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INSPECTOR GENERAL

June 10, 2012

To: Joel Neimeyer, Federal Co-Chair

FINAL REPORT

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

FOR PUBLIC RELEASE

Subject: Inspection of \$50,000 payment to Alaska Forum Inc. for 2009 training event

PURPOSE OF THE INSPECTION

One of the most persistent controversies at the Denali Commission (Denali) has been its payment of \$50,000 toward an intergovernmental training event that was held in Anchorage during the winter of 2009. Denali made this payment as part of a consortium of 19 federal agencies that pooled their funds to provide five days of training for themselves and those they fund or regulate.

This training event is not a new one. Alaska's federal agencies have convened it with various stakeholders on 14 occasions since it started back in 1990 as the "Alaska Federal Facility Environmental Roundtable." Shortly thereafter, the event was renamed the "Alaska Forum on the Environment." And a nonprofit organization was incorporated under the same name to act as the service provider who organizes and promotes the event.

Denali's payment — like those of the other federal agencies — was sent to this nonprofit corporation (hereafter Alaska Forum Inc.).

Leaders from two statewide interest groups (hereafter Complainant-1 and Complainant-2) complained about several aspects of Denali's \$50,000 payment toward the 2009 edition of the event. The Office of Inspector General (OIG) notes that these complaints occurred in the course of their representation of these interest groups, rather than within the statutory scope of any advisory role to the Government.

One or more Members of Congress contacted Denali's agency head at some point in the fall of 2008.¹ The agency head responded by attempting to get his money back shortly before the event began. Over three years later, the agency head is still trying to get his money back.

¹ Though this contact occurred in the context of constituent casework, memories vary as to the specifics.

The consortium of other federal agencies continues to support this annual training event and to find it beneficial in delivering their services. But Denali has not contributed any funding since its dispute over the 2009 event.

OIG previously inspected this event back in 2009, and we confirmed for the agency head that it was a valid use of federal funds under appropriation laws and Denali's enabling act. However, after learning of the continuing dispute over repayment, we reopened our prior inspection in hopes of finally bringing the matter to closure for all concerned.²

The purpose of this reopened inspection was to review Denali's compliance with the applicable laws and agreements. Our inspection was conducted pursuant to the Inspector General Act,³ the standard assurances in OMB Form 424B,⁴ regulation 2 CFR 215.53(e), and the CIGIE inspection standards.

A draft of this report was provided to Denali's agency head, with the opportunity to comment either formally or informally at his discretion. His informal comments were genuinely helpful to OIG as we considered the potential solutions for this persistent dispute.

BACKGROUND OF THE TRANSACTION

Nature of the convening consortium

The consortium of agencies functions an informal working group rather a formal organization with a separate legal existence. Every several years, the interested agencies sign a non-binding "statement of cooperation" that articulates their general aspirations for a successful working relationship. Denali signed the most recent statement in February 2012.

One theme can be summarized as the agencies' desire to resolve ambiguities ("issues" and "concerns") as to who will do what for whom. Though no particular laws are cited, this implicitly supports congressional goals for agencies to pursue alternative dispute resolution,⁵ negotiated rulemaking,⁶ and voluntary compliance in the implementation of their programs.

² This is an appropriate role for us given that section 4(a)(4) of the Inspector General Act directs inspector generals to do the following:

to recommend policies for, and to conduct, supervise, or coordinate relationships between such establishment and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of . . . programs and operations . . .

³ See sections 4(a) and 6(a).

⁴ See section 2.

⁵ See 5 USC 572(a); 41 USC 7103(h).

⁶ See 5 USC 561.

The statement of cooperation also pledges to “[c]oordinate consultation with federally recognized tribes, as appropriate, when planning significant environmental actions that involve multiple Parties and common issues among the Parties.” Though, again, no specific law is cited, the provision implicitly supports the President’s executive order for enhanced federal “consultation and coordination” with tribal governments.”⁷

And, most pertinent to the event in question, is the agencies’ aspiration to:

Promote education and training with an emphasis on seeking solutions to human health and environmental issues that affect Alaska, such as the Alaska Forum on the Environment.

This seems quite consistent with the statutory authority that Congress has provided for federal agencies to fund the participation by employees of state, local, and tribal governments in training events.⁸

Nevertheless, the statement of cooperation leaves it to each agency to make its own agreement with Alaska Forum Inc. as to the funding and personnel — if any — that an agency chooses to provide for such an event:

This is not an enforceable legal agreement. The Parties may develop separate, more detailed agreements as needed. Efforts under this [statement of cooperation] shall be consistent with applicable federal and state laws and regulations, and are subject to the availability of duly appropriated funds. . .

Each agency that wishes to contribute must determine the availability of its appropriations and then structure the transaction to reflect its purpose for participation. While the event is in substance an annual joint venture, the binding agreements are between the individual agency and Alaska Forum Inc. as the service provider. In other words, the appropriate legal instrument to support this event can vary considerably between agencies.

Historical context of the consortium’s event

The existence of such an event in Alaska is not surprising. The federal government is the largest employer in the state, and payments by federal agencies are important to the state’s economy. Alaska leads the nation in its per capita receipt of federal grants. Alaska ranks fourth in the nation in its per capita receipt of federal contracts. And over half of the state’s land is still under federal control.⁹

⁷ See *Consultation and Coordination With Indian Tribal Governments*, Executive Order 13175 (Nov. 6, 2000).

⁸ See 42 USC 4742, 42 USC 4762.

⁹ See Neal Fried, “Federal Spending in Alaska,” *Alaska Economic Trends* (Alaska Dept. of Labor and Workforce Development, Feb. 2012), pages 4-8, at <http://labor.alaska.gov/trends/feb12.pdf>.

Exhibits 1 to 3, 5, and 7 to 10 quote the perspectives of other federal agencies as to what they get for the money they spend on this event. All of these quotes are directly from the agencies' public home pages (retrieved in May 2012).

While the event is traditionally portrayed as an intergovernmental training activity, it also functions similarly to alternative dispute resolution, negotiated rulemaking, and other catalysts for voluntary compliance.

Alaskan stakeholders have a long history of battling the degree to which federal programs should develop the state rather than preserve it without development. The lore is that the Panama Canal would still be only a dream if its proponents had faced the federal litigation seen in Alaska's first 50 years of statehood.

In the 1950s, Alaskans successfully protested a federal agency's plan to atomically blast a harbor north of Kotzebue.¹⁰ In the 1960s, federal agencies conducted nuclear tests in the Aleutians that culminated in a ruling by the U.S. Supreme Court and the start of Greenpeace. And both of these Cold War decades saw federal construction of the electronic wall that stretched offshore from the ocean floor to outer space.

In the 1970s, federal approvals resulted in the pipeline whose effects have indirectly funded the state's government to this day. And federal agencies finally put to rest decades of debate over whether the Yukon River should be dammed to create a hydroelectric lake the size of Lake Erie.

In the 1980s, federal agencies coordinated the cleanup and public redress for a record oil spill. And the federal and state courts offered differing solutions to the allocation of Alaskan wildlife among the many residents seeking to hunt and fish.

¹⁰ See William Hedman and Charles Ditters, *The Legacy of Project Chariot* (Bureau of Indian Affairs, ca. 2005) and Dan O'Neill, *The Firecracker Boys* (Basic Books, 2007).

EXHIBIT 1 PERSPECTIVE OF THE U.S. ARMY
<p><i>"Alaska Forum on the Environment (AFE) — This world world-class event facilitates education and interaction among all government agencies, non-profit organizations and the general public. The AFE is designed to seek understanding and solutions for many of Alaska's greatest environmental challenges. Keynote speakers and breakout sessions provide both environmental educational and cross-cultural opportunities for attendees. U. S. Army Alaska, the Alaska Army National Guard and the Alaska Army Corps of Engineers participate in the funding, planning and execution of the AFE."</i></p> <p><i>Source: www.asaie.army.mil/Public/ESOH/REEO/Western/partnerships.html (retrieved May 23, 2012)</i></p>

EXHIBIT 2 PERSPECTIVE OF THE BUREAU OF LAND MANAGEMENT
<p>After the 2012 event:</p> <p><i>"BLM . . . hosted 'What's Happening at Red Devil Mine? A Talking Circle for Interested Kuskokwim Communities' during the 2012 Alaska Forum on the Environment. Approximately 50 tribal, community, agency and corporate representatives attended the session."</i></p> <p><i>Source: www.blm.gov/ak/st/en/fo/ado.html (retrieved May 23, 2012)</i></p>

In the 1990s, Alaska saw a quiet construction boom as agencies coordinated the remediation of a multitude of military sites going back to World War II.

After the year 2000, agencies pondered the federal response to relocating settlements as nature was relocating the state's coastlines. And yet another federal agency grappled with the nationally-publicized possibility of using small nuclear reactors to address the fuel crisis in bush settlements.¹¹

Now in the decade of 2010, the Alaskan frontiers for federal agencies concern the possibilities of new drilling, a new pipeline, a new mine, and new shipping routes across the North Pole. And agencies are considering their response to the floating debris that is arriving at the state's shoreline from Japan's tsunami disaster.

Regardless of an interest group's policy perspective on "environmental" issues, most players now acknowledge that periodic federal conversations with the public — whether labeled as voluntary compliance, negotiated rulemaking, or alternative dispute resolution — can be more productive than decade-long lawsuits. Federal agencies in Alaska have a long history of trying different approaches to arbitrate competing demands — as the cycles of nature and the nation have giveth and taketh away.

EXHIBIT 3
PERSPECTIVE OF THE U.S. COAST GUARD

Before the 2009 event:

"Coast Guard personnel from around the state will participate in several discussion panels during the 2009 Alaska Forum on the Environment Conference Monday through Thursday at the Dena'ina and Egan Convention Centers. . .

"The Alaska Forum on the Environment is a statewide gathering of environmental scientists and professionals from government agencies, non-profit and for-profit businesses, community leaders, Alaskan youth, conservationists, biologists and community elders. . ."

Source: www.d17.uscgnews.com (Jan. 29, 2009 "media advisory"), retrieved May 23, 2012.

After the 2009 event:

"During the Alaska Forum on the Environment in Anchorage this past February [2009] I listened to briefs from nine coastal communities who were at risk from the sea due to coastal erosion."

Source: www.d17.uscgnews.com/go/doc/780/230836/Arctic-Journal-by-RADM-Brooks (article by district commander dated March 24, 2009), retrieved May 23, 2012

¹¹ 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.

The 2009 event in question

The \$50,000 in dispute was a payment that Denali made toward the 2009 edition of the event. Denali’s payment — like those of the other federal agencies — was sent to Alaska Forum Inc. The purpose of this corporation is to produce the annual training event (a “forum”).¹²

It is heavily a federally sponsored event, with federal agencies as two-thirds of the contributing organizations listed in the 2009 program publication, as well as on the event’s current home page.¹³ And the published program for 2009 also shows that 17 out of 39 members on the planning committee were from federal agencies.

While nonfederal players were important participants in the 2009 event, its dominant purpose was to market the services of federal agencies and train stakeholders about the oversight expected in return (build the latter’s “capacity”). This is evident from the content of the published program with its 150+ sessions (see Exhibit 4). Readers can see for themselves in the excerpt from the 2009 program publication included in the Appendix.

The content shown in the published program differs markedly from the classic interest group conventions that balance business with advocacy, socializing, and entertainment. And Anchorage in February obviously has less appeal as a “recreational destination” than during its summer months when such social conventions are often held.

EXHIBIT 4 SUBJECT AREAS OF SESSIONS AT 2009 EVENT	
<u>Subject area</u>	<u>No.</u>
Arctic issues	15
Clean up & remediation	21
Climate change	15
Contaminants & human health	9
Denali Commission	3
Energy	15
Environmental education & outreach	14
Environmental justice	3
Environmental regulations	6
Exxon Valdez oil spill	7
Federal government issues	20
Fish, wildlife & habitat	25
General assistance program	36
Green building	7
National Environmental Policy Act	4
Rural issues	7
Science & technology	5
Solid waste & recycling	9
Subsistence	14
<i>Source:</i> Subject areas per 2009 program publication. Some sessions counted in multiple categories.	

¹² The corporation’s 2009 Biennial Report, filed with the State of Alaska, describes its business as one to “provide a forum in which to present environmental topics.”

¹³ See www.akforum.org (retrieved on May 16, 2012).

CONCLUSIONS

Denali’s “sponsorship” had the legal status of a contract for services to the Government.

