinely concerned about closing the landmark facility — to the point of considerable emotion over the loss expressed during our interviews.

In short, there is nothing in the experience with Agrium that should foreclose the Denali Commission from making grants to corporations from other northern nations if that's what it takes to get the job done. In fact, experience with this multinational corporation may be a valuable prelude to international collaboration in development along the Alaskan arc of the emerging Northwest Passage.

### *LESSON LEARNED NO. 2*

#### ANY DENALI GRANTS FOR RESEARCH SHOULD PERPETUATE RESULTS FOR THE PUBLIC.

The Denali Commission serves as a national, experimental field station that explores different possibilities for solving the problems of rural Alaska. Often the experiments work; sometimes they don't. The key in the latter case is to advance the public understanding of what doesn't work. But that didn't happen here.

Denali awarded Agrium a \$2 million grant to research the feasibility of retooling its Nikiski plant to produce a gasified fuel from coal. Agrium concluded that the technology was sound, but economics warranted closing the plant that would apply it. The grantee's close-out report summarized the progress as follows:

*The project completed a substantial amount of engineering and design to prove that gasification can be used to supply feedstock to the [Agrium plant]. . . [I]t is clear that gasification is technically a feasible solution to sustained operations . . . Through nearly two years of effort, Agrium was unable to attract a partner to [the project] under the current project economics. . . Gasification represents a great opportunity for the State of Alaska to develop and utilize its vast coal resources in an economic and environmentally friendly way. . .*

To label this as just a feasibility study would understate what was accomplished here. Agrium hired at least 11 specialized contractors, and their collective reporting constitutes a tour de force on the potential to gasify coal in Alaska. Subject matter experts addressed the constellation of issues we list in Exhibit 1.

For instance, Agrium reported to Denali that the geophysical contractor had studied the "*horizontal and lateral extent of known and suspected aquifers*" by applying "*extensive modeling and observation.*" And in another progress report, Agrium indicated its plans to compare information from "*seven gasification companies.*"

But Denali never requested any of this work-product. In fact, Agrium seemed disappointed that Denali's staff never met with the company for periodic debriefings as to all that had been learned about the Alaska possibilities. As the plant closes and Agrium disappears from Alaska, Denali's lack of interest reminds us of the popular film where the priceless relic from a heroic quest ends up as simply crated warehouse inventory.

Agrium appears quite willing to pass on its technological learning, but the grant did not require its research results to be presented to Denali in any sort of written, work-product deliverable. Rather, the commission just structured the grant as a subsidy for Agrium's internal decision-making on the potential use of its corporate assets.

During our inspection, we did not attempt to second-guess Agrium's business judgment in deciding not to proceed. However, in the agency head's review of our draft inspection report, he indicated his interest in further details of what factors were determinative in the corporate thinking. Those details would most likely be found in the business plan memos that Agrium circulated when it unsuccessfully courted potential investors. The agency head should be able to request these internal documents under section 2 of the grant assurances that promises Denali "*access to and the right to examine all records, books, papers, or documents related to the award . . .*"

Ironically, it was Agrium's project manager — not Denali — who first recommended that future grants include a provision assuring the dissemination of such a body of knowledge garnered at public expense. That corporate executive seemed proud of his Denali-funded "*world-class evaluative results*" and asserted that Denali "*needs to take and extrapolate the learning of Agrium to future projects.*"

To put it another way, this was a "low-maintenance" grant for both Agrium and the Denali Commission. It didn't require Agrium to provide the commission with anything beyond a quarterly number for dollars spent and a general narrative of where the project stood. Agrium was understandably happy with the commission's staff — they didn't require much.

EXHIBIT 1 DENALI-FUNDED BODY OF RESEARCH CONDUCTED BY AGRIMUM
Plant retooling and power house design
Coal supply transportation and storage
Gasification processes
Licensing of applicable patents
Environmental permitting
Survey of available labor
Power transmission grid
Air quality control
Area geophysics, including ground water supply (aquifers)
Financial modeling (cost estimates)
Bond financing
Potential investors
Comparative information from seven gasification companies

However, given Alaska's abundant coal and other players' continuing efforts, it would be unfortunate to deprive the public of the knowledge left behind. By failing to perpetuate Agrium's learning gained at public expense, the commission may be melting down some silver bullets. For instance, the conversion of coal is being studied elsewhere as a solution to the fuel costs of Alaska's largest employer (the military).

**Recommendation:** Agrium's facility at Nikiski is currently in the process of being permanently closed ("mothballed"). The commission's evaluation and reporting manager should visit the plant without delay and obtain the collection of studies that memorialize the research work-product produced at the commission's expense. Those documents should be placed in the public domain in the library at the University of Alaska in Fairbanks.

**Agency response:** Denali is attempting to obtain copies of Agrium's work-product. Denali now requires semiannual, lessons-learned meetings with all grantees. Denali has added an evaluation and reporting manager to its staff. Denali plans to add a lessons-learned feature to its public home page.

### *LESSON LEARNED NO. 3*

#### DENALI SHOULD LEVERAGE THE AUDITS OF GRANTEES DONE BY THEIR CPA FIRMS.

Federal law requires that certain grantees (annual spending  $\geq$  \$500,000) arrange for an audit from a CPA firm. These basic audits check for accuracy of the financial statements, reliability of the accounting systems, and compliance with selected regulatory requirements.

Agrium was required to obtain such an audit of its Denali Commission grant — and it did so. The email record shows a conscientious effort by Agrium's staff to ascertain the grant's reporting requirements.

However, Denali required the grantee to obtain only a limited, "program-specific" audit that verified the overall totals for federal and state expenditures in the past calendar year. Though the grant agreement's "cost share distribution table" showed a potential \$15 million match by "Agrium, partners & others," Denali received no verification as to how much of Agrium's own money was ultimately contributed. And the grant's close-out report to Denali shows a total of only around \$3.5 million for the non-Federal "recipient share of outlays" — with at least \$2.8 million of that from the state grant per the grantee's audit report.

