FACTS AND ANALYSIS FOR INTERGOVERNMENTAL AGREEMNT CTR05990 11/15/21

WHAT THE GRANT CONTRACT MONEY IS FOR IN PLAIN ENGLISH

We have to get to page 27 to see what grant amount $3,169,013 is for. "Cochise County Health and Social Services will (1) Partner with two organizations that provide services to the homeless populations in Cochise County to reduce the impact of COVID-19 among socially-vulnerable Cochise County residents. (2) Partner with one organization to improve access to telehealth services for specialty and behavioral health care for residents of rural areas of Cochise County, many of whom are low-income, immigrants, and/or speak a language other than English at home and/or farmworkers. (3) Enhance health literacy by using $750,000 of the $3,169,013 Contract money to fund the Arizona Community Health Workers Association so it can hire and train 5 additional Community Health Workers to serve Cochise County. $458,000 o f the Contract money is to go to Chiricahua Community Health Centers, Inc., and $335,000 is to go to Winchester Heights Health Organization so it can provide medical services to farmworkers and ranching families to lessen the effects of COVID-19. $277,000 of the Contract money is to go to Pinal Hispanic Council to promote COVID-19 specific health services to their clients who struggle with mental health and substance abuse disorder (Intergovernmental Agreement CTR05990, 27).

THE TERMS OF THE GRANT CONTRACT IN PLAIN ENGLISH

Without making our own specific speculations, we can make reasonable inferences about the Intergovernmental Agreement from the various definitions and provisions by ADHS.
For example, under definition 7,we have risk and liability defined risk of loss as it pertains to the Grant. "The Contractor shall bear all loss of conforming material covered under this Contract until received and accepted by authorized personnel at the location designated in the Purchase Order, Change Order or Contract."

<u>HOLD HARMLESS CLAUSE</u>

Just what are the risks to the County? Under the Hold Harmless clause in 7.2,the County is on the hook for any and all attorney's fees which may result from a potential lawsuit "…arising out of bodily injury of any person (including death) or property damage…caused by act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees or volunteers (Intergovernmental Grant CTR055990). This is an example of the County waiving its right to legal recourse. As I understand it, this means that if the Feds were found by a court to be the indemnitor, the County would be the ones paying.

REMEDIES OF THE STATE OF ARIZONA AGAINST COCHISE COUNTY UP TO AND INCLUDING TERMINATION OF GRANT CONTRACT

Now, Section 9.1 does state that the State (of Arizona) has good reason to believe that the contractor does intend to or is unable to, perform or continue performing under the Contract, then the State can demand written assurance of intent to perform, and if the statement of intent to perform is not forthcoming, then the State can terminate Contract. This one of many examples of Arizona's contractual remedies. Other examples included in section 9.2 are reasonable enough, but they it is obvious that without the County having similar remedies, it's a very one-sided contract at best.Section 10 contains a host of provisions for termination of the Contract, but again, the point is that the terms of Contract favor the State of Arizona almost to the exclusion of the County.

8.4. Compliance With Applicable Laws. The Materials and services supplied under this Contract shall comply with all applicable federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements (Intergovernmental Agreement, CTR055990, 9.) Our question is what are the relevant laws (rules, regulations) which must be adhered by parties which accept the Intergovernmental Agreement CTR05990, 10-11).

SCOPE OF WORK (E.G., SCOPE OF COUNTY RESPONSIBILITY TO ADHS VIS A VIS CDC AND HHS

Let us turn to the section Intergovernmental Agreement Scope of Work

We are told in 1 Background that the ADHS is tasked with addressing health disparities and advancing health equity, a la Office of Health Equity, the chief document summarizing its mission is Arizona Health Improvement Plan (AZHIP). 1.2 laments the disproportionate risk of COVID-19, especially rural, medically undeserved, and/or racial ethnic minority groups. Specifically, the concerns are "…higher risk of exposure, infection, hospitalization and morality. Coupled with known disproportionate rates of chronic diseases.