Over the past 13 years, Denali has experimented with various criteria for distributing payments that the agency calls its “sponsorships.” The \$50,000 payment in question was one of these. Denali processed this payment on the “federal financial award” form that it uses for grants.¹⁴

However, the legal status of a “sponsorship” — and the applicable federal rules — depend greatly upon its purpose. When the main purpose is to publicly subsidize the work of the recipient, the funding constitutes a “grant.”¹⁵ When the main purpose is to purchase a service for the Government itself, the funding constitutes a procurement “contract.”¹⁶

The rules for awarding federal “contracts” are very different from the rules for awarding federal “grants.” The Federal Acquisition Regulation prescribes detailed procedures to assure that contracts are awarded through competition that protects the public. In contrast, agencies have considerable discretion as to how they select grantees. Federal law encourages, but does not require, competition in the award of grants.¹⁷

EXHIBIT 5
PERSPECTIVE OF THE
FISH AND WILDLIFE SERVICE

After the 2010 event:

“For its third consecutive year, an interagency fire prevention and education group has sponsored an exhibit at the Alaska Forum on the Environment. This year, the U.S. Fish and Wildlife coordinated staffing of the booth, making 138 contacts with 66 different public and private agencies and 61 communities from all over Alaska, the Yukon Territory in Canada, and Washington, D.C.

“The 2010 Alaska Forum on the Environment was held at the Den’aia Convention Center in downtown Anchorage from February 8-11. The fire booth was staffed full-time by the Alaska Wildland Fire Coordinating Group’s Prevention and Education Committee. Members of the committee provided fire information materials from their respective agencies and answered a wide variety of questions from the public on fire-related topics.

“Last year, the interagency fire exhibit at the Alaska Forum on the Environment received visitors from 20 agencies and 40 different communities in Alaska, the Lower 48, and the Yukon Territory. Numerous public and private organizations attend the annual Forum.”

Source: www.fws.gov/fire/news/ak/fireEducators.shtml
(retrieved May 23, 2012)

¹⁴ Denali award no. 1028.

¹⁵ See 31 USC 6304.

¹⁶ See 31 USC 6303.

¹⁷ See 31 USC 6301(3); GAO, *Principles of Federal Appropriations Law*, 3rd ed., vol. II, pages 10-25 to 10-26.

GAO is the “booth referee” in resolving whether an agency has erroneously labeled a purchase as a grant.¹⁸ And GAO acknowledges that “[i]t is often difficult to draw fine lines between the types of arrangements and fact situations that require the use of a procurement contract and those that do not.”¹⁹

In our original inspection of the event over three years ago, we did not question the agency head’s characterization of this transaction as a form of grant (a “cooperative agreement”). OIG conducted that 2009 inspection on its own initiative, and at that point, we reviewed the use of the funding rather than the vehicle for awarding it.

But during last year’s audit of Denali’s financial statements, OIG was surprised to learn that a dispute over this matter has persisted for some years. We have thus reopened our 2009 inspection and taken a closer look at the underlying transaction.

Based upon the factors listed in Exhibit 6, OIG concludes that the main purpose of the \$50,000 payment was to procure a service for the Government. In other words, the agreement operated in legal substance as a federal contract between Denali and Alaska Forum Inc. (hereafter the “contractor”).

From a business perspective, this was a classic joint venture (a partnership for a specific project) in which each party brought resources to the effort in hopes of mutually advancing their respective positions. This contrasts to the more obtuse public benefit from simply subsidizing a “grantee” or from conditioning a grant on the agency’s continuing involvement (a “cooperative agreement”).

EXHIBIT 6 FACTORS INDICATIVE OF THE TRANSACTION'S STATUS AS A CONTRACT
Transaction initiated by Denali’s agency head with no real grant application or RFP process
No pre-award evaluation of “grantee’s” capacity
Recipient paid by single invoice rather than periodic submission of OMB Standard Form 270
Large payment size compared to Denali’s other “sponsorships” that were true grants
Recipient paid to modify its existing event rather than create a new one
Scope’s emphasis on Government’s requirements, including Denali’s control over event content and right to publicity
No categorized budget in scope of work
Limited performance period (effectively 6 months) atypical of true grants
Single deliverable of the event itself, with no interim progress reports to monitor best efforts
Denali’s commitment to share its staff
Denali’s commitment to contribute its non-monetary business intangibles (creative talent, customer base, intellectual property, branding, publicity)
Recipient’s pattern of defining its relationship with Government agencies as the “partners”
Recipient’s offer to settle Denali’s dispute by sharing any profit generated by the event
Parties’ behavior as a joint venture in which they hoped to mutually advance their positions by pooling their business resources

¹⁸ See GAO, *Sprint Communications Company, L.P.*, # B-256586, B-256586.2 (May 9, 1994) at www.gao.gov.

¹⁹ See GAO, *Environmental Protection Agency*, # B-262110 (March 19, 1987) at www.gao.gov.

To put it yet another way, both the Government's involvement and its anticipated benefits were too intense to consider the arrangement as a mere "financial assistance award" (a grant or cooperative agreement). The fact that Denali typed the arrangement on a form for a grant is not determinative.

Denali's purpose for the contract was consistent with federal law.

Complainant-1 wrote of "[b]eing naturally suspicious of anything with the word 'Environment.'" Complainant-1, who heads a trade organization of construction companies, is implicitly suggesting that Denali's funding may offend the appropriation law bans on spending for "propaganda" and "political activity."

OIG has responded to this complaint by reviewing (1) what Denali attempted to purchase from the contractor and (2) what was actually provided by the contractor. Procedurally, OIG reviewed the agreement's wording, reviewed the published program, interviewed key persons, issued an administrative subpoena for the contractor's records²⁰ and, last but not least, made direct observations during our unannounced physical inspection²¹ of the event itself (back when it occurred in 2009).

OIG concludes that the 2009 event indeed functioned in practice as a "forum" for 19 federal agencies to market their services and educate stakeholders as to the oversight requirements

²⁰ OIG has the statutory authority to issue administrative subpoenas to acquire recipient records of Denali's grants and contracts. See Inspector General Act sec. 6(a)(4).

²¹ On February 4, 2009, OIG (1) reviewed the 68-page program booklet published for the event, (2) reviewed the exhibitors' displays, and (3) observed a judgmental sample of four of the event's meetings in which Denali executives had an active role. At all four of the observed meetings, an executive from Denali either analyzed the agency's perspective on its "lessons learned" — or seriously questioned grantees concerning their own. And Denali's director of programs was personally documenting these lessons for ultimate publication on the agency's home page. OIG was, of course, careful to function as a neutral observer, rather than an active participant, for the purpose of this physical inspection of the event.

EXHIBIT 7 PERSPECTIVE OF THE DEPARTMENT OF ENERGY
<p>After the 2011 event:</p> <p><i>"The Alaska Forum on the Environment (AFE), in its 13th year, was held February 7 through 11, 2011, in Anchorage, Alaska. The AFE is a statewide gathering, with an increasing presence of representatives from the continental U.S., environmental professionals from government agencies, non-profit and for-profit businesses, community leaders, Alaskan youth, conservationists, biologists, and community elders. It was attended by more than 1,200 people.</i></p> <p><i>"The AFE provided an opportunity for state, local, Federal, military, private, and Native leaders and professionals to come together and discuss the latest projects, processes, and issues that affect Alaska. Representatives from the U.S. Department of Energy (DOE), the U.S. Environmental Protection Agency, and the U.S. Department of Interior were panelists for the Federal Interagency Coordination on Environmental Justice Issues session. . . "</i></p> <p style="text-align: center;"><i>Source: ww.lm.doe.gov/default.aspx?id=7769 (retrieved May 23, 2012)</i></p>

expected in return. And the contractor functioned as a service provider to the Government by convening, organizing, and promoting the event. This role is consistent with the vision that the contractor's executive director (himself a former EPA inspector) articulated to us.

Per GAO rulings on appropriations law,²² federal agencies may spend on activities that (1) disseminate information to the public, (2) facilitate outreach on agency services, (3) gather feedback from the public, (4) educate recipients on oversight requirements, and (5) explain and defend agency policies.

Federal agencies also have the statutory authority to fund the participation by employees of state, local, and tribal governments in training events.²³ And the President has issued an executive order that directs agencies to pursue enhanced "consultation and coordination" with tribal governments.²⁴

Federal agencies also have the statutory authority to pursue negotiated rulemaking²⁵ and alternative dispute resolution.²⁶

In the agreement's scope of work, Denali was implicitly paying for a platform to further all of these purposes.

Denali was 10 years old at this point, and the congressional authorization in its enabling act expired several months before the event took place.²⁷ Denali had a genuine need for a conversation with stakeholders over the agency's breakthroughs, limitations, possibilities, and potential sources of nonfederal funding (such as more grant matching). Denali also had a genuine need for stakeholders to understand and voluntarily comply with its oversight expectations.

EXHIBIT 8 PERSPECTIVE OF THE DEPARTMENT OF ENERGY
<p>After the 2011 event:</p> <p><i>"The AFE included a listening session for the Alaska Natives to present to the Federal agencies and specific topics during the break-out sessions. Participants in the environmental justice session break-out groups included elders and other Tribal members from Alaska Native villages, community members from across Alaska and elsewhere in the U.S. and Canada, and representatives from state, Tribal, and local agencies and organizations. Federal agency representatives were present at each table to listen and, as needed, to facilitate and take notes for each group."</i></p> <p style="text-align: right;"><small>Source: ww.lm.doe.gov/default.aspx?id=7769 (retrieved May 23, 2012)</small></p>

²² See GAO, *Principles of Federal Appropriations Law*, 3rd ed., vol. I, chapter 4(C)(11) (updated through March 2012).

²³ See 42 USC 4742, 42 USC 4762.

²⁴ See *Consultation and Coordination With Indian Tribal Governments*, Executive Order 13175 (Nov. 6, 2000).

²⁵ See 5 USC 561.

²⁶ See 5 USC 572(a); 41 USC 7103(h).

²⁷ The Denali Commission's authorization expired on September 30, 2008. See P.L. 108-7, 117 Stat. 158, sec. 504.

Any reference to a 10-year “anniversary” was a euphemism for the need for a little-known agency with an uncertain future to explain itself to the public, all amidst skeptical national realities. Far more Americans were no doubt familiar with the lore of the Iditarod dog race, arctic truckers, and the alleged bridges to nowhere. In contrast, neither Steven Spielberg²⁸ nor Garrison Keillor²⁹ is likely to ever tell the story of the little agency that could — or could have been.

OIG can see valid reasons for the 2009 forum that seem consistent with the aims of both constitutional constraints and construction companies. To the extent that Complainant-1 is objecting to the subject matter of the funded event as illegal, OIG finds the complaint unfounded.

Denali failed to document its justification for a noncompetitive, sole-source award.

We found no records at Denali that explain why the agency head simply offered the work to one contractor (Alaska Forum Inc.), rather than attempting some competitive inquiries of other potential vendors under the FAR’s simplified acquisition procedures.³⁰ This is the most troubling aspect of this transaction, and OIG recommends some specialized training on this nuance of the FAR (see Recommendation # 2 on page 25).

Due to recusals by key employees at Denali (discussed below), the agency head lacked technical advice on the arcane nuances that distinguish grants from contracts. Left to his own devices, he failed to recognize that “sponsorships” can trigger procurement issues.

We have thus attempted to reconstruct whether the circumstances surrounding the transaction — if they had been properly documented — could have supported a sole-source award. For purchases that do not exceed \$150,000, the FAR does indeed allow noncompetitive “single source” purchases when *“the contracting officer determines that the circumstances of the contract action deem only one source reasonably available.”*³¹

EXHIBIT 9 PERSPECTIVE OF THE DEPARTMENT OF THE INTERIOR
<p>After the 2012 event:</p> <p><i>“In a speech to the Alaska Forum on the Environment today, Department of the Interior Deputy Secretary David J. Hayes and Deputy Assistant to the President for Energy and Climate Policy Heather Zichal outlined a series of new initiatives aimed at bringing the best available science to energy-related decisions in the Arctic. The announcement today underscores the Obama Administration’s commitment to science-based decision-making in the Arctic’s sensitive environment.”</i></p> <p><small>Source: www.doi.gov/news/pressreleases/ (Feb. 7, 2012 press release), retrieved May 23, 2012</small></p>

²⁸ Steven Spielberg’s Amblin Entertainment produced the animated movie *Balto* (1995) about the 1925 dogsled relay along the Iditarod Trail to Nome.

²⁹ See Garrison Keillor, “If only English majors were lobbyists,” *Anchorage Daily News*, Aug. 22, 2005, page B-4. Keillor gives his thoughts on Alaska’s plan for bridges.

³⁰ See FAR subpart 13.1.

³¹ See FAR 13.106-1(b)(1) and FAR 2.101.