Since Denali did not specify further, the CPA firm's limited audit was consistent with the regulatory minimums.<sup>10</sup> Nevertheless, Denali has hopefully learned its lesson for the future and will require audits that verify the match that actually occurs in assistance like this that is premised on substantial cost sharing.

<sup>10</sup> OMB Circular A-133 § 235(b).

There was no linkage between the commission's staff and the auditor at the critical phases of (1) planning the audit testwork samples (the auditor's "risk assessment"),<sup>11</sup> (2) analysis of what (if any) problems the auditor ultimately found, and (3) a potential "quality control review" of the auditor's workpapers.

The inspector general asked for a copy of the audit report during this inspection and appears to be the first person at the commission to have read it. Fortunately, in this case, the auditor issued an unqualified opinion — with no findings — on each of the three traditional topics.

The commission's staff was also entitled to obtain a copy of the auditor's "management letter" to the grantee.<sup>12</sup> Though the audit was presumably paid for out of the commission's grant, we found no evidence that the commission's staff ever asked to see this letter of advice to the grantee.

Denali's management has long asserted that its monitoring effort depends upon the grantees' own audits such as this one. However, OMB regulations encourage management to be more than a passive bystander to the work done by grantees' CPA firms:

*The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring which could be material to the Federal program. . . [A]s part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency. . .*<sup>13</sup>

OMB regulations also require the "federal awarding agency" to do the following:

*Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this part. . .*

*Issue a management decision on audit findings within six months after receipt of the audit report and ensure that the recipient takes appropriate and timely corrective action. . .*<sup>14</sup>

*The management decision shall clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee.*<sup>15</sup>

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<sup>11</sup> A brief phone call should usually be sufficient. Or, since there are limited CPA firms that audit the commission's grantees, discussions concerning a firm's clients could potentially be combined.

<sup>12</sup> OMB Circular A-133 § 320(f).

<sup>13</sup> OMB Circular A-133 § 525 (emphasis added).

<sup>14</sup> OMB Circular A-133 § 400(c) (emphasis added).

<sup>15</sup> OMB Circular A-133 § 405(a) (emphasis added).

Where the commission is the main federal funder (as in this grant), OMB regulations also authorize the commission's management to conduct a "quality control review" of the workpapers produced by the grantee's auditor.<sup>16</sup> This quality review need not be an arduous effort: a brief look at the auditor's sampling will either instill confidence, or suffice as a reality check on the limits to which the commission should be relying on the auditor's work. (Such an abbreviated look, of course, does not constitute a professional "peer review" of a CPA firm's competence.)

This "leveraging" disconnect is hardly unique to the Denali Commission. OMB and the Association of Government Accountants (AGA) have jointly convened a national panel that is trying to fix it across the federal system.<sup>17</sup> A recurring theme of the panel's discussions is that the results from these costly, private audits should have utility in government monitoring, rather than suffice as an end in themselves (mere compliance rituals).<sup>18</sup>

Though the commission's management cites its reliance on grantees' own audits, it doesn't seem to be in anyone's job description to offer planning input to the CPAs, follow up on what the CPAs find, check the quality of their work — or even just read the audit reports and grantee "management letters." These activities should be a routine part of the operating staff's role in monitoring its grants. And that staff can certainly refer significant findings to the inspector general for use in planning our own work.

**Recommendations:** (1) Grant agreements should specify audits that verify the match that actually occurs in assistance premised on substantial cost sharing. (2) Grant agreements should specify that a grantee's audit report and management letter will be sent to the Denali Commission's grants administrator for initial review. (3) Program managers should initiate at least a brief planning discussion of risk factors and testwork samples with a grantee's auditor. (4) The grants administrator, program manager, evaluation and reporting manager, and state's single audit coordinator<sup>19</sup> should jointly meet to review any audit report with findings for needed follow-up and "lessons learned." (5) For grants in which the commission is the main federal funder, either its grants administrator or its evaluation and reporting manager should conduct a limited "quality control review" of key auditor workpapers. (In the case of Agrium, its auditor was just blocks away from Denali's office.)

#### INSPECTOR GENERAL COMMENT

The hope, of course, was for Agrium's aging plant to be retooled for coal gasification — not just studied. However, like other Denali-funded energy projects, there was an implicit "mammoth" in the room that Denali has limited ability to resolve.

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<sup>16</sup> OMB Circular A-133 §§ 400(b)(2), 400(a)(3).

<sup>17</sup> This inspector general is the ECIE representative to this national panel, the OMB/AGA Partnership for Intergovernmental Management and Accountability.

<sup>18</sup> It's obviously not a new theme in the accounting world. See, for instance, Michael Power, *The Audit Society: Rituals of Verification* (Oxford, 1997), and Marianne M. Jennings, *The Seven Signs of Ethical Collapse: How to Spot Moral Meltdowns in Companies . . . Before It's Too Late* (St. Martin's, 2006).

<sup>19</sup> The state government is a major grantee that passes the commission's funding on to numerous sub-grantees around the state. Its "single audit coordinator" tracks the audit reports that CPAs do on all state grants.

While Denali funds the construction of new generators and tank farms around the state, Denali doesn't try to remove their rusting predecessors — or remediate the soil they've contaminated over the decades. Communities periodically voice this disappointed expectation to Denali's management. The state's environmental regulator also voiced it to us as a general concern unconnected with this inspection.

A similar "brownfield" issue lurks at the Agrium facility that Denali's grant was designed to retool. The state's online, public, "contaminated sites database" reports the facility's history as follows:

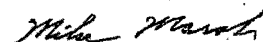
*This plant has operated since 1967. A large amount of ammonia and other substances, including arsenic, have been spilled over the years and contamination of the soil and groundwater has occurred. Extent of contamination and health impacts unknown.*

*This plant produces fertilizers and has had numerous spills and accidental discharges. It is suspected that the land and water may be polluted with arsenic, nitrates, and other unidentified pollutants.*<sup>20</sup>

The state's environmental regulator seems quite willing to discuss "brownfields" with Denali's program staff, but this is not a step in the commission's current process for screening grant applications. In the case of Agrium, the regulator seems satisfied that the company is implementing the necessary long-term remediation. This progress will hopefully continue as Agrium "mothballs" the facility.

