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INSPECTOR GENERAL

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FINAL REPORT

FOR PUBLIC RELEASE

INSPECTION REPORT RE GRANT # 1312

This inspection¹ by the Office of Inspector General (OIG) concerns grant # 1312 that the Denali Commission (Denali) awarded to its grantee, the State of Alaska (State). Complainant "X" asserts that it was denied a subaward in violation of law.

The program at issue is a state program established by state statute.² Denali's role is limited to (1) partial funding via its grant to the State and (2) assignment of a Denali employee to a state advisory panel whose members, per state statute,³ are appointed by the state's governor. The purpose of OIG's inspection is thus limited to determining whether Denali's participation on this panel complied with applicable laws.

A state statute identifies particular sources from which the advisory panel's members are to be appointed.⁴ Denali is one of these sending organizations.⁵ Additional technical qualifications are prescribed for the panel members: *"Each member of the committee shall have a degree in science or engineering, or equivalent professional experience, and at least two years of experience working in the state."*⁶

OIG has confirmed through the State's online public database that the panel member from Denali has active licensing as a Professional Engineer. This panel member also has well in excess of two years of work experience in the construction of public facilities in rural Alaska. In short, the member sent from Denali meets the statutory requirements to sit on the panel.

¹ OIG responded to this complaint under the CIGIE standards for inspections through the following methodology: (1) a three-hour interview of the complainant conducted in Anchorage, Alaska; (2) an interview of the panel's chair conducted in Homer, Alaska; (3) an interview of the Denali employee who sat on the panel; (4) a review of documents provided by the complainant; (5) a review of Denali records for its grant # 1312; (6) a review of state statutes and regulations applicable to the program.

² See AS 42.45.375, which establishes the "Emerging energy technology fund."

³ See AS 42.45.375(f).

⁴ See AS 42.45.375(f).

⁵ See AS 42.45.375(f)(4).

⁶ See AS 42.45.375(f).

The state's panel scores grant applications using the criteria specified in state regulations.⁷ The panel then forwards its results as a recommendation to the State's energy agency.⁸

OIG found no evidence that any federal laws were violated by the service of Denali's employee on the State's scoring panel. More specifically, we found no evidence that the service of Denali's employee was inconsistent with the federal regulations that restrict "covered relationships,"⁹ "prohibited sources,"¹⁰ and "prohibited financial interests."¹¹

The state energy agency has issued regulations that prescribe appeal procedures for aggrieved applicants, proposers, and bidders.¹² In fact, the Alaska Supreme Court has previously confirmed the legitimacy of these procedures in a protest concerning the use of Denali funding by this same state agency:

*The hearing officer . . . —after a careful review of the law and evidence bearing on the specific claims [the vendor] advanced to support its challenge—issued a thorough, well-supported, and clearly explained decision rejecting [the vendor's] challenge. The Energy Authority has adopted the recommended decision and, on appeal, [the vendor] has failed to make a persuasive showing of any significant legal or factual error in the agency's decision. Accordingly, we affirm the hearing officer's recommended decision, set out its full text in Appendix A, and rely on it to explain our reasons for rejecting the points [the vendor] raises here renewing its arguments before the agency.*¹³

And a further decision of the supreme court has addressed this state agency's protection for a vendor's trade secrets during Denali-funded projects.¹⁴

X complains that its application was not scored properly under the program's criteria and in relation to some of the successful applicants. Protests over application scoring are the type of complaint that the State's appeal system has been established to decide, and OIG does not attempt to override or displace that process. The Alaska Court System (not OIG) has the

⁷ See 3 AAC 107.720, 3 AAC 107.745, 3 AAC 107.755, 3 AAC 107.760.

⁸ See 3 AAC 107.720, 3 AAC 107.745, 3 AAC 107.755.

⁹ See 5 CFR 2635.502.

¹⁰ See 5 CFR 2635.202.

¹¹ See 5 CFR 2635.403.

¹² See 3 AAC 107.765, 3 AAC 107.795, 3 AAC 108.915, 3 AAC 108.920.

¹³ See *Powercorp Alaska v. State, Alaska Industrial Development & Export Authority, Alaska Energy Authority*, 171 P.3d 159 (Alaska 2007).

¹⁴ See *Powercorp Alaska v. Alaska Energy Authority*, 290 P.3d 1173 (Alaska 2012).

jurisdiction to authoritatively decide such matters after the state agency's own appeal procedures have been exhausted.¹⁵

Those disappointed with the State's grant program can also express concerns during the "public comments" portion of meetings of the board of directors of the state energy agency.¹⁶

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¹⁵ See AS 22.10.020(d); Alaska Rule of Appellate Procedure 601; Alaska Court System Form AP-101, *Notice of Appeal (from Administrative Agency to Superior Court)*.

¹⁶ See, for example, the board meeting minutes for August 14, 2012 at www.akenergyauthority.org/boardmin.html.