At first glance, there would seem to have been other potential providers with a history of orchestrating large statewide events — events that were both funded by Denali and aimed at the same constituencies that Denali benefits. For instance, a prior inspector general made the following observation in a report that discussed Denali’s first five years of “sponsorships:”

Prior to suspension of sponsorships on March 17, 2005, \$749,282 had been expended since November 8, 2000 for 85 sponsorships of activities of 72 non-profit organizations. . .

Examples of sponsorships made in partnership with other Federal agencies included donations to the Alaska Municipal League, Historic Preservation of Science and Art, Division of Fire Protection, the Alaska Forum for the Environment, the Southeast Conference, and the Kodiak Chamber of Commerce. . .

*The largest sponsorships noted were \$300,000 in FY 2004 to the Alaska Federation of Natives in connection with an Economic Development Forum co-sponsored with the Commissions [sic] and \$50,000 in FY 2004 to the Alaska Municipal League in connection with a local government support center. . .*³²

And since Denali’s resumption of “sponsorships” in 2006, the agency has made them to 28 organizations for a total of almost \$700,000.³³ Since 2006, the two largest individual sponsorships were to the Alaska Center for Rural Health for just under \$52,000 and to Alaska Forum Inc. for the \$50,000 that is the subject of this inspection report.³⁴

From this OIG’s closer look at the nature of these 28 more recent (post-2005) recipients, Alaska Forum Inc. seems to be the only candidate that was neither an interest group representing a constituency (such as a class of grantees) nor an organization with a focus on a specialized subject matter. At the time of the payment in question, Alaska Forum Inc. also had a multi-year track record that demonstrated its capacity to convene a consortium of federal agencies and 1,000+ attendees.

The dominant factor would seem to be the need for a neutral forum, rather than Denali’s mere inclusion as a guest within an event identified with an interest group that represents a particular subject matter, grantee constituency, private interest, or policy perspective. Though there is some private support for the event, the basic business of Alaska Forum Inc. has from the start been to annually connect government agencies with each other and the stakeholders that they symbiotically fund and regulate.

³² Back in 2005, Denali’s agency head contracted with the Appalachian Regional Commission OIG to review a variety of internal control issues. The quoted excerpts concerning sponsorships appeared on page 20-21 of that report dated July 7, 2005. The *Anchorage Daily News* published its July 12, 2005 story headlined as “*Investigator details dubious spending: Report on Denali Commission chief calls for tighter rules.*” The entire 57-page report was then published on the newspaper’s website.

³³ Per the project database on Denali’s website at www.denali.gov/dcpdb/.

³⁴ Per the project database on Denali’s website at www.denali.gov/dcpdb/.

On the other hand, the Alaska Municipal League (AML) had some history of partnering with the U.S. Forest Service to host a “Centennial Forum” in Anchorage back in 2004. A press release on the Forest Service’s website³⁵ described that event as follows:

Forest Service begins celebrating 100 years by honoring members of local communities

JUNEAU, Alaska - In celebration the [sic], the Alaska Region of the Forest Service hosted a regional Centennial Forum, Saturday, Nov. 13, in Anchorage. . .

Participants at the Alaska Region Centennial Forum included a variety of community, conservation, agency, political, scientific, and business leaders from across the region. They honored the hard work and dedication of the award recipients, celebrated the rich past of the Forest Service, and identified some major issues and challenges for national forest management in the 21st Century.

The Alaska Region of the Forest Service hosted the event with assistance from the Alaska Municipal League and the Society of American Foresters. The Alaska Forum is one of 12 forums taking place across the nation. The event is part of a series of themed events leading up to the National Centennial Congress in Washington, D.C., in January 2005. The Forums were designed to bring together diverse interests in joint discussions related to the future of the nation's forests.

And AML was certainly familiar with the Alaska Forum’s event for 2009, since six hours of the latter’s sessions were convened by AML itself on the topics of sustainability and climate change.

Similarly, the Associated General Contractors (AGC)³⁶ had some history with producing an annual event in Washington, DC that, for 2008, advertised a four-day “neutral forum” for conversations with 13 federal agencies. The website³⁷ for that event described it as follows:

The AGC Federal Contractors Conference is a one-of-a-kind event that provides AGC contractors and Federal agency personnel the opportunity to meet in a neutral forum and review issues occurring around the United States. These insightful and highly productive exchanges have solidified the need for both Federal construction contractors and the Federal construction agencies to share information on a wide variety of issues and foster better communication and real solutions.

³⁵ See www.fs.usda.gov/detail/r10/news-events/?cid=FSBDEV2_038966 (Nov. 23, 2004 press release), retrieved May 23, 2012.

³⁶ The Associated General Contractors of Alaska (see www.agcak.org) is a chapter of this national organization.

³⁷ See www.agc.org/galleries/events_brochures/2008%20FEDCON%20-%20Brochure.pdf, retrieved May 23, 2012.

At this late point, it would be speculation to conclude whether this pre-2009 experience of AML or AGC would have been sufficiently transferable to compete with Alaska Forum Inc. as the provider — had those two organizations been interested.

Nevertheless, any disappointed organization had a right to file an appeal with GAO if it felt at the time that Denali had mislabeled its contract as a “grant” and circumvented the requirement for a competitive procurement. While GAO is the authoritative “booth referee” for that issue,³⁸ OIG knows of no organization that has ever claimed that it was displaced as a potential provider of the 2009 event.

Ironically, in May 2012 Alaska’s three members in Congress convened their own “Alaska Congressional Delegation Grants Symposium” in the same venue as the 2009 event by Alaska Forum Inc.

Denali’s award of the contract was not tainted by conflicts of interest.

However, the underlying root of the complaints is not found in the legal nuances of federal appropriations and procurement. Denali’s funding for the 2009 event was higher than most of Denali’s other sponsorships, and the complainants are concerned that the contractor may have benefited from the influence of related parties employed at the agency.

OIG understands the complainants’ concerns. The contractor’s executive director is the spouse of Denali’s CFO. The subcontractor that designed the event’s program publication is the spouse of Denali’s (now former) chief operating officer. One of Denali’s two accountants now works part-time as the event’s bookkeeper (though not in 2009).

The complainants also understandably note the barrage of ethics guidance that Denali has for years pursued from such federal regulators

EXHIBIT 10 PERSPECTIVE OF THE DEPARTMENT OF THE INTERIOR
<p>After the 2011 event:</p> <p><i>“The Director of OEPC [Office of Environmental Policy and Compliance] attended the Alaska Forum on the Environment in February, 2011. The Forum addressed many issues of concern to the people of Alaska including climate change and climate adaptation. The panels discussed the [environmental justice interagency working group] and its work, and resources and programs that are available to Alaska. Panel topics also consisted of Alaska Native village representatives presenting on environmental issues of concern to them. EPA Senior management and other Federal representatives, including the Department were in the audience to listen. . . . The Department has developed responses to the public to address questions and concerns developed during the 2011 Alaska Forum and have made them available at: http://www.doi.gov/oepec/justice.html . . .</i></p> <p><i>“The Department anticipates participation in the 2012 Alaska Forum on the Environment. . .”</i></p> <p><i>Source: www.doi.gov/pmb/oepec/upload/Final-Annual-Implementation-Progress-Report-3-27-12.pdf (pages 10-11, 27), retrieved May 23, 2012.</i></p>

³⁸ See GAO, *Sprint Communications Company, L.P.*, # B-256586, B-256586.2 (May 9, 1994) at www.gao.gov.

as the Office of Government Ethics, GAO, the Department of Justice, and the designated agency ethics official.³⁹ These authoritative sources have proactively cautioned grantees and stakeholders about the evils of funding abuse and conflicts of interest. And the complainants obviously expect Denali's own employees to respect the same rules that outsiders must obey.

Under the federal ethics regulations, each agency has a "designated agency ethics official" (DAEO) who collaborates with the U.S. Office of Government Ethics in policing the agency's compliance. The DAEOs function as the federal system's "booth referees" in addressing disclosures, interpretations, prevention, and violations.

OIG has verified⁴⁰ that all three Denali employees disclosed the planned relationships to the DAEO and obtained the safe harbor of his guidance.⁴¹ OIG has found no evidence that any of them attempted to influence the agency's decisions concerning its payment to the contractor.⁴² Nor did OIG find any evidence that the contractor gained access to insider information.⁴³ All three employees were effectively recused, isolated, and "quarantined" (also known as a "screen" or "firewall" in the business world).⁴⁴

In other words, this is not new material. The DAEO proactively addressed each employee's situation under the federal ethics regulations, and there is no indication that they did not fully respect his interpretation of what the law required of them.

In the complainants' capacity as interest group leaders and private citizens, they certainly have the right to grouse about the booth referee's calls. In contrast, federal employees act under the peril of discipline if they disregard an authoritative ruling that displeases them and then continue to complain of a violation determined not to exist.⁴⁵

In a larger agency, such disclosure, recusal and quarantine would be the end of the matter. In fact, in some cases the shared bookkeeper scenario could arguably be structured as the detail of a federal employee for "technical assistance," or training to enhance recipient reporting skills, under the Intergovernmental Personnel Act.⁴⁶

³⁹ For example, see GAO, *Denali Commission — Anti-Lobbying Restrictions*, # B-317821 (June 30, 2009) at www.gao.gov.

⁴⁰ OIG interviews with the DAEO on February 27, 2012 and May 31, 2012.

⁴¹ See 5 CFR 2635.402, 5 CFR 2635.502, 5 CFR 2635.802.

⁴² See 5 CFR 2635.702, 5 CFR 2635.501-502.

⁴³ See 5 CFR 2635.703.

⁴⁴ See 5 CFR 2635.402, 5 CFR 2635.502.

⁴⁵ See *Bieber v. Dept. of the Army*, 287 F.3d 1358 (Fed. Cir. 2002); *Oliver v. Dept. of Health and Human Services*, 34 MSPR 465 (1987); *Barnes v. Dept. of the Army*, 22 MSPR 243 (1984); *Bonanova v. Dept. of Education*, 49 MSPR 294 (1991); *Roach v. Dept. of Defense*, no. 06-3241 (Fed. Cir., Dec. 7, 2006).

⁴⁶ The Intergovernmental Personnel Act allows federal agencies to detail their employees to state, tribal, nonprofit, university, and local governmental entities. See 5 USC 3371-3373.

But at tiny Denali (< 30 employees), isolating the potential conflicts of interest had the unintended side effect of isolating the agency head from the procurement expertise he needed to correctly structure the transaction.

By analogy, it's not enough for an impaired pilot to leave the flight deck. The airline still needs to arrange a substitute crew who can keep flying the airplane.

The contractor performed as required by the original contract.

OIG found few records of this transaction at Denali. We were able to supplement this with the limited records that we obtained from the contractor under our administrative subpoena. We were able to further supplement these documents with some oral memories by the two entity heads who structured the transaction at the time it was entered.

Based upon this evidence and reasonable inferences, the following is OIG's reconstruction of the services that contractor was expected to perform for the Government.

1. The overall event itself

First, the contractor was expected to provide the consortium of federal agencies with the overall 2009 "Forum" event. That event was identified with little detail in Denali's agreement, leaving OIG to conclude that it was defined by the parties' past customs, or "course of dealing," to be the same type of annual event that the contractor had previously convened over the years of Denali's lifespan.

While Denali wrote the agreement, the agency left the contractor with considerable discretion as to what was offered at the event. Based on OIG's personal observations and the scope of the published program (see Exhibit 4 on page 6), we conclude that the contractor met the Government's expectations for this aspect of the agreement.

2. Event's physical venue and audio-visual equipment

Second, the contractor was expected to apply Denali's \$50,000 payment toward the event's physical venue ("event space") and its associated audio-visual equipment. OIG's review of the subpoenaed records shows that the contractor incurred expenses in excess of \$50,000 for these purposes.

The contractor rented the two downtown convention facilities owned by the city government, and arranged audio-visual support by two vendors. This physical presence was confirmed by OIG's personal observations and the published program showing the locations for the 150+ sessions (see the Appendix). The event had the run of the two facilities for the five days. To the extent that Denali wanted out at a point two weeks before the event, OIG finds that the many meeting spaces were fungible, commingled, and not divisible among the participating agencies.

3. Event's program publication

Third, the contractor was expected to apply Denali's \$50,000 toward the design and printing of the 68-page program publication. OIG reviewed invoices for over \$8,500 that went for this purpose. This is a critical feature of meaningful attendance at 150+ sessions in two large buildings. And when OIG obtained a copy at the event itself, we noted the modest format of the publication: a stapled booklet with plain "down-to-business" descriptions of the sessions, rather than anything glossy, polished, or self-laudatory. It was a basic stapled booklet to get attendees to the right rooms — not a colorful magazine or a bound keepsake.