We have previously written about an opportunity in waiting that sometimes accompanies the state's brownfields.<sup>21</sup> The military is the state's largest employer, which includes the remediation of hundreds of formerly used defense sites around Alaska (the FUDS). Cleanups can involve restorative compensation to damaged communities, as well as the basic cleanup itself. While the Agrium site does not appear to implicate a FUD, Denali's staff should remember this possibility of partnering with the military when screening grant applications.

Though the Denali Commission out of necessity sidesteps this resident "mammoth" of brownfield cleanup, it still casts a shadow over the agency's ultimate historical success in solving Alaska's frontier problems.



MIKE MARSH, CPA, MPA, CFE, ESQ.  
INSPECTOR GENERAL

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<sup>20</sup> See [www.dec.state.ak.us](http://www.dec.state.ak.us).

<sup>21</sup> See our report for Sterling Landing at the Inspector General home page at [www.denali.gov](http://www.denali.gov).



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Washington, DC 20548**

## **Decision**

**Matter of:** Denali Commission—Overobligation of Apportionment

**File:** B-316372

**Date:** October 21, 2008

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### **DIGEST**

The Denali Commission incurred an obligation for the amount of a grant to the Alaska Department of Commerce, Community and Economic Development when it transmitted its Financial Assistance Award to the Alaska Department on August 27, 2005. The Commission did not violate the Antideficiency Act because it had sufficient funds available for the grant at the time it incurred the obligation; however, the Commission failed to record the obligation in accordance with the recording statute, 31 U.S.C. § 1501(a).

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### **DECISION**

The Inspector General of the Denali Commission has requested our decision on whether the Commission violated the Antideficiency Act (Act) in December 2005 when it recorded an obligation of \$400,000 for a grant to the Alaska Department of Commerce, Community and Economic Development. Letter from Mike Marsh, Inspector General, Denali Commission, to Susan Poling, Managing Associate General Counsel, GAO, Mar. 12, 2008 (Request Letter). As explained below, the Commission incurred an obligation for the grant on August 27, 2005, when the Commission transmitted a Financial Assistance Award to the Alaska Department of Commerce, Community and Economic Development, although it failed to properly record the obligation. Nevertheless it had an apportionment sufficient at that time to cover the grant amount; therefore, the Commission did not violate the Antideficiency Act. Compliance with the Antideficiency Act is measured at the time an agency incurs an obligation, not when it records the obligation. B-302358, Dec. 27, 2004.

Our usual practice when rendering decisions is to request the views of the relevant federal agency to establish a factual record and to elicit the agency's legal position on the subject matter of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at

[www.gao.gov/legal/resources.html](http://www.gao.gov/legal/resources.html). In this instance, the request letter included, as an attachment, a copy of the Commission's Resolution No. 05-24, dated July 13, 2005, and apportionment and reapportionment schedules for fiscal year 2006 for the Commission. The Commission subsequently provided us with copies of the Financial Assistance Award, other relevant apportionment schedules, and a legal analysis that the Commission had requested from a Federal Aviation Administration senior attorney.

## BACKGROUND

Congress established the Denali Commission (Commission) in the Denali Commission Act of 1998. Pub. L. No. 105-277, §§ 301-308, 112 Stat. 2681-637 to 2681-641 (Oct. 21, 1998). The Commission operates exclusively in, and for the benefit of, the state of Alaska and has three purposes. One is to deliver federal services in the most cost-effective manner by reducing administrative and overhead costs. Another is to provide training and economic development services in rural communities. The third purpose is to provide infrastructure needs such as power generation and transmission facilities, modern communication systems, water and sewer systems. *Id.* § 302. The Commission is composed of seven members, who are appointed by the Secretary of Commerce. Six members are Alaskans, including the Governor of Alaska (or her nominee), who serves as the State Cochairperson. The seventh member is a federal official, who serves as the Federal Cochairperson. *Id.* § 303. One way in which the Commission carries out its mission is to make grants to Alaska state departments to implement specific projects. Request Letter.

On July 13, 2005, the Commission passed a resolution approving up to \$400,000 for a grant to the Alaska Department of Commerce, Community and Economic Development (Alaska Department) for the operation of the Commission's Mini-Grant Program. Denali Commission, *Financial Assistance Award*, No. 202-06 (Dec. 2, 2005), *available at* [www.denali.gov/dcpdb/Data/attachments/signed%20award152.pdf](http://www.denali.gov/dcpdb/Data/attachments/signed%20award152.pdf) (last visited Oct. 8, 2008) (Award No. 202-06). This program provides grants for projects that will generate new income for a community, create jobs, or otherwise improve the community economy. Examples of mini-grant projects are a shellfish nursery, a crane for a dock facility, and the installation of restroom facilities to accommodate more tourists and improve public health and safety. Alaska Division of Community and Regional Affairs, *State FY 07 Mini-Grant Program*, *available at* [www.commerce.state.ak.us/dca/grt/minigrant.htm](http://www.commerce.state.ak.us/dca/grt/minigrant.htm) (last visited Oct. 8, 2008).

In August 2005, Commission staff sent a Financial Assistance Award document to the Alaska Department for signature. The Alaska Department misplaced the award document and, consequently, never returned it to the Commission. After following up with the department in October 2005, Commission staff transmitted a second award document to the department, dated December 2, 2005. A department official signed the document and returned copies to the Commission. That same day the



Commission recorded a \$400,000 obligation for the grant award against a 3-year appropriation that was available for obligation in fiscal years 2005 through 2007.<sup>1</sup> Telephone Conversation between Corrine Eilo, Director of Administration, Denali Commission, and Jonathan Barker, Senior Attorney, GAO, July 8, 2008.