4. Agency's right to publicity

Fourth, the contractor was expected to support Denali's right to publicity:

"[T] he Commission shall receive recognition for its sponsorship in the form or [sic] banners, fliers, program announcements and all media and press coverage related to the event. The Commission shall also receive 4 waived registration slots and a booth space, which shall be staffed during the conference by Commission employees."⁴⁷

OIG heard no claim by Denali that the contractor denied the agency any of the requested publicity. The program publication acknowledges Denali as a "leadership partner." Denali had its information booth as requested. The four "waived registration slots" had a value of \$2,100 in themselves (\$525 each), which the unilateral amendment increased to a total of "30 comp conference registrations" (total value of \$15,750).

5. Agency's creative control

Fifth, the contractor was expected to cede the right to creative control over a certain loosely-defined portion of the event — to the extent Denali chose to exercise this right. At the last minute, Denali attempted to assert that the contract was divisible and that it was entitled to enforce a unilateral price reduction for portions of this right not exercised.

However, OIG finds this argument moot because Denali did in fact take and receive what was originally promised — despite its unsuccessful eleventh-hour spin that it had extracted itself by unilaterally reducing the contract price.

On the event's second day (February 3), Denali's agency head served for the afternoon as a presenter on a climate change panel.

On the event's third day (February 4), Denali's agency head had the floor for the morning. He started by delivering the 8 a.m. keynote address, then moderated two panels on rural infrastructure, and finally did the introduction for the next keynote speaker at noon — the

⁴⁷ Excerpt from award condition #1 in the original contract.

university president who by statute serves as a member of Denali's board. After that lunch address, Denali's chief operating officer moderated a panel until 3:15 pm.

On the event's fourth day (February 5), Denali's chief operating officer served as a presenter on a panel that discussed the future of arctic development.

Thus, over the course of February 3-5, the public got the day of Denali — including the “plenary presentation” — that was envisioned in the original contract.

We also note that Denali's information booth was staffed by its employees throughout the event. And, last but not least, OIG's analysis of the program's content shows another 31 sessions that seem directly related to specific issues faced by Denali (including some found in OIG's reports to the agency head⁴⁸).

Denali wrote the agreement's nebulous scope of work, with much of its specifics apparently left to the trust and tradition established over past editions of the event. To the extent that Denali now claims nonperformance of some expected detail back in 2009, the contractor would arguably have a defense of “commercial frustration” in the legal parlance of contracting.⁴⁹

Denali did not pay for a party.

Complainant-2 heads a trade organization of grant recipients and asserts that Denali's funding was aimed at a social event, celebration, or party. Complainant-2 is thus implicitly suggesting that Denali's funding may offend the appropriation law bans on spending for refreshments, entertainment, and unsanctioned “reception and representation” expenses.

To begin with, we note that the 150+ sessions in the published agenda (see the Appendix) emphasize government information that most people would not consider “entertainment.” Beyond this, the original agreement explicitly warns that “*Commission funds cannot be used for food or beverage of any kind, gifts, per diem of attendees, or wages/salaries.*”

The agreement required that publicity acknowledge 2009 as Denali's tenth year of experience in addressing Alaskan problems. The agreement's passing reference to Denali's “anniversary” did not convert this event of legitimate training into a “celebration” or “party.”

On the other hand, the agreement's scope of work explicitly included spending for event space, audio-visual equipment, and the program publication. OIG's review of the subpoenaed records confirmed that the contractor's spending on these permissible items exceeded the \$50,000 received from Denali.

⁴⁸ Examples from OIG's reports would be the numerous challenges of funding facilities in small, remote settlements — such as serviceable size (population), facility staffing, local match, out-migration, post-completion support, and remediation of replaced structures (brownfields). OIG's reports are published online at www.denali-oig.org.

⁴⁹ See *Division of Agriculture Loan Fund v. Carpenter*, 869 P.2d 1181, 1184 n. 1 (Alaska 1994).

Nevertheless, the contractor was certainly free to fund the non-Denali items (such as food) from other sources to the extent permitted by law. The many individuals attending the event paid a registration fee of \$525 each. There were some nonfederal entities that contributed to the cost of the event. The other federal agencies may have had specialized appropriations that more broadly support such events,⁵⁰ or they may have utilized the appropriation law exceptions for training activities that allow some items Denali simply chose not to fund.⁵¹

In short, we find the objection by Complainant-2 to be unfounded.

Denali's unilateral price reduction functioned as a partial termination for convenience.

On August 28, 2008, Denali's agency head signed an agreement to provide \$50,000 to the contractor in connection with its event to be held February 2-6, 2009. Though typed on a form for a "financial assistance award," the scope of work detailed a variety of services intended to directly benefit the Government. In Exhibit 6 (page 8), we note the factors that gave this agreement the legal status of a federal contract.

The contractor then sent Denali an invoice billing the agency for the full \$50,000. On September 8, 2008, three Denali staffers promptly approved the invoice for payment in full. This was at a point just slightly less than five months before the event was scheduled to start.

Nature of the Government's claim

On January 20, 2009, the agency head signed a unilateral amendment of the agreement that reduced the amount to \$30,000, reduced the extent of Denali's participation, and increased the number of Denali's registration passes from 4 to 30 (the latter representing approximately a \$13,000 change in itself). These unilateral changes were at a point two weeks before the event was scheduled to start.

Since Denali's records include no documentation to support the amendment, OIG has attempted to reconstruct the surrounding circumstances through interviews of the contractor's officers and Denali's former agency head.

At some point in December 2008 or January 2009, the agency head contacted the contractor and indicated that a Member of Congress was questioning the payment. The agency head felt that he needed to respond to this constituent casework by changing the original agreement and recovering the money paid. Memories of those interviewed vary as to whether the agency head sought to cancel all, or only part, of the agreement and as to whether he sought to recover all, or only part, of the \$50,000.

⁵⁰ See 10 USC 2262; GAO, *National Institutes of Health—Food at Government-Sponsored Conferences*, # B-300826 (March 3, 2005) at www.gao.gov; GAO, *Principles of Federal Appropriations Law*, 3rd ed., vol. I, sections 4(C)(2), 4(C)(5)(f).

⁵¹ See GAO, *Principles of Federal Appropriations Law*, 3rd ed., vol. I, sec. 4(C)(5)(b)(2), vol. III, sec. 12(B)(3).

But the contractor responded that the money had already been spent. It offered to share \$20,000 of the event's profits with Denali — if the event turned out to be successful (a contingency and an unknown). The instant dispute developed when the contractor later asserted that it had instead suffered a loss and resisted repayment.

Complainant-2 periodically urges Denali's current agency head to revisit the matter, and to take more aggressive action to collect the amendment's \$20,000 as a debt due the Government.

*Legal substance of the
Government's unilateral price reduction*

In legal substance, the agency head's unilateral modification functioned as a partial "termination for convenience" of a federal contract. Such terminations by the Government are permissible under the Federal Acquisition Regulation (FAR),⁵² provided that a fair settlement is arranged for the losses incurred by the contractor. FAR 49.201(a) provides:

A settlement should compensate the contractor fairly for the work done and the preparations made for the terminated portions of the contract, including a reasonable allowance for profit. Fair compensation is a matter of judgment and cannot be measured exactly. In a given case, various methods may be equally appropriate for arriving at fair compensation. The use of business judgment, as distinguished from strict accounting principles, is the heart of a settlement.

Similarly, FAR 49.208 provides that a contractor who faces a partial termination by the Government "may request an equitable adjustment in the price or prices of the continued portion of a fixed-price contract. . ."

When the Government attempts to change its mind two weeks before the event begins, a serious question exists as to how much of \$20,000, if any, the Government is still entitled to recoup. Even beyond the contractor's asserted reliance in retaining subcontractors and vendors, Denali's six-fold increase in "comp. conference registrations" represented a significant change in the pricing structure (26 more passes @ \$525 each = \$13,650). Arguably, only the difference between \$20,000 and \$13,650 should be the amount truly at issue, that is, \$6,350.

OIG concludes that a fair resolution under FAR 49.201(a) and FAR 49.208 would be for the contractor to retain the \$20,000 at issue. There is a point where the Government tries to escape "for convenience" too late in the game — and this was it. The \$6,350 would seem to represent a conservative estimate of the contractor's loss from commitments that couldn't be reversed at the eleventh hour. And the contractor would seem entitled to compensation for Denali's unilateral self-help to an extra 26 registration passes (whether actually used or not).

⁵² Every federal contract is deemed to include an implied clause allowing the Government to "terminate for convenience" if no explicit clause has been included. See *G.L. Christian & Assocs. v. United States*, 312 F.2d 418, 160 Ct. Cl. 1 (1963).

While OIG finds insufficient cause for the contractor to repay \$20,000 (or the full \$50,000), we are quick to recognize that our opinion is just our opinion. The “primary jurisdiction” to authoritatively decide the matter lies with the contracting officer⁵³ (who has not ruled so far), the Civilian Board of Contract Appeals,⁵⁴ and the Court of Federal Claims.⁵⁵

Ironically, the standard faced by Denali would be even tougher had its arrangement with Alaska Forum Inc. constituted a mere “grant.” The applicable OMB rules for grants do not allow the Government to terminate a grant for convenience. Once an agency has “obligated” itself to make a grant, any unilateral changes by the Government require a finding that “*a recipient materially fails to comply with the terms and conditions of an award.*”⁵⁶ To put it another way, unilateral cancellation of an “obligated” grant presents an issue of liability under federal law unless the grantee has done something wrong.⁵⁷

Beyond this, the “financial assistance award” itself⁵⁸ provides that the Government will not unilaterally terminate the agreement unless a recipient who is “not in compliance with the terms and conditions” is first given a chance to cure the defect through a corrective action plan. Since the Government wrote the agreement, OIG assumes that it meant what it said.⁵⁹

Nature of the contractor’s claim

While Denali has persisted in its attempts to collect its perceived overpayment of \$20,000, the contractor has responded at two points with claims that allege consequential damages of \$60,000 to \$100,000+ from Denali’s untimely renegeing:

⁵³ See 41 USC 7103.

⁵⁴ See 41 USC 7105(e)(1)(B).

⁵⁵ See 41 USC 7104(b)(1).

⁵⁶ See 2 CFR 215.61(a)(1).

⁵⁷ See *Lynch v. United States*, 292 U.S. 571 (1934); *San Juan City College v. United States*, 391 F.3d 1357 (Fed. Cir. 2004); GAO, *Denali Commission—Overobligation of Apportionment*, # B-316372 (October 21, 2008) at www.gao.gov.

⁵⁸ Award condition # 9 in the original contract.

⁵⁹ In contrast, OIG’s recent inspection report for Denali grant # 1315 found no breach of an obligation when the agency head unilaterally reduced the amount of the award by an even greater percentage. The critical difference, though, was our conclusion that

in grant # 1315, Denali did not breach a promise to the [grantee]. For three reasons, OIG finds that the unused \$980,294 never materialized as a legally-binding “obligation” under federal appropriations law. It legally did not advance beyond the pre-obligation planning stage known in federal budgetary parlance as a non-binding “commitment.”

See Denali OIG, *Inspection of \$1 million grant # 1315 to State of Alaska for Village Resume Project* (Feb. 9, 2012), pages 3 to 5, at www.denali-oig.org.

Excerpt from Letter 1:

*While we had every hope of working this out cooperatively, our event sustained a \$60,000 shortfall due to our substantially increased expenses and unrealized benefit from the intended partnership with the Denali Commission. . .*⁶⁰

Excerpt from Letter 2:

*The Commission, having backed out of their participation commitments, left our organization saddled with over \$104,000 in actual debt associated with the increased venue space, supporting equipment and contracted services. . . The Commission's request for reimbursement for funds we had expended prior to final amendment is appalling, given that our organization suffered fixed losses in excess of \$104,000. . . It has taken our organization over two years to financially recover from the Commission's failure to fulfill their component of the Agreement. . .*⁶¹

Each of these two letters would clearly seem to constitute a pending "claim," which FAR 2.101 defines as follows:

Claim means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. . .

In Letter 2, the contractor further asserts that Denali's participation was expected to increase the event's attendance by another 500 persons and another 45 exhibitors. The contractor asserts that neither number increased due to Denali's failure to cooperate.

In OIG's interview, the contractor asserted an even greater loss of over \$200,000 from the disappointing attendance of 500 persons less than expected.

Denali has so far not responded to these contractor claims for consequential damages.

Despite these protests that want more than the original \$50,000, FAR 49.207 would at first glance seem to cap the contractor's damages at the full contract price that would have been paid in the absence of the Government's termination.

However, the theme of the contractor's claim letters is that it was relying on Denali to do more than just add money. The contractor is arguing that Denali agreed to function as an active partner

⁶⁰ Contractor's letter to Denali, dated Jan. 29, 2010.

⁶¹ Contractor's letter to Denali, dated Aug. 8, 2011.

rather than a silent one — active to the point of being an actual co-promoter and designer of the event as a form of joint venture.

The contractor apparently finds these assumptions in the following paragraph of the original agreement:

In addition to the conference sponsorship the Commission agrees to provide a staff member to participate in the Conference Planning events and on the Conference planning committee. Additionally, the Commission shall develop thematic presentations and sessions for the conference and shall ensure that Commission staff and other program partners and stakeholders participate in the conference and are featured as presenters, panelists, and/or moderators for the Commission tracks.⁶²

Since the Government wrote the agreement, OIG will interpret it from the reasonable expectations of the contractor. Dissecting the above paragraph, Denali seems expected to supply “sweat equity” in terms of (1) a Denali employee detailed to the event’s preparation, (2) creative work-product (designing “thematic presentations and sessions” and “tracks”), (3) a promise (“shall ensure that”) to successfully negotiate speaking talent from Commission staff, “program partners” (major grantees), and “stakeholders” (subgrantees), and (4) a promise (again, “shall ensure that”) to arrange for Denali’s equivalent of a customer base (program partners, stakeholders) to come to the event in the first place.

Based on the claim letters and OIG’s interviews, the contractor is asserting that Denali defaulted in its promises to contribute business intangibles beyond the payment of money: subject-matter expertise, intellectual property, influence with the equivalent of a customer base (partners, stakeholders), “celebrity” contacts, and prestigious “branding” for the event (strong identification akin to an endorsement). The contractor hoped that these intangibles would boost attendance to new levels and enhance the event’s ability to attract high-ranking Beltway talent.

The contractor’s claims thus suggest that the promised intangibles were just as important as the \$50,000 payment that went for the tangible items (space, equipment, printing). The contractor asserts that these shortcomings on the intangibles deprived it of the benefit of its bargain for increased attendance.

OIG has so far been sympathetic with the contractor’s frustrations over the last-minute partial termination for convenience. However, OIG finds the claim of a \$60,000 to \$104,000 loss (or more) from disappointing attendance to be speculative as to both amount and cause. In fact, during OIG’s interview of the contractor, it disclosed a significant casualty loss that was under the contractor’s control with no connection to Denali.⁶³

⁶² Excerpt from award condition # 1 in the original contract.

⁶³ In the contractor’s records obtained through OIG’s administrative subpoena, OIG notes that contractor paid over \$4,500 for insurance coverage. OIG has not attempted to evaluate whether this insurance might have covered the asserted casualty — and thus offered the contractor the potential to mitigate its losses. The type of casualty alleged is one that nonprofits frequently insure against.

But, again, OIG's opinion on this claim is just our opinion. Authoritative resolution of such a claim for consequential damages against the Government would lie within the province of the Civilian Board of Contract Appeals⁶⁴ or the Court of Federal Claims.⁶⁵

To the extent that the contractor considers any third parties responsible for its losses, the contractor can review with its legal counsel the potential remedies available under Alaska law. For instance, state law recognizes the potential for recovery for "tortious interference with a contract."⁶⁶ And the Alaska Supreme Court has stated:

We have long recognized the tort of intentional interference with prospective economic advantage. . . "[u]nder this theory, a person who is involved in an economic relationship with another, or who is pursuing reasonable and legitimate prospects of entering such a relationship, is protected from a third person's wrongful conduct which is intended to disrupt the relationship. [citations omitted]"⁶⁷

It is, of course, not the role of OIG to speculate on the existence of relevant third parties (if any) or their legal culpability (if any).

RECOMMENDATIONS

1. The disputants should attempt to restore their working relationship by participating in the mediation offered by the Federal Mediation and Conciliation Service.

OIG's inspection has reviewed Denali's compliance with the applicable laws and agreements. While our report details our conclusions, it does not repair the following aspects of the troubled working relationship:

- Denali and the contractor need an authoritative, binding resolution as to whether the Government is owed \$50,000, \$20,000, or nothing.
- Denali and the contractor need an authoritative, binding resolution as to whether the Government owes the contractor consequential damages.

⁶⁴ See 41 USC 7105(e)(1)(B).

⁶⁵ See 41 USC 7104(b)(1).

⁶⁶ See *K & K Recycling v. Alaska Gold Co.*, 80 P.3d 702, 717 (Alaska 2003).

⁶⁷ *Alaska Marine Pilots v. Hendsch*, 950 P.2d 98 (Alaska 1997), quoting *Ellis v. City of Valdez*, 686 P.2d 700, 706 (Alaska 1984).

- Denali and the contractor need to define a constructive relationship for any future projects, including the potential resumption of Denali’s full participation in the consortium that continues to convene the annual training event.

OIG has conferred with the respected Federal Mediation and Conciliation Service,⁶⁸ who has agreed at OIG’s request to offer the parties a neutral mediation of these persistent issues. This is an appropriate use of OIG resources under the Inspector General Act,⁶⁹ and OIG hopes the mediation will assist the disputants in transitioning to a productive working relationship. Both the contractor and Denali’s agency head have agreed to participate in such a mediation.

2. Denali’s agency head should request pertinent training from GAO.

Denali’s agency head should request training from GAO that will enable him to document defensible choices as to whether a grant, cooperative agreement, procurement, or interagency transfer⁷⁰ is the appropriate instrument. For procurements, this should include training on the documentation of any single-source selections.

We understand that the agency head intends to transition from the past form of “sponsorships” — which primarily assist the recipients — to more focused events that primarily benefit Denali in assessing the public impact of its programs. To the extent that these future events will be treated as contracts, the FAR’s procedures for resolving disputes will hopefully moot the burden on Members of Congress to intervene through constituent casework.

Denali has benefited from GAO training on appropriations law and OMB training on grants law. Denali may wish to continue its past practice of including other federal agencies in the local training that Denali arranges from Beltway authorities.

3. Denali’s agency head should strengthen controls over the event’s federal funding.

OMB requires increased oversight and justification for the federal funding of group events.⁷¹ To the extent that Denali decides to contribute to future editions of the event in question, OIG recommends two specific improvements to proactively preserve public confidence.

First, Denali’s agency head should coordinate the part-time detail of a federal employee to maintain the event’s accounting records. Such a detail to a nonprofit organization is permissible

⁶⁸ See www.fmcs.gov.

⁶⁹ See Inspector General Act sections 4(a)(4), 6(a)(9), 8G(g)(2).

⁷⁰ An agreement under the Economy Act in which one federal agency performs services for another federal agency.

⁷¹ See OMB Memorandum M-12-12, *Promoting Efficient Spending to Support Agency Operations* (May 11, 2012); OMB Memorandum M-11-35, *Eliminating Excess Conference Spending and Promoting Efficiency in Government* (Sept. 21, 2011).

under the Intergovernmental Personnel Act⁷² and can be periodically rotated among the parties to the statement of cooperation. The event's records must be kept with sufficient sophistication to clearly trace public and private funding to the respective expenses that each treats as acceptable under differing rules.

Second, Denali's agency head should encourage the consortium of federal agencies to condition their funding of this event on an annual program audit of the contractor's (1) financial statements, (2) sources and use of federal funds, (3) accounting procedures, and (4) representations on IRS Form 990.⁷³

OIG found no record of any prior audits for this contractor in the online database of the Federal Audit Clearinghouse,⁷⁴ presumably because the contractor's annual federal assistance has never reached the \$500,000 "single audit" threshold. Nevertheless, the consortium of federal agencies can still proactively require a "program audit" as a condition of funding. Most of the consortium agencies are under the oversight of a large Office of Inspector General with considerable staff,⁷⁵ whose services for this audit could be periodically rotated under the statement of cooperation.

MIKE MARSH, CPA, MPA, CFE, Esq.

INSPECTOR GENERAL
DENALI COMMISSION

⁷² The Intergovernmental Personnel Act allows federal agencies to detail their employees to state, tribal, nonprofit, university, and local governmental entities. See 5 USC 3371-3373.

⁷³ On the other hand, Denali's agency head may wish to seek an IRS letter ruling as to whether the contractor is required to file a Form 990 tax return. See Revenue Procedure 2012-4, 2012-1 I.R.B. 125 (Jan. 12, 2012). Much of the form is related to the nonprofit's organizational structure and accounting controls, rather than the actual reporting of taxes. Preparation of such a return is thus quite labor intensive, and the IRS could potentially consider the contractor to be performing an "essential government function" similar to a government franchise fund. See 26 USC 115.

⁷⁴ See <http://harvester.census.gov/sac/>.

⁷⁵ See Inspector General Act sec. 12(2).

APPENDIX

*The following are excerpted pages 57-64 and 67-68
from the program publication for the 2009 Alaska Forum event*

ARCTIC ISSUES

Monday, February 2

3:30 p.m. - 4:45 p.m.

- ❑ Arctic Transportation: Central Hubs and Future Infrastructure *E/Space 2*

Tuesday, February 3

10:45 a.m. - 11:45 a.m.

- ❑ Arctic Marine Ecosystem Changes *E/Space 13&14*
- ❑ The Status and Trends of Ice Seals in Alaska *E/Space 11&12*
- ❑ Program Review of ConocoPhillips North Slope Environmental Studies *E/Space 2*

2:00 p.m. - 3:15 p.m.

- ❑ Walrus and Polar Bear – What Next? (Part 1 of 2) *E/Space 2*

3:30 p.m. - 4:45 p.m.

- ❑ Future Cruise Ship Tourism and Potential Impacts on Rural Alaska *E/Space 11&12*
- ❑ Walrus and Polar Bear – What Next? (Part 2 of 2) *E/Space 2*

Wednesday, February 4

9:30 a.m. - 10:30 a.m.

- ❑ Maritime Operations in the Arctic *E/Space 7&8*
- ❑ Unlocking Heavy Oil Reserves in Alaska's North Slope *E/Space 11&12*

10:45 a.m. - 11:45 a.m.

- ❑ Erosion Impacts on Alaskan Communities *E/Space 7&8*

2 p.m. - 3:15 p.m.

- ❑ Trends in Arctic Mining: Assessing Data for Monitoring Social Indicators *E/Space 7&8*

3:30 p.m. - 4:45 p.m.

- ❑ Arctic Port and Shipping Infrastructure *E/Space 7&8*

Thursday, February 5

9:30 a.m. - 10:30 a.m.

- ❑ Arctic Oil Spill Response *E/Space 2*
- ❑ Fate and Transport of Petroleum Spills in Arctic Soils and Gravel Pads *E/Space 11&12*

10:45 a.m. - 11:45 a.m.

- ❑ Arctic Development: A Future Vision and A Way Forward *E/Space 2*

CLEAN UP & REMEDIATION

Monday, February 2

10:30 a.m. - 11:45 a.m.

- ❑ Brownfields: Federal Resources for Addressing Contaminated Sites *E/Space 13&14*

2 p.m. - 3:15 p.m.

- ❑ Alaska's Brownfields Program and Current Projects *E/Space 13&14*
- ❑ Fort Richardson Environmental Restoration: Case Study of the Military Effort to Bring Back Waterfowl and Other Wildlife *E/Space 4*

3:30 p.m. - 4:45 p.m.

- ❑ Tribal Brownfields Grant Programs in Alaska *E/Space 13&14*
- ❑ Federal Restoration Status: Progress and Challenges of Federal Facility Environmental Restoration Efforts *E/Space 4*

CLEAN UP & REMEDIATION (continued)

Tuesday, February 3

9:30 a.m. - 10:30 a.m.

- ❑ Responses to Hazard Discovery *E/Space 4*

10:45 a.m. - 11:45 a.m.

- ❑ Contaminated Sites: Cleanup, Closure, and Finding Out More *E/Space 1*

Wednesday, February 4

10:30 a.m. - 11:45 a.m.

- ❑ Survey of Environmental Crimes in Alaska *E/Space 1*

10:45 a.m. - 11:45 a.m.

- ❑ Guidance on Investigating Vapor Intrusion at Contaminated Sites *E/Space 3*

2 p.m. - 3:15 p.m.

- ❑ The Impact of Dump Site Contaminants on Rural Populations: What is Known and Not Known *E/Space 13&14*
- ❑ Community Solutions to Backhauling Old Tank Farms *E/Space 3*
- ❑ In-Situ Treatment for Chlorinated Organics *E/Space 6*

3:30 p.m. - 4:45 p.m.

- ❑ Amchitka Island Nuclear Test Site Monitoring Program Update *E/Space 13&14*
- ❑ Treatment of PCBs and Other Recalcitrant Organic Compounds *E/Space 6*

Thursday, February 5

9:30 a.m. - 10:30 a.m.

- ❑ Military Munitions Response Program: Program Overview - State of Alaska Perspective (Part 1 of 2) *E/Space 4*
- ❑ Fate and Transport of Petroleum Spills in Arctic Soils and Gravel Pads *E/Space 11&12*

10:45 a.m. - 11:45 a.m.