In September 2006, when the Commission submitted its fiscal year 2007 apportionment request to the Office of Management and Budget (OMB) for that appropriation, OMB advised the Commission that it may have violated the Antideficiency Act (ADA)<sup>2</sup> because, in December 2005, when the Commission recorded the obligation against the appropriation, the Commission had an apportionment of only \$164,480.<sup>3</sup> Subsequently, the Commission adjusted its accounts to record the obligation against no-year appropriations for which it had an apportionment. E-mail from Corrine Eilo, Director of Administration, Denali Commission, to Jonathan Barker, Senior Attorney, GAO, May 9, 2008 (Eilo E-mail). This account adjustment did not take place until September 2006.

## DISCUSSION

The question the Inspector General posed is whether the Commission violated the Antideficiency Act when it recorded an obligation in December 2005 for \$400,000 against the 3-year appropriation for which it had only \$164,480 apportioned. As posed, the answer would be yes. If an agency overobligates its apportionment, even though there may be an adequate appropriation, the agency violates the Antideficiency Act. 31 U.S.C. § 1517(a)(1). However, in examining the facts here, as explained below, the Commission incurred the obligation not in December, but in August 2005, when it first transmitted the Grant Award to the Alaska Department. At that time, the Commission had sufficient funds apportioned in a no-year account to

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<sup>1</sup> Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 118 Stat. 3300, 3302 (Dec. 8, 2004). Congress appropriated amounts to the Department of Housing and Urban Development's (HUD) Community Development Fund, to remain available for three fiscal years until September 30, 2007, for grants for the Economic Development Initiative "in accordance with the terms and conditions specified in the statement of managers accompanying this Act." *Id.* at 3302. The statement of managers specified that \$1,300,000 should be made available to the Denali Commission for economic development in remote Native and Rural Villages in Alaska. H.R. Rep. 108-792, at 1531 (2004). According to Commission staff, HUD transferred the funds to the Commission in April 2005.

<sup>2</sup> See *SF 132 Apportionment and Reapportionment Schedule*, Appropriation Account 9505071200, signed by OMB Sept. 29, 2006 (2006 SF 132), at n.1. OMB apportions all budgetary resources made available to executive agencies. OMB Circular No. A-11, § 120.4 (2008).

<sup>3</sup> *Id.* at Line No. 2A.

cover the obligation.<sup>4</sup> The no-year account was the account to which the Commission ultimately charged the grant obligation after adjusting accounts in September 2006. Eilo E-mail.

An agency incurs an obligation when it makes a definite commitment that creates a legal liability on the part of the government or takes an action that could mature into a legal liability by virtue of actions on the part of the other party beyond the control of the United States. B-300480, Apr. 9, 2003; GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: Sept. 2005), at 70, available at [www.gao.gov/legal/resources.html](http://www.gao.gov/legal/resources.html). For grants, generally, an agency incurs an obligation at time of grant award. See, e.g., B-300480, at 4. See also 31 U.S.C. § 1501(a)(5).

In B-126652, Aug. 30, 1977, we concluded that the Economic Development Administration (EDA) incurred an obligation for a grant based on an Offer of Grant similar to Denali's Financial Assistance Award form. In that case, EDA proposed to send an Offer of Grant to applicants that provided:

"This approval and award of grant . . . shall constitute an obligation to make such grant. Such obligation *may be terminated* without further cause, however, if the grantee shall fail to *affirm its timely utilization* of the grant by signing and returning to the Economic Development Administration within 30 days its affirmation of intent as set forth below."

B-126652, at 2 (emphasis added). With this language, EDA incurred an obligation because EDA accepted the grant application, specified the project approved and the amount of funding, and imposed a timeframe for affirmation by the grantee.

The language in the Denali Financial Assistance Award has the same key terms upon which we based our conclusion that the EDA Offer of Grant established an obligation. Like the EDA Offer, Denali's grant award specifies the project and the amount of funding, as well as a 30-day timeframe for affirmation by the grant applicant. When the Commission transmitted the Financial Assistance Award to the Alaska Department in August, the language of the award form recognized an obligation at that time. The award form stated that:

"This Financial Assistance Award . . . *constitutes an obligation of federal funding*. By signing . . . , the Recipient agrees to comply with the Award provisions indicated below and attached. . . . If not signed

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<sup>4</sup> See *SF 132 Apportionment and Reapportionment Schedule*, Appropriation Account 95X1200, signed by OMB Aug. 9, 2005 (2005 SF 132).

and returned without modification by the Recipient within 30 days of receipt, the Federal Co-Chair may unilaterally terminate this Award.”

Award No. 194-05, at 2 (emphasis added).

Accordingly, the Commission incurred a \$400,000 obligation on August 27, 2005, when it transmitted the initial Financial Assistance Award to the Alaska Department.<sup>6</sup>

Denali’s Inspector General suggests that the Commission may have incurred an obligation when it passed its resolution on July 13, 2005, approving the grant. We disagree. Although the resolution generally expressed the Commission’s approval for making a grant, the resolution lacks the specificity required to establish a firm commitment on the part of the government to make a grant. *See generally Champaign County, Illinois v. United States Law Enforcement Assistance Administration*, 611 F.2d 1200, 1204–05 (7<sup>th</sup> Cir. 1979) (a letter from the head of an agency indicating that he had directed that funds be made available for a grant did not “amount to a formal award”). The resolution merely states that the Commission allocates funds to the Mini-Grant Program for up to \$400,000. It fails to state essential specifics such as who the grantee is and what the award performance period is. Accordingly, since the resolution did not impose a legal liability on the government nor communicate grant terms that the awardee accepted, the Commission did not incur an obligation at the time it passed the resolution.

On August 27, 2005, when the Commission incurred an obligation, it should have recorded the obligation for the grant under the so-called “recording statute,” 31 U.S.C. § 1501, but did not. The statute requires an agency to record an obligation for a grant when it is supported by documentary evidence that the grant is “payable under an agreement authorized by law.” 31 U.S.C. § 1501(a)(5)(B). To correct this failure to record, the Commission must adjust its accounts to record the obligation properly.