- ❑ Military Munitions Response Program: Program Overview - State of Alaska Perspective (Part 2 of 2) *E/Space 4*
- ❑ Using the Ultra-Violet Optical Screening Tool System Technology for Rapid Field Screening of Petroleum Contamination in Soil *E/Space 11&12*

2 p.m. - 3:15 p.m.

- ❑ Federal Facility Remediation Roundtable: Open Discussion on Remedial Cleanup Projects (Part 1 of 2) *E/Space 4*
- ❑ Multi-Incremental Soil Sampling: When or When Not to Use It *E/Space 11&12*

3:30 p.m. - 4:45 p.m.

- ❑ Federal Facility Remediation Roundtable: Open Discussion on Remedial Cleanup Projects (Part 1 of 2) *E/Space 4*

Agenda by Subject

Agenda by Subject

CLIMATE CHANGE

Monday, February 2

10:30 a.m. - 11:45 a.m.

- Climate Change in Alaska: Recent Developments
E/Arteaga Room

2 p.m. - 3:15 p.m.

- Climate Change in Alaska: Reducing Emissions in the Energy Supply and Demand Sector *E/Arteaga Room*

3:30 p.m. - 4:45 p.m.

- Climate Change in Alaska: Mitigating Impacts from the Oil and Gas Industry *E/Arteaga Room*

Tuesday, February 3

9:30 a.m. - 10:30 a.m.

- Climate Change in Alaska: Reducing Emissions in the Transportation & Land Use Sector *E/Arteaga Room*

10:45 a.m. - 11:45 a.m.

- Climate Change in Alaska: Reducing Emissions from Forestry, Agriculture, and Waste *E/Arteaga Room*

2 p.m. - 3:15 p.m.

- Climate Change in Alaska: Building Resiliency into our Future (Part 1 of 2) *E/Arteaga Room*

3:30 p.m. - 4:45 p.m.

- Climate Change in Alaska: Building Resiliency into our Future (Part 2 of 2) *E/Arteaga Room*

Wednesday, February 4

9 a.m. - 12 a.m.

- Climate Change Sessions by The Alaska Municipal League (Day 1 of 2) *D/Tubughnenq' Breakout Room 3*

9:30 a.m. - 10:30 a.m.

- Climate Change in Alaska: Building Resiliency - Health & Culture *E/Arteaga Room*

10:45 a.m. - 11:45 a.m.

- Climate Change in Alaska: Wildlife and Other Natural Systems *E/Arteaga Room*

2 p.m. - 3:15 p.m.

- Climate Change in Alaska: Infrastructure - Our Built Environment *E/Arteaga Room*

3:30 p.m. - 4:45 p.m.

- Climate Change in Alaska: Discussion - Pulling it All Together *E/Arteaga Room*

Thursday, February 5

8 a.m. - 4:45 p.m.

- Climate Change: Research Coordination Workshop *D/Tubughnenq' Breakout Room 4&5*

8 a.m. - 12 p.m.

- Climate Change Sessions by The Alaska Municipal League (Day 2 of 2) *D/Tubughnenq' Breakout Room 3*

8 a.m. - 4 p.m.

- Climate Change - Mitigation Advisory Group Meeting *Atwood Building*

CONTAMINANTS & HUMAN HEALTH

Monday, February 2

3:30 p.m. - 4:45 p.m.

- Using Health Assessments to Understand Contaminant Impacts in Your Community *E/Cook Room*

Tuesday, February 3

2 p.m. - 3:15 p.m.

- Children Run Better Unleaded *E/Space 13&14*

Wednesday, February 4

9:30 a.m. - 10:30 a.m.

- Contaminant Research in Alaskan subsistence species and Coastal Waters *E/LaPerouse Room*

10:45 a.m. - 11:45 a.m.

- Community Focused Contaminant Monitoring Projects *E/LaPerouse Room*
- The Role of Tribal Community and Academic Partnerships in Investigating Environmental Health Concerns in Alaska *E/Space 11&12*

2 p.m. - 3:15 p.m.

- Research and Monitoring of Contaminants in our National Parks *E/LaPerouse Room*
- The Impact of Dump Site Contaminants on Rural Populations: What is Known and Not Known *E/Space 13&14*

3:30 p.m. - 4:45 p.m.

- Contaminant Monitoring Strategy Discussion *E/LaPerouse Room*

Thursday, February 5

2 p.m. - 3:15 p.m.

- Environmental Health and Justice: Bringing Together Isolated Communities to Reduce Harmful Environmental Exposures from Formerly Used Defense Sites and Global Transport *E/Space 9&10*

DENALI COMMISSION

Wednesday, February 4

9:30 a.m. - 10:30 a.m.

- Investing in Rural Infrastructure (Part 1 of 2) *E/Space 9&10*

10:45 a.m. - 11:45 a.m.

- Investing in Rural Infrastructure (Part 2 of 2) *E/Space 9&10*

2 p.m. - 3:15 p.m.

- Community Solutions to Backhauling Old Tank Farms *E/Space 3*

ENERGY

Monday, February 2

10:30 a.m. - 11:45 a.m.

- Geothermal Potential in Alaska *E/Space 9&10*

2 p.m. - 3:15 p.m.

- Integrated Energy Systems in Alaska *E/Space 6*

3:30 p.m. - 4:45 p.m.

- Electric Vehicle Technology *E/Space 9&10*

Tuesday, February 3

9:30 a.m. - 10:30 a.m.

- Electricity from Alaska's Rivers - Instream Hydrokinetic Technologies Compared to Traditional Hydro *E/Space 9&10*
- Polar Bears in the North Slope Oil Fields: Preliminary Data and Potential Mitigation Measures to Reduce Bear-Human Interactions *E/Space 2*

10:45 a.m. - 11:45 a.m.

- Wind Power Developments in Alaska: Challenges and Successes *E/Space 9&10*
- Program Review of ConocoPhillips North Slope Environmental Studies *E/Space 2*

2 p.m. - 3:15 p.m.

- The Denali Alaska Gas Pipeline - Major Environmental Issues and Challenges *E/Space 11&12*
- Coal Development in Alaska *E/Space 9&10*

3:30 p.m. - 4:45 p.m.

- TransCanada's Alaska Pipeline Project: The Engineering and Environmental Partnership Approach *E/Space 1*
- Alaska Ocean Energy Potential *E/Space 9&10*

Wednesday, February 4

9:30 a.m. - 10:30 a.m.

- Unlocking Heavy Oil Reserves on Alaska's North Slope

10:45 a.m. - 11:45 a.m.

- Biomass: A New Look at a Traditional Energy Source

2 p.m. - 3:15 p.m.

- Carbon Trading Laboratory

3:30 p.m. - 4:45 p.m.

- Carbon Trading Laboratory (Continued)

ENVIRONMENTAL EDUCATION & OUTREACH

Monday, February 2

10:30 a.m. - 11:45 a.m.

- The Reserved Warrior *E/Space 11&12*

2 p.m. - 3:15 p.m.

- Making a Difference: Involving Local and Traditional Knowledge in Resource Management *E/Space 11&12*

Tuesday, February 3

9:30 a.m. - 10:30 a.m.

- Community Forums: Discussing Natural Resource Management with your Neighbors (Part 1 of 2) *E/Space 7&8*

10:45 a.m. - 11:45 a.m.

- Community Forums: Discussing Natural Resource Management with your Neighbors (Part 2 of 2) *E/Space 7&8*

2 p.m. - 3:15 p.m.

- Green Infrastructure and Green Building: Putting Ideas Into Practice - How Can We Do More? *E/Space 3*

3:30 p.m. - 4:45 p.m.

- Green Infrastructure and Green Building: What's In It For Me? *E/Space 3*
- The Rebel Pebbles: How Youth in Dillingham Organized Around an Environmental Issue *E/Space 6*

Wednesday, February 4

2 p.m. - 3:15 p.m.

- Tribal Natural Resource Programs: A Pathway to Meaningful Involvement in Natural Resource Management (Part 1 of 2) *E/Space 11&12*

3:30 p.m. - 4:45 p.m.

- Tribal Natural Resource Programs: A Pathway to Meaningful Involvement in Natural Resource Management (Part 2 of 2) *E/Space 11&12*

Thursday, February 5

10:45 a.m. - 11:45 a.m.

- Are Kids Connecting to Nature? *E/Space 9&10*

2 p.m. - 3:15 p.m.

- Science Training and Education Programs for Alaska Natives and Rural Alaskans: K-12 and Pre-college Recruitment (Part 1 of 2) *E/Space 6*

3:30 p.m. - 4:45 p.m.

- Science Training and Education Programs for Alaska Natives and Rural Alaskans: Post-Secondary Education (Part 2 of 2) *E/Space 6*

Friday, February 6

8:30 a.m. - 4:30 p.m.

- Project WET - Native Waters Workshop *E/Space 3*

9:30 a.m. - 12 p.m.

- Alaska Marine Science and Fisheries Career Coalition Workshop *E/Space 5&6*

Agenda by Subject

ENVIRONMENTAL JUSTICE

Monday, February 2

3:30 p.m. - 4:45 p.m.

- Participatory Process in the Alaska Pollutant Discharge Elimination System: Optimizing Community Input *E/Space 7&8*

Wednesday, February 4

10:45 a.m. - 11:45 a.m.

- The Role of Tribal Community and Academic Partnerships in Investigating Environmental Health Concerns in Alaska *E/Space 11&12*

2 p.m. - 3:15 p.m.

- The Impact of Dump Site Contaminants on Rural Populations: What is Known and Not Known *E/Space 13&14*

ENVIRONMENTAL REGULATIONS

Monday, February 2

10:30 a.m. - 11:45 a.m.

- Brownfields: Federal Resources for Addressing Contaminated Sites *E/Space 13&14*

2 p.m. - 3:15 p.m.

- Alaska's Brownfields Program and Current Projects *E/Space 13&14*

Tuesday, February 3

9:30 a.m. - 10:30 a.m.

- Mitigation Measures: What are they? Why do we need them? *E/Space 6*

10:45 a.m. - 11:45 a.m.

- Contaminated Sites: Cleanup, Closure, and Finding Out More *E/Space 1*

2 p.m. - 3:15 p.m.

- Children Run Better Unleaded *E/Space 13&14*

Wednesday, February 4

3:30 p.m. - 4:45 p.m.

- Cruise Ship Regulations: My How They have Changed! *E/Space 3*

EXXON VALDEZ OIL SPILL

Monday, February 2

10:30 a.m. - 11:45 a.m.

- 20 Years After the Exxon Valdez Oil Spill, Initial Impacts and Killer Whales *E/LaPerouse Room*

2 p.m. - 3:15 p.m.

- Oil Remains: 20 Years After the Exxon Valdez Oil Spill *E/LaPerouse Room*

3:30 p.m. - 4:45 p.m.

- Sea Otters, Herring, and the Future of Restoration - 20 Years After the Exxon Valdez Oil Spill *E/LaPerouse Room*

EXXON VALDEZ OIL SPILL (continued)

Tuesday, February 3

2 p.m. - 3:15 p.m.

- Oil Spill Prevention and Response (Part 1 of 2) *E/LaPerouse Room*

3:30 p.m. - 4:45 p.m.

- Oil Spill Prevention and Response, (Part 2 of 2) *E/LaPerouse Room*

Wednesday, February 4

9:30 a.m. - 11:45 a.m.

- Transforming the Human Community: Connecting Conversations for Peer Listener Networks *E/Space 6*

Thursday, February 5

2 p.m. - 4:45 p.m.

- Transforming the Human Community: Connecting Conversations for Peer Listener Networks *E/Space 7&8*

FEDERAL GOVERNMENT ISSUES

Monday, February 2

10:30 a.m. - 11:45 a.m.

- National Guard Response to Community Needs *E/Space 4*
- Brownfields: Federal Resources for Addressing Contaminated Sites *E/Space 13&14*

2 p.m. - 3:15 p.m.

- Fort Richardson Environmental Restoration: Case Study of the Military Effort to Bring Back Waterfowl and Other Wildlife *E/Space 4*

3:30 p.m. - 4:45 p.m.

- Federal Restoration Status: Progress and Challenges of Federal Facility Environmental Restoration Efforts *E/Space 4*

Tuesday, February 3

9:30 a.m. - 10:30 a.m.

- Responses to Hazard Discovery *E/Space 4*
- Mitigation Measures: What are they? Why do we need them? *E/Space 6*

10:45 a.m. - 11:45 a.m.

- Public Use of Federal Property: Opportunities for the Use of Military Land for Hiking, Hunting, Recreation, etc. *E/Space 4*

2 p.m. - 3:15 p.m.