According to the Commission, in August 2005, it had three appropriations available to it. In the Consolidated Appropriations Act for Fiscal Year 2005, Congress appropriated \$67,000,000 to the Commission for its expenses for fiscal year 2005, providing that \$2,500,000 of that amount was to remain available until expended. Pub. L. No. 108-447, 118 Stat. at 2961. Congress also appropriated \$1,300,000 of 3-year funds available until September 30, 2007, specifically for economic development in remote Native and rural villages in Alaska.<sup>6</sup> In addition, the

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<sup>6</sup> Of course, after the expiration of the 30-day deadline for affirmation of the grant, the Co-Chair may terminate the award and deobligate the funds.

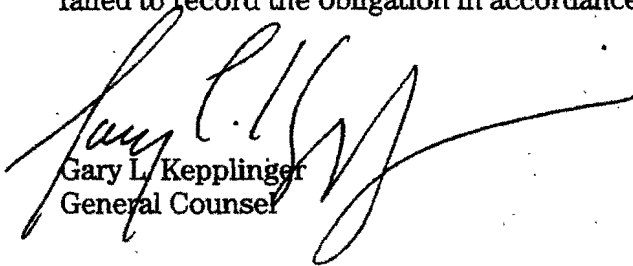
<sup>6</sup> Pub. L. No. 108-447, 118 Stat. at 3302. See note 1 above.

Commission had \$6,600,809 of no-year funds that were apportioned by OMB on August 9, 2005. *SF 132 Apportionment and Reapportionment Schedule, signed by OMB Aug. 9, 2005.* Each of these three appropriations was available for purposes of making the August 2005 grant to the state. However, only the no-year appropriation, apportioned on August 9, had an apportionment adequate to cover the amount of the grant. The Commission should have recorded the obligation against this appropriation.<sup>7</sup> Accordingly, the Commission has not violated the Antideficiency Act.

The Commission should examine its policies and procedures to ensure that it is recording its grant obligations properly, in accordance with 31 U.S.C. § 1501, and that it has appropriate controls in place to ensure that it has an apportionment at the time of obligation. Without appropriate controls, the Commission has no assurance that it complied with the Antideficiency Act as it incurred grant obligations. When the Commission adjusts its records to reflect this obligation as of August 27, 2005, instead of September 2006, it should review obligations subsequent to August 2005 to make sure there were adequate apportionments and unobligated balances to cover grants awarded during that time.

#### CONCLUSION

When the Denali Commission incurred an obligation on August 27, 2005, for a Financial Assistance Award to the Alaska Department of Commerce, Community and Economic Development, it had an apportionment sufficient to cover the obligation. Accordingly, it did not violate the Antideficiency Act. The Commission, however, failed to record the obligation in accordance with the 31 U.S.C. § 1501.



Gary L. Kepplinger  
General Counsel

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<sup>7</sup> When the Commission adjusted its accounts in 2006 in response to OMB's query regarding its available apportionment, it charged the \$400,000 obligation to the no-year appropriation. Eilo E-mail.



**G A O**

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United States Government Accountability Office  
Washington, DC 20548

Comptroller General  
of the United States

## Decision

**Matter of:** Denali Commission—Anti-Lobbying Restrictions

**File:** B-317821

**Date:** June 30, 2009

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### DIGEST

Anti-lobbying provisions prohibit Commissioners and their personal staff as well as agency officials from using appropriated funds to engage in grassroots lobbying by encouraging interest groups to contact Members of Congress and their staff regarding Denali's reauthorization. The Byrd Amendment prohibits Commissioners and their personal staff, in their role as grantees, from using grant funds to lobby Members of Congress and their staff in connection with the making of a grant. Commissioners and their personal staff may be reimbursed for travel expenses incurred while conducting the official business of the agency.

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### DECISION

The Inspector General of the Denali Commission has requested an advance decision on the availability of the Denali Commission's appropriations to contact Members of Congress and congressional staff about the agency's reauthorization, including the use of appropriations for related travel costs. Letter from Mike Marsh, Inspector General, Denali Commission, to Susan Poling, Managing Associate General Counsel, GAO, Feb. 6, 2009 (Denali Request Letter). In this regard, the Inspector General has asked specifically whether Denali Commissioners and their personal staff, who are not federal employees, may contact Members of Congress and congressional staff for this purpose, and whether the agency may provide travel funding for Commissioners and their personal staff for this purpose.

As explained below, we conclude that when performing their duties as Commissioners, Commissioners (and their staff acting in support of or on behalf of Commissioners) may contact Members of Congress and congressional staff regarding the Denali Commission's reauthorization and other agency business. Anti-lobbying provisions, however, prohibit Commissioners, when being compensated or reimbursed, including *per diem*, in performance of their duties as Commissioners, and their personal staff from engaging in grassroots lobbying. The so-called Byrd

Amendment, 31 U.S.C. § 1352, prohibits Commissioners and their staff from using grant or contract funds to influence Members of Congress and congressional staff in connection with the award of a federal grant or contract. The agency's appropriations are available to reimburse Commissioners and their personal staff for travel expenses incurred while conducting the official business of the agency.

Our practice when rendering decisions is to obtain the views of the relevant agency to establish a factual record on the subject matter of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at [www.gao.gov/legal/resources.html](http://www.gao.gov/legal/resources.html). Consistent with our practice, we sought additional information regarding agency activities. Telephone Conversation between Mike Marsh, Inspector General, Denali Commission; Corrine Eilo, Director of Administration, Denali Commission; Thomas H. Armstrong, Assistant General Counsel, GAO; and Crystal Wesco, Staff Attorney, GAO (Feb. 23, 2009) (February 2009 Teleconference). In a subsequent meeting, the Inspector General provided additional clarifying information. Meeting between Mike Marsh, Inspector General, Denali Commission; Tom Armstrong, Assistant General Counsel, GAO, and Crystal Wesco, Staff Attorney, GAO (Mar. 19, 2009) (March 2009 Meeting).

## BACKGROUND

Congress established the Denali Commission as a federal agency in the Denali Commission Act of 1998. Pub. L. No. 105-277, § 301, 112 Stat. 2681-1, 2681-637, 42 U.S.C. § 3121 note (Oct. 21, 1998). This federal agency operates exclusively in, and for the benefit of, the State of Alaska for the purposes of: (1) delivering the services of the federal government in the most cost-effective manner practicable by reducing administrative and overhead costs; (2) providing job training and other economic development services in rural communities; and (3) promoting rural development, providing power generation and transmission facilities, modern communication systems, water and sewer systems and other infrastructure needs. *Id.* § 302. One way in which the agency carries out its purpose is to make grants to the State of Alaska and various interest groups to implement specific projects. Congress has traditionally funded the agency through an annual "base" appropriation and several specialized appropriations for particular subject areas (*e.g.*, clinics, solid waste, job training). Denali Request Letter. In fiscal year 2009, Congress appropriated \$11,800,000, to remain available until expended, for "the expenses of the Denali Commission including the purchase, construction, and acquisition of plant and capital equipment as necessary and other expenses." Pub. L. No. 111-8, 123 Stat. 524, 628 (Mar. 11, 2009). Congress also appropriated several specialized appropriations for the Denali Commission in fiscal year 2009, including, for example, \$434,000, to remain available until expended, to address deficiencies in solid waste disposal sites that threaten to contaminate rural drinking water supplies. Pub. L. No. 111-8, § 716.

The Denali Commission effectively consists of two groups: the Commissioners and the agency itself. There are seven Commissioners who form the Commission, as provided by the Denali Commission Act. Six Commissioners are, by statute, officials of the State of Alaska or Alaska organizations, including the Governor of Alaska (or

her nominee) who serves as the State Co-chair. The Denali Commission Act designates, in addition to the Governor of Alaska, the President of the University of Alaska, the President of the Alaska Municipal League, the President of the Alaska Federation of Natives, the Executive President of the Alaska State AFL-CIO, and the President of the Associated General Contractors of Alaska as the remaining nonfederal Commissioners. Pub. L. No. 105-277, § 303(b). Many of the Commissioners are officials of organizations who receive federal grants from the agency or whose members receive federal grants. The seventh member is a federal official who serves as the Federal Co-chair and is appointed by the Secretary of Commerce to a four-year term. *Id.* § 303(b)(2)(B).

The Commissioners' statutory role is to propose a work plan for providing federal financial assistance in Alaska.<sup>1</sup> The Commissioners present the proposed work plan to the Federal Co-chair who approves or disapproves it.<sup>2</sup> *Id.* § 304(b). The Department of Justice has determined that the Commissioners are "special government employees."<sup>3</sup> They receive reimbursement for travel, including *per diem* when engaged in agency business.<sup>4</sup> February 2009 Teleconference.

The Denali Commission Act authorizes the Federal Co-chair to appoint agency staff. *Id.* § 306(c). The employees along with the Federal Co-chair comprise the federal agency.<sup>5</sup> Some Commissioners have personal staff who assist them in carrying out

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<sup>1</sup> The agency solicits project proposals from local governments and other entities and organizations in Alaska for rural and infrastructure development and job training in the area covered under the work plan. Pub. L. No. 105-277, § 304.

<sup>2</sup> The Federal Co-chair is also vested with the authority to break any tie in the Commissioners' votes. Pub. L. No. 105-277, § 304(b)(2)(C).

<sup>3</sup> E-mail from Brad Smith, Attorney-Advisor, Office of Legal Counsel, Department of Justice, to George Cannelos, Federal Co-Chair, Denali Commission, *Subject: Applicability of 18 U.S.C. § 208 to Members of the Denali Commission*, Dec. 7, 2006. A special government employee is as an officer or employee who is retained, designated, appointed, or employed by the government to perform temporary duties either on a full-time or intermittent basis or a part-time United States commissioner, with or without compensation, for not more than 130 days during any period of 365 consecutive days. 18 U.S.C. § 202(a).

<sup>4</sup> The Denali Commission Act provides that Commissioners are to be paid travel expenses, including *per diem*, "while away from their homes or regular places of business in the performance of services for the Commission." Pub. L. No. 105-277, § 306(b).

<sup>5</sup> For the purposes of this decision, we use "Commissioners" to refer to the six nonfederal Commissioners, and we use "agency" to refer to the Federal Co-chair and  
(continued...)

their duties as Commissioners. February 2009 Teleconference. The Commissioners' personal staff were not hired by the Federal Co-chair and are not agency employees or officials. Instead, the Commissioners' personal staff are employees of the state government entity or interest group represented by the individual Commissioner.<sup>6</sup> They receive no compensation from the agency; however, sometimes they use agency office space and are reimbursed for travel expenses to carry out agency or Commissioners' business. February 2009 Teleconference. A Commissioner's personal staff member generally assists the Commissioner, sometimes setting forth the Commissioner's position or otherwise acting for the Commissioner in meetings. February 2009 Teleconference.

The Denali Commission's authorization expired at the end of fiscal year 2008.<sup>7</sup> A reauthorization bill was introduced in the 110<sup>th</sup> Congress<sup>8</sup> but was not enacted. Even though the Denali Commission has not yet been reauthorized, it received an appropriation for fiscal year 2009. Pub. L. No. 111-8, 123 Stat. 628 (Mar. 11, 2009). It is well settled that an appropriation without an authorization can act as its own authorization. 71 Comp. Gen. 378 (1992).

#### ANALYSIS

Because the six nonfederal Commissioners and their personal staff are not agency employees, the Inspector General asked for an advance decision to address the following questions: (1) May Commissioners contact Members of the Alaska congressional delegation, as well as other Members of Congress, regarding the agency's possible reauthorization? (2) May the Commissioners' personal staff discuss reauthorization with Members of Congress and congressional staff? (3) If Commissioners' personal staff, using agency appropriations, travel to Washington, D.C. for the purposes of contacting Members of Congress regarding Denali's reauthorization, may they conduct nonagency business as well? February 2009 Teleconference. We address the first two questions in our discussion, below, of anti-lobbying restrictions. Because many of the Commissioners represent agency

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(...continued)

staff hired by the Federal Co-chair. While the Federal Co-chair is also a Commissioner, we have grouped him with the agency because he is a federal employee. Pub. L. No. 105-277, § 303(b)(2)(B).