- Cultural Resources: Cultural Resource Management and You. Tools for Citizens (Part 1 of 2) *E/Space 4*

3:30 p.m. - 4:45 p.m.

- Cultural Resources: Cultural Resource Management and You. Tools for Citizens (Part 2 of 2) *E/Space 4*

FEDERAL GOVERNMENT ISSUES (cont.)

Wednesday, February 4

9:30 a.m. - 10:30 a.m.

- Government Mandates for Sustainability: Summary of Executive Orders, Laws, etc., that Create a more Sustainable Federal Government *E/Space 4*

10:45 a.m. - 11:45 a.m.

- Low-Impact Development: Beyond Compliance Design Practices to Reduce Environmental Impact and Energy Use *E/Space 4*

2 p.m. - 3:15 p.m.

- Climate Change Response Action: Summary of Federal Strategies to Tackle Climate Change *E/Space 4*

3:30 p.m. - 4:45 p.m.

- Living Marine Resources: Federal Government Efforts to Preserve the Marine Environment *E/Space 4*

Thursday, February 5

9:30 a.m. - 10:30 a.m.

- Military Munitions Response Program: Program Overview - State of Alaska Perspective (Part 1 of 2) *E/Space 4*
- Arctic Oil Spill Response *E/Space 2*
- Grants.gov: An Online Resource and Application Portal for Federal Grants *E/Space 1*

10:45 a.m. - 11:45 a.m.

- Military Munitions Response Program: Quality Assurance at Munition Response Sites (Part 2 of 2) *E/Space 4*

2 p.m. - 3:15 p.m.

- Federal Facility Remediation Roundtable: Open Discussion on Remedial Cleanup Projects (Part 1 of 2) *E/Space 4*

3:30 p.m. - 4:45 p.m.

- Federal Facility Remediation Roundtable: Open Discussion on Remedial Cleanup Projects (Part 2 of 2) *E/Space 4*
- General Assistance Programs: Secrets, Tools, and Resources to a Clean Audit for Federal Grants *E/Space 1*

FILM FESTIVAL

Monday, February 2

10:30 a.m. - 11:45 a.m.

- Film Festival: Opening Film - Youth and the Environment *E/Space 5*

2 p.m. - 3:15 p.m.

- Film Festival: Ecosystem/Preserving the Environment *E/Space 5*

3:30 p.m. - 4:45 p.m.

- Film Festival: Non-indigenous Species, Youth and the Environment, Education *E/Space 5*

Tuesday, February 3

9:30 a.m. - 10:30 a.m.

- Film Festival: Ecosystem/Preserving the Environment *E/Space 5*

10:45 a.m. - 11:45 a.m.

- Film Festival: Non-indigenous Species *E/Space 5*

2 p.m. - 3:15 p.m.

- Film Festival: Education *E/Space 5*

3:30 p.m. - 4:45 p.m.

- Film Festival: Non-indigenous Species *E/Space 5*

FILM FESTIVAL (continued)

Wednesday, February 4

9:30 a.m. - 10:30 a.m.

- Film Festival: Ecosystem/Preserving the Environment, Solid Waste/Recycling *E/Space 5*

10:45 a.m. - 11:45 a.m.

- Film Festival: Non-indigenous Species *E/Space 5*

2 p.m. - 3:15 p.m.

- Film Festival: Solid Waste/Recycling *E/Space 5*

3:30 p.m. - 4:45 p.m.

- Film Festival: Education *E/Space 5*

FISH, WILDLIFE & HABITAT

Monday, February 2

10:30 a.m. - 11:45 a.m.

- 20 Years After the Exxon Valdez Oil Spill, Initial Impacts and Killer Whales *E/LaPerouse Room*

2 p.m. - 3:15 p.m.

- Fort Richardson Environmental Restoration: Case Study of the Military Effort to Bring Back Waterfowl and Other Wildlife *E/Space 4*

- Alaska Monitoring and Assessment Program for Coastal and Freshwater Resources *E/Space 2*

3:30 p.m. - 4:45 p.m.

- Sea Otters, Herring, and the Future of Restoration - 20 Years After the Exxon Valdez Oil Spill *E/Space LaPerouse Room*

Tuesday, February 3

9:30 a.m. - 10:30 a.m.

- Helping People Help the Land *E/Space 11&12*
- Mitigation Measures: What are they? Why do we need them? *E/Space 6*

- Polar Bears in the North Slope Oil Fields: Preliminary Data and Potential Mitigation Measures to Reduce Bear-Human Interactions *E/Space 2*

10:45 a.m. - 11:45 a.m.

- The Status and Trends of Ice Seals in Alaska *E/Space 11&12*
- Arctic Marine Ecosystems Changes *E/Space 13&14*

2 p.m. - 3:15 p.m.

- Walrus and Polar Bear - What Next? (Part 1 of 2) *E/Space 2*

3:30 p.m. - 4:45 p.m.

- Walrus and Polar Bear - What Next? (Part 2 of 2) *E/Space 2*

FISH, WILDLIFE & HABITAT (continued)

Wednesday, February 4

9:30 a.m. - 10:30 a.m.

- Rural Issues: Traditional Ecological Knowledge and Habitat Conservation *E/Space 1*
- Contaminant Research in Alaskan Subsistence Species and Coastal Waters *E/LaPerouse Room*

10:45 a.m. - 11:45 a.m.

- Carbon Catchers, Chemistry & Climate: Changes to our Streams *E/Board Room*
- Climate Change in Alaska: Wildlife and Other Natural Systems *E/Arteaga Room*

2 p.m. - 3:15 p.m.

- Mysterious Demise of an Ice Age Relic *E/Space 1*

3:30 p.m. - 4:45 p.m.

- Living Marine Resources: Federal Government Efforts to Preserve the Marine Environment *E/Space 4*

Thursday, February 5

9:30 a.m. - 10:30 a.m.

- Indigenous People's Council for Marine Mammals *E/Space 9&10*
- Predator Control: What's the Justification? (Part 1 of 2) *E/Space 3*

10:45 a.m. - 11:45 a.m.

- Predator Control - What's the Biology? (Part 2 of 2) *E/Space 3*
- Local Community Involvement: The Marine Mammals Protection Act and the Endangered Species Act (Part 1 of 2) *E/Space 1*

2 p.m. - 3:15 p.m.

- Marine Debris Cleanup Along Alaska's Coasts (Part 1 of 2) *E/Space 2*
- Local Community Involvement: The Marine Mammals Protection Act and the Endangered Species Act (Part 2 of 2) *E/Space 1*

3:30 p.m. - 4:45 p.m.

- Marine Debris Cleanup Along Alaska's Coasts (Part 2 of 2) *E/Space 2*

Friday, February 6

8:30 a.m. - 11:30 a.m.

- Tribal Conservation District Workshop *E/Space 2*

GENERAL ASSISTANCE PROGRAM

Monday, February 2

10:30 a.m. - 11:45 a.m.

- Tribal Baseline Water Quality Monitoring for General Assistance Programs *E/Cook Room*
- Opportunities for Peer Grants Management Assistance: Alaska General Assistance Program Circuit Rider and Peer Assistance Projects *E/Space 1*

2 p.m. - 3:15 p.m.

- General Assistance Program Online For Trainers: Circuit Riders and Peer Assistance Providers *E/Space 1*
- General Assistance Program Grant Negotiations: Your Questions Answered *E/Cook Room*

3:30 p.m. - 4:45 p.m.

- General Assistance Program Online (Will be Repeated) *E/Space 1*
- Using Health Assessments to Understand Contaminant Impacts in Your Community *E/Cook Room*

Tuesday, February 3

9:30 a.m. - 10:30 a.m.

- General Assistance Program Online: (Repeated) *E/Space 1*
- Environmental Protection Agency Tribal Operations Committee: You Can Make a Difference! *E/Cook Room*

10:45 a.m. - 11:45 a.m.

- EPA Tribal Consultation Procedures: Closed Session for Tribal Leaders *E/Cook Room*

2 p.m. - 3:15 p.m.

- Weaving Culture and Language into Tribal Environmental Program Development *E/Cook Room*

3:30 p.m. - 4:45 p.m.

- EPA Communications Protocols: North Slope Community Case Study *E/Cook Room*
- Local to Global: Community Based Projects of International Scope *E/Space 13&14*

Wednesday, February 4

8:45 a.m. - 11:45 a.m.

- Alaska Tribal Multi-Media Small Demonstration Projects: Innovative Projects that Make Sense *D/Tubughnenq' Breakout Room 4*

9:30 a.m. - 10:30 a.m.

- Keeping Ahead of the Curve: General Assistance Program Grants Management Changes and Developments for New Recipients *E/Cook Room*
- Mining Fundamentals: An Introduction (Part 1 of 4) *E/Space 2*

9:30 a.m. - 4:45 p.m.

- Picture Exhibition: Before and After Community Abandoned Drum Clean Up Projects *E/Cook Room*

10:30 a.m. - 11:45 a.m.

- Survey of Environmental Crimes in Alaska *E/Space 1*

10:45 a.m. - 11:45 a.m.

- Mining 101: Environmental Issues (Part 2 of 4) *E/Space 2*
- General Assistance Programs: Briefing Tribal Councils on Environmental Program Developments *E/Cook Room*

2 p.m. - 3:15 p.m.

- Mining Regulatory Framework (Part 3 of 4) *E/Space 2*

3:30 p.m. - 4:45 p.m.

- Mining and Tribal Involvement (Part 4 of 4) *E/Space 2*

GENERAL ASSISTANCE PROGRAM (cont.)

Thursday, February 5

9:30 a.m. - 10:30 a.m.

- Implementing the Alaska Pollution Discharge Elimination System *E/Cook Room*
- Meet with an Environmental Protection Agency General Assistance Program Project Officer and Ask Questions *E/Space 13&14*
- Grants.gov: An Online Resource and Application Portal for Federal Grants *E/Space 1*

10:45 a.m. - 11:45 a.m.

- Alaska Natives and Climate Change Talking Session: A Traditional Discussion of a Modern Problem *E/Cook Room*
- Banning Plastic Bags and Styrofoam in Village Alaska *E/Space 13&14*

2 p.m. - 3:15 p.m.

- Two Topics, One Place: Brownfields Tribal Response Program Grants and Emergency Response Planning for Villages *E/Space 13&14*
- Climate Change: Tribal Perspectives *E/Cook Room*

3:30 p.m. - 4:45 p.m.

- Logic Modeling & Performance Measurement: Learning to Tell Your Performance Story *E/Space 9&10*
- Opportunities for Environmental Education and Stewardship through Indian General Assistance Programs *E/Cook Room*
- General Assistance Programs: Secrets, Tools, and Resources to a Clean Audit for Federal Grants *E/Space 1*

Friday, February 6

9 a.m. - 11:45 a.m.

- Training-the-Trainer: Teaching Logic Modeling & Work Plan Development & Performance Measurement *E/Space 4*

9:30 a.m. - 10:30 a.m.

- How to use Film as a Community Conservation Tool *E/Space 9&10*

10:30 a.m. - 11:45 a.m.

- General Assistance Programs: GIS Applications for Tribal Lands *E/Space 11&12*

1 p.m. - 2 p.m.

- General Assistance Program Breakout Sessions *D/Tikahtnu Ballroom*

2:15 p.m. - 3:30 p.m.

- Environmental Protection Agency General Assistance Program *D/Tikahtnu Ballroom*

GREEN BUILDING / GREEN INFRASTRUCTURE

Monday, February 2

10:30 a.m. - 11:45 a.m.

- Green Infrastructure and Green Building: An Overview *E/Space 3*

2 p.m. - 3:15 p.m.

- Green Infrastructure in Alaska: Recent Activities and Accomplishments *E/Space 3*

3:30 p.m. - 4:45 p.m.

- Green Building: What Is It and How Is It Being Applied in Alaska? *E/Space 3*

Tuesday, February 3

9:30 a.m. - 10:30 a.m.

- Green Building in Alaska's Urban Environment *E/Space 3*

10:45 a.m. - 11:45 a.m.

- Green Building in Alaska's Rural Environment *E/Space 3*

2 p.m. - 3:15 p.m.

- Green Infrastructure and Green Building: Putting Ideas Into Practice - How Can We Do More? *E/Space 3*

3:30 p.m. - 4:45 p.m.

- Green Infrastructure and Green Building: What's In It For Me? *E/Space 3*

NATIONAL ENVIRONMENTAL POLICY ACT

Monday, February 2

3:30 p.m. - 4:45 p.m.

- Handling Climate Change Issues in National Environmental Policy Act Documents *E/Space 6*

Tuesday, February 3

10:45 a.m. - 11:45 a.m.

- Making the National Environmental Policy Act work for Rural Alaskans *E/Space 6*

2 p.m. - 3:15 p.m.