<sup>6</sup> For the purposes of this opinion, state government entity refers to the Office of the Governor of Alaska and the University of Alaska. Both the Governor of Alaska and the President of the University of Alaska (or their delegates) serve as Commissioners. Pub. L. No. 105-277, § 303(b).

<sup>7</sup> The Commission was authorized through September 30, 2008. Pub. L. No. 108-7, § 504, 117 Stat. 11, 158 (Feb. 20, 2003).

<sup>8</sup> S. 1368, 110<sup>th</sup> Cong. (2007).



grantees, our discussion of the application of anti-lobbying restrictions includes a discussion of restrictions imposed on federal grantees. We address the Inspector General's third question in our discussion of travel reimbursements.

### Anti-Lobbying Restrictions

The Denali Commission's appropriations are subject to three anti-lobbying restrictions: 18 U.S.C. § 1913; section 501 of the Energy and Water Development and Related Agencies Appropriations Act, 2009, Pub. L. No. 111-8, div. C, title V, § 501, 123 Stat. 524, 630 (Mar. 11, 2009); and, section 717 of the Financial Services and General Government Appropriations Act, 2009, Pub. L. No. 111-8, div. D, title VII, § 717, 123 Stat. at 685.

The prohibition in section 1913 provides that appropriated funds may not be used—

“directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress . . . to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy or appropriation . . .”

18 U.S.C. § 1913. Section 1913, however, does not prohibit agency officers or employees from communicating directly with Congress. It states that the prohibition—

“shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business . . .”

*Id.*

Section 501 applies to the agency's fiscal year 2009 appropriations and prohibits their use—

“in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913.”

Pub. L. No. 111-8, § 501.

Section 717 applies to all appropriations enacted in fiscal year 2009 for any executive agency:

“No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, . . . for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.”

Pub. L. No. 111-8, § 717. Both sections 501 and 717 were enacted in annual appropriations acts and apply only to the appropriations enacted in fiscal year 2009.<sup>9</sup>

All three provisions apply to the agency's use of appropriations. Clearly, they apply to activities of the agency's employees, that is, the Federal Co-chair and his staff. While the six nonfederal Commissioners and their staff are not agency employees, the provisions apply to them as well when a Commissioner is using appropriated funds (for example, is paid *per diem* and travel expenses) in performance of Commissioner duties, or when a Commissioner's personal staff is acting on behalf of or in support of a Commissioner acting in that capacity. As noted above, the agency uses its appropriations to pay Commissioners a *per diem* when the Commissioner is carrying out Commission duties. However, because the three provisions apply to the use of appropriated funds, they do not apply to a Commissioner's activities when the Commissioner is not receiving a *per diem* or when there are no appropriations being used otherwise.

We view section 1913 as well as agency-specific and governmentwide provisions like sections 501 and 717 to prohibit communications designed to encourage members of the public to pressure Members of Congress to support administration or agency legislative or appropriations proposals (also referred to as “grassroots” lobbying).<sup>10</sup>

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<sup>9</sup> Both provisions are, however, regularly enacted as part of the annual appropriations bills. *See, e.g.*, Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, §§ 501, 720, 121 Stat. 1844, 1971, 2024 (Dec. 26, 2007).

<sup>10</sup> B-285298, May 22, 2000 (section 1913 and governmentwide provision); B-239856, Apr. 29, 1991 (section 1913 and agency-specific provision). The Department of Justice, which is responsible for enforcement of section 1913, has similarly held that section 1913 prohibits grassroots lobbying. 13 Op. Off. Legal Counsel 300 (1989). Referring to the legislative history of section 1913, Justice has concluded that it prohibits the use of “substantial” grassroots lobbying campaigns; Justice defines a “substantial” campaign to be one that involves the expenditure of \$50,000 or more. *Id.*

We have said that anti-lobbying restrictions do not apply to agency officials' direct contact with or appeals to Members of Congress. B-285298, May 22, 2000. Agencies have a legitimate need to communicate with Congress regarding agency funding, policies and activities. *E.g.* B-304715, Apr. 27, 2005. In fact, all three provisions expressly recognize this. In assessing a potential anti-lobbying violation by the Social Security Administration, we made clear that we will avoid construing anti-lobbying provisions in such a way that would unnecessarily or excessively constrain agency officials' communications with Congress. B-304715, Apr. 27, 2005. Therefore, the anti-lobbying provisions would not prohibit the Federal Co-chair and other officials from engaging in discussions with Members of Congress and congressional staff regarding Denali's reauthorization or other agency business. Similarly, contact by Commissioners and Commissioners' staff with Members of Congress and congressional staff with regard to Denali's reauthorization would also be permissible.

All three provisions prohibit grassroots lobbying, that is, encouraging the public, including Alaska interest groups and grantees, to contact Members of Congress regarding reauthorization or other agency-related legislation, policies or appropriations. For example, in a May 2000 decision, we found that an e-mail from staff of the China Trade Relations Working Group (established by the Secretary of Commerce) violated anti-lobbying laws because it appealed to interested organizations and their members to contact a Member of the House of Representatives in support of permanent normal trade relations with China. B-285298, May 22, 2000. However, agency officials and Commissioners, as well as Commissioners' personal staff, may meet with interested groups or otherwise share information with them. In B-239856, Apr. 29, 1991, a representative from the National Endowment for the Arts (NEA), presenting a lecture to members of an arts lobbying group, mentioned, in response to a question from the audience, that members might contact their legislators regarding NEA's reauthorization. We concluded that because the NEA representative was not appealing to the audience to lobby Congress, only answering a question, the representative did not violate the anti-lobbying restrictions. In B-304715, Apr. 27, 2005, analyzing a Social Security Administration publication that detailed the funding problems of the Social Security System, we held that the prohibition requires evidence of a clear or explicit appeal to the public to contact Members of Congress, and that statements that are merely "likely" to influence the public to contact Members of Congress do not violate the prohibition.