- Public Health and the National Environmental Policy Act Process *E/Space 6*

3:30 p.m. - 4:45 p.m.

- Health Impact Assessment and Natural Resource Development Permitting in Alaska: An Update on the Current Status and Future Directions *E/Board Room*

Agenda by Subject

RURAL ISSUES

Monday, February 2

10:30 a.m. - 11:45 a.m.

- Rural Issues: Dump Site Erosion Impacts and Case Studies - Nightmute and Kwigillingok *E/Space 7&8*

10:30 a.m. - 11:45 a.m.

- Rural Issues: Tribal Activities in Air Quality *E/Space 6*

2 p.m. - 3:15 p.m.

- Rural Issues: Addressing the Environmental Impact of Rural Schools *E/Space 7&8*

Tuesday, February 3

10:45 a.m. - 11:45 a.m.

- Green Building in Alaska's Rural Environment *E/Space 3*

2 p.m. - 3:15 p.m.

- Rural Issues: Honeybuckets - A Process for Improving Human Waste Disposal Practice in Rural Alaska *E/Space 7&8*

3:30 p.m. - 4:45 p.m.

- Rural Issues: The Impact of Construction and Demolition Waste on Rural Dump Sites *E/Space 7&8*

Wednesday, February 4

9:30 a.m. - 10:30 a.m.

- Rural Issues: Traditional Ecological Knowledge and Habitat Conservation *E/Space 1*

SCIENCE & TECHNOLOGY

Wednesday, February 4

2 p.m. - 3:15 p.m.

- In-Situ Treatment for Chlorinated Organics *E/Space 6*

3:30 p.m. - 4:45 p.m.

- Treatment of PCBs and Other Recalcitrant Organic Compounds *E/Space 6*

Thursday, February 5

9:30 a.m. - 10:30 a.m.

- Fate and Transport of Petroleum Spills in Arctic Soils and Gravel Pads *E/Space 11&12*

10:45 a.m. - 11:45 a.m.

- Using the Ultra-Violet Optical Screening Tool System Technology for Rapid Field Screening of Petroleum Contamination in Soil *E/Space 11&12*

2 p.m. - 3:15 p.m.

- Multi-Incremental Soil Sampling: When or When Not to Use It *E/Space 11&12*

SOLID WASTE & RECYCLING

Monday, February 2

10:30 a.m. - 11:45 a.m.

- Landfill Leachate Recirculation Projects *E/Space 2*

2 p.m. - 3:15 p.m.

- University of Alaska Anchorage: Doctorate Program Presentation *E/Space 9&10*

3:30 p.m. - 4:45 p.m.

- Recycling Roundtable *E/Space 11&12*

Wednesday, February 4

2 p.m. - 3:15 p.m.

- Community Solutions to Backhauling Old Tank Farms *E/Space 3*

SOLID WASTE & RECYCLING (continued)

Thursday, February 5

9:30 a.m. - 10:30 a.m.

- Solid Waste Projects in Rural Alaska *E/Space 7&8*

10:45 a.m. - 11:45 a.m.

- Composting Programs Around Alaska *E/Space 7&8*
- Banning Plastic Bags and Styrofoam in Village Alaska *E/Space 13&14*

2 p.m. - 3:15 p.m.

- Statewide Solid Waste Workgroup Meeting *E/Space 3*

3:30 p.m. - 4:45 p.m.

- Tribal Solid and Hazardous Waste Roundtable *E/Space 3*

SUBSISTENCE

Monday, February 2

10:30 a.m. - 11:45 a.m.

- Rural Issues: Dumpsite Erosion Impacts and Case Studies - Nightmute and Kwigillingok *E/Space 7&8*
- The Reserved Warrior *E/Space 11&12*

2:00 p.m. - 3:15 p.m.

- Making a Difference: Involving Local and Traditional Knowledge in Resource Management *E/Space 11&12*

Tuesday, February 3

10:45 a.m. - 11:45 a.m.

- Arctic Marine Ecosystem Changes *E/Space 13&14*
- Community Forums: Discussing Natural Resource Management with your Neighbors (Part 2 of 2) *E/Space 7&8*

2:00 p.m. - 3:15 p.m.

- Rural Issues: Honeybuckets - A Process for Improving Human Waste Disposal Practice in Rural Alaska *E/Space 7&8*

Wednesday, February 4

9:30 a.m. - 10:30 a.m.

- Tribal Subsistence Assessment Projects (Part 1 of 2) *E/Space 13&14*

- Contaminant Research in Alaskan subsistence species and Coastal Waters *E/LaPerouse Room*

10:45 a.m. - 11:45 a.m.

- Tribal Subsistence Assessment Projects (Part 2 of 2) *E/Space 13&14*

- Community Focused Contaminant Monitoring Projects *E/LaPerouse Room*

2:00 p.m. - 3:15 p.m.

- Tribal Natural Resource Programs: A Pathway to Meaningful Involvement in Natural Resource Management (Part 1 of 2) *E/Space 11&12*

3:30 p.m. - 4:45 p.m.

- Tribal Natural Resource Programs: A Pathway to Meaningful Involvement in Natural Resource Management (Part 2 of 2) *E/Space 11&12*

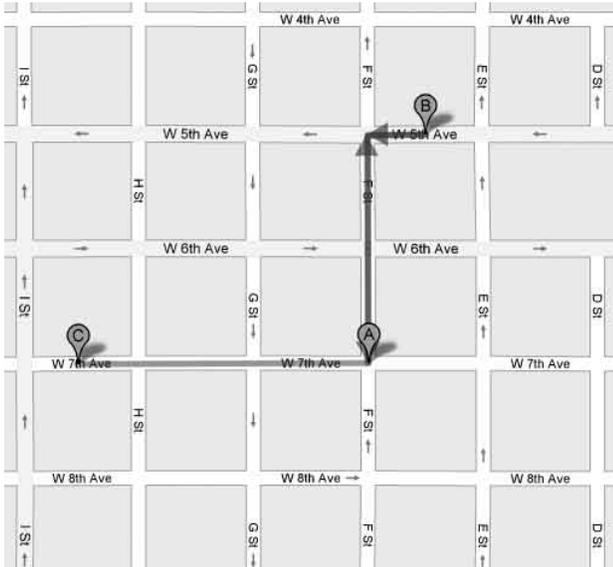
Thursday, February 5

10:45 a.m. - 11:45 a.m.

- Local Community Involvement: The Marine Mammals Protection Act and the Endangered Species Act (Part 1 of 2) *E/Space 1*

2:00 p.m. - 3:15 p.m.

- Local Community Involvement: The Marine Mammals Protection Act and the Endangered Species Act (Part 2 of 2) *E/Space 1*



A. Dena'ina Convention Center
600 W. Seventh Ave Anchorage, AK 99510

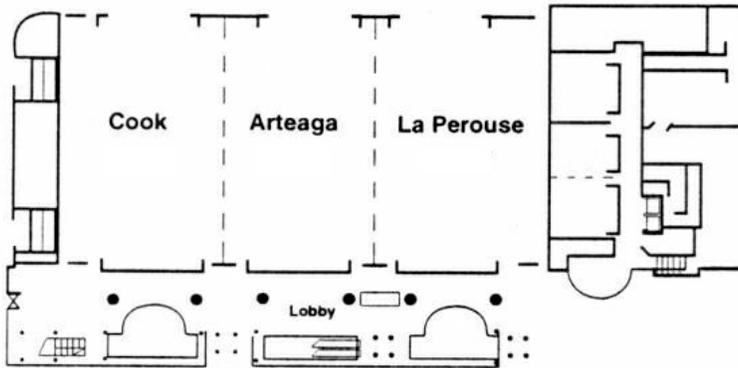
B. Egan Civic & Convention Center
555 W 5th Ave Anchorage, AK 99501

C. Anchorage Marriott Downtown
820 W. 7th Ave Anchorage, AK 99501

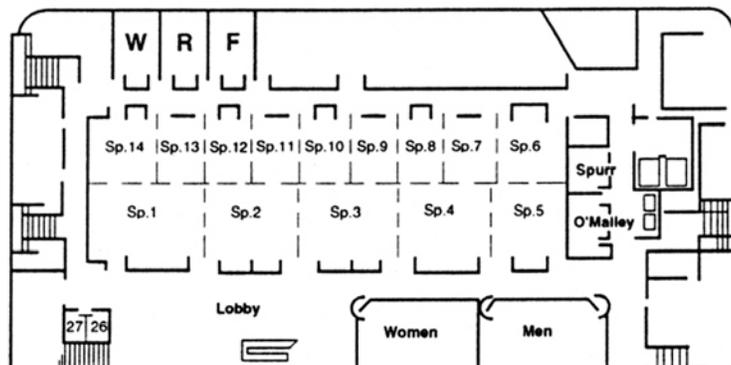
Alaska Forum on the Environment
Registration Services and all Keynote Events
will be located at the Dena'ina Convention Center,
TIKAHTNU (COOK INLET) BALLROOM, 3rd Floor

EGAN CENTER FLOORPLANS

Explorers Hall - Street Level

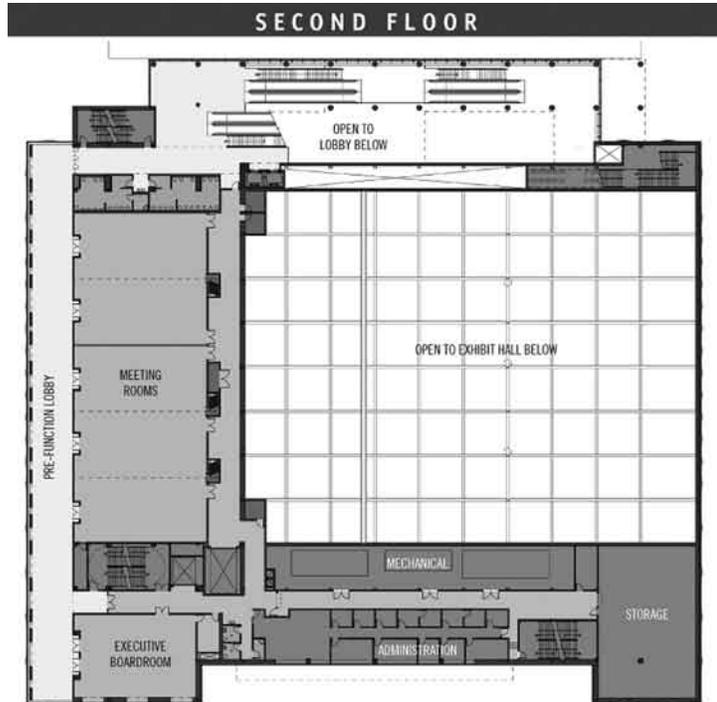


Summit Hall

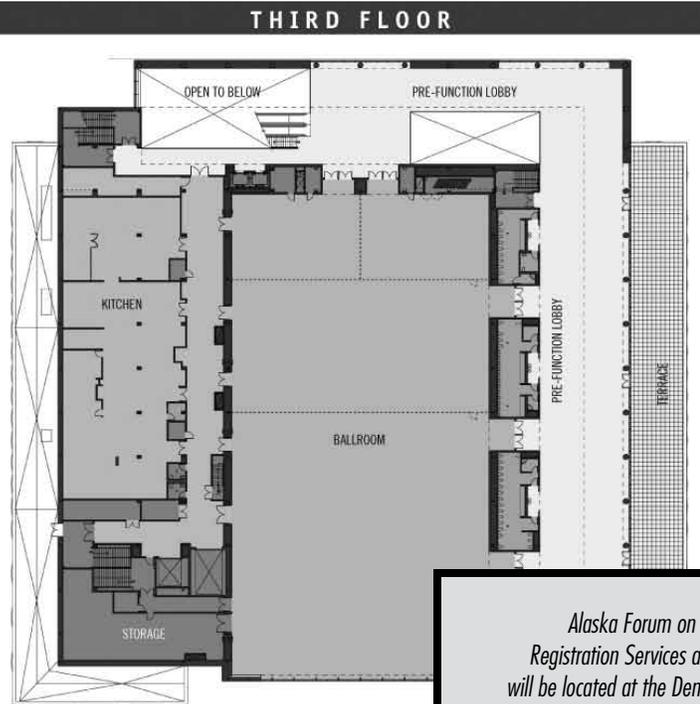


DENA'INA CENTER FLOORPLANS

**2nd FLOOR: KAHTNU (KENAI) - MEETING ROOMS 1 & 2
TUBUGHNENQ' (TYONEK) - MEETING ROOMS 3, 4 & 5
K'ENAKATNU (KNIK) EXECUTIVE BOARD ROOM**



3rd FLOOR: TIKAHTNU (COOK INLET) - BALLROOM



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TIKAHTNU (COOK INLET) BALLROOM, 3rd Floor*