As mentioned above, the Commissioners are not only members of the Denali Commission, many of them are also officials of agency grantees or organizations whose members are agency grantees. For example, the State of Alaska receives about 40 percent of available grant funding. E-mail from Mike Marsh, Inspector General, Denali Commission, to Crystal Wesco, Staff Attorney, GAO, *Subject: Denali Request for CG Decision*, Feb. 28, 2009. When Commissioners are not acting as members of the Commission but as officials of their grantee organization, they should be aware of the restrictions imposed by the so-called Byrd Amendment. Codified at 31 U.S.C. § 1352, the Byrd Amendment prohibits the use of appropriated funds awarded to a grantee, or federal contractor, "to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress,

an officer or employee of Congress, or an employee of a Member of Congress in connection with" the award of a federal grant or contract. 31 U.S.C. § 1352(a). For example, in *United States v. National Training and Information Center*, 532 F. Supp. 2d 946 (N.D. Ill. 2007), the court held that the National Training and Information Center (NTIC), a Justice Department grantee, could not use grant funds to pay the salaries of NTIC officials who organized a conference of NTIC sub-recipients for the purpose of lobbying Congress for 2001 grant funding. *National Training and Information Center*, 532 F. Supp. 2d at 959.

### Travel Reimbursements

The Denali Commission Act provides for the reimbursement of travel expenses of Commissioners, including *per diem*, incurred in the performance of services for the Commission. Pub. L. No. 105-277, § 306(b). The Act, however, does not address reimbursement of Commissioners' personal staff, who may accompany a Commissioner or travel on behalf of a Commissioner. Agencies are permitted to reimburse travel or transportation expenses of individuals who serve the agency without pay. 5 U.S.C. § 5703. We have not objected to an agency's use of appropriations to reimburse the travel expenses of an individual not employed by the federal government so long as the agency determines, on a case-by-case basis, that that individual's travel costs are a necessary expense of the agency, helping the agency achieve the object of its appropriation. B-259620, Feb. 29, 1996 (agency may pay the travel costs of the spouse of an overseas employee to attend cross-cultural training considered important to the success of the employee's assignment); 60 Comp. Gen. 235, 240 (1981) (the cost of a candidate for employment to travel to Washington, D.C., for a preemployment interview was a necessary expense payable from the agency's appropriation); 37 Comp. Gen. 349 (1957) (agency may pay travel costs of college faculty members for the purpose of consulting with agency officials on recruiting).

The necessary expense determination should be made by the head of the agency, in this case the Federal Co-chair,<sup>11</sup> or an official to whom the agency head has delegated that determination. Consistent with our case law, the Federal Co-chair, in consultation with the Commissioner, must determine that the travel of a Commissioner's personal staff is in the interest of the agency, benefiting the agency by assisting the agency or the Commissioner in performance of the agency's or the Commissioner's duties.

The Inspector General has asked if the agency can use its appropriation to reimburse the travel expenses of a Commissioner's personal staff, traveling with or on behalf of the Commissioner, who, while traveling, conducts nonagency business as well as

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<sup>11</sup> Under the Denali Commission Act, the Federal Co-chair establishes the official business of the agency; the Federal Co-chair approves and adopts the work plan proposed by the Commission as well as appoints employees of the agency. Pub. L. No. 105-277, §§ 304(b), 306(c).

Commission business. The question arises because the Commission's statutory structure is such that a Commissioner's interests are often intertwined with the agency's interests, but, at times, could be different, and it might be difficult to discern when a Commissioner's personal staff is traveling on behalf of the Commissioner's service to the Commission and when the travel is on behalf of the organization the Commissioner represents. Heads of agencies (and their delegees), to whom Congress has entrusted the proper use of public money, are often called upon to make difficult decisions in the use of that money. It is incumbent upon the Federal Co-chair or his delegee to ensure that the use of the agency's appropriation serves the purposes for which Congress appropriated the funds to the agency: "For the expenses of the Denali Commission . . ." Pub. L. No. 111-8, 123 Stat. at 628. We do not see any basis for objecting to the agency reimbursing travel expenses where the primary purpose of the travel was in performance, or support, of the Commissioner's services under the Act, notwithstanding that the traveler may have conducted nonagency business incident thereto. *Cf.* B-136762, Aug. 18, 1958.

Since Commissioners' personal staff are not federal employees, their travel is authorized using invitational travel orders. A copy of the agency's travel request form that was provided to us shows that the agency asks that the traveler describe the services to be performed during the travel. *Denali Commission Travel Request/Report*, part II (Direct Service Provided to the Government). Under the Federal Travel Regulation, before the agency makes reimbursement, Denali's nonfederal travelers, like federal travelers, should submit a travel voucher upon completion of travel to confirm the travel took place as authorized. 41 C.F.R. § 301-52 (GSA's Federal Travel Regulation).

## CONCLUSION

Denali Commissioners, when performing their duties as Commissioners, may contact members of the Alaska delegation, as well as other Members of Congress, regarding the agency's possible reauthorization or other agency business. Anti-lobbying restrictions do not prohibit such direct contact with Members of Congress. Commissioners' personal staff, who represent, or act for, their Commissioner, also may discuss reauthorization with Members of Congress and their staff. However, anti-lobbying provisions prohibit Commissioners and their personal staff from using appropriated funds to engage in grassroots lobbying by encouraging interest groups and grantees to contact Members of Congress and congressional staff regarding Denali's reauthorization. The Byrd amendment prohibits Commissioners and their personal staff from using grant funds to contact Members of Congress and congressional staff in connection with a grant award.

With regard to travel reimbursements, the Denali Commission Act provides for the reimbursement of travel expenses, including *per diem*, of Commissioners incurred in performance of their service as Commissioners. The Federal Co-chair may use appropriated funds to reimburse travel expenses of the Commissioners' personal staff so long as the Federal Co-chair, or his delegee, determines that the cost is a

necessary expense of the agency and that the primary purpose of the travel was in performance, or support of, the Commissioner's duties to the Denali Commission.

A handwritten signature in black ink, appearing to read 'D. Gordon', with a long horizontal flourish extending to the right.

Daniel I. Gordon  
Acting General Counsel