Section 1.4 provides the Grant details. It is awarded by the Department of Health and Human Services (HHS), and yes, it is linked with the e Coronavirus Aid, Relief, and Economic Security Act, 2020 (the "CARES Act") (P.L. 116-136). It is also linked to two other acts: Paycheck Protection Program and Health Care Enhancement Act (P.L. 116-139); the Consolidated Appropriations Act and the Coronavirus Response and Relief Supplement Appropriations Act, 2021 (P.L. 116-260) and/or the American Rescue Plan of 2021 (P.L. 117-2). **What you want to know most: "[Recipient] agrees to 1) comply with existing and/or future directives and guidance from the Secretary regarding control of the spread of COVID-19; 2) in consultation and coordination with HHS, provide, commensurate with the condition of the individual, COVID-19 patient care regardless of the individual's home jurisdiction and/or appropriate public health measures (e.g., social distancing, home isolation); and 3) assist the United States Government in the implementation and enforcement of federal orders related to quarantine and isolation" (Intergovernmental Agreement CTR05990, 17). So, without speculating, we know from the content of the Contract that the County is at least agreeing to comply with existing and future guidance from the Secretary of the HHS.**

We know furthermore that existing directives pertain to social distancing and home isolation.

Finally, we have 3) assist the United States Government in the implementation and enforcement of federal orders related to quarantine and isolation. Also, from 3), there is the requirement of Section 18115 of CARES Act with respect to reporting to the HHS Secretary results of COVID tests. Also included in 3) is the provision for the HSS to collect COVID-19 data including but not limited COVID-19 testing. **We are told that the CDC will "specify in further guidance and directives what is encompassed by this requirement." In other words, without speculating, we know that the Contract binds Contractees to adhere to whatever future directives the CDC might make. So, this Contract is but a rough outline of the County's responsibilities, equivalent to a "other-duties-as-assigned" clause, which makes it an incomplete contract.** Courts have struck down such incomplete contracts before on the grounds that the terms are excessively one-sided, where one side stands to benefit in clear ways whereas the other side's benefits are vague at best.

THE STRATEGIES THE CDC, HHS, AND ADHS WILL USE TO MITIGATE COVID-19 AMONG "UNDESERVING" POPULATIONS USING COUNTIES LIKE COCHISE TO IMPLEMENT ITS STRATEGIES

Okay, we're now at section 1.5, with four overarching strategies (note, strategies are not instructions or terms. The first strategy is to "expand existing and/or develop new mitigation and prevention resources and services to reduce COVID-19 related disparities among populations at higher risk and that are undeserved…" The second strategy is to "…Increase/ improve data collection and reporting for populations experiencing a disproportionate burden of COVID-19 infection, severe illness, and death to guide the response to the COVID-19 pandemic" (Intergovernmental Agreement CTR05990, 17).

The third strategy is to build, leverage, and expand infrastructure support for COVID-19 prevention and control among populations that are at higher risk and undeservedly so. The final strategy is to mobilize partners and collaborators to advance health equity and address social determinants of health as they are related to COVID-19 health disparities among populations at higher risk and that are undeserved.

Part of the meaning of higher risk and is undeserved is revealed in section 1.6. We are told that ADHS is to strengthen existing partnerships by focusing its efforts in rural counties "where residents have poorer health outcomes, higher uninsured rates, less access to health and social services, higher disparities in chronic diseases, infection, hospitalization and deaths related to COVID-19, especially among American Indian, Latino, African American, communities with disabilities, low socio-economic, and older adult populations." (Intergovernmental Agreement CTR05990, 18). Specific information about these schemes is given in section 2 Purpose, chiefly in section 2.2.2 "improved and increased testing and contact tracing among populations at higher risk and that are undeserved, including racial and ethnic minority groups and people living in rural communities." The underlying rationale, we are told, in 3.2 is that the above groups tend to be underinsured, and experience a disproportionate burden of COVID-10 infection, severe illness, and death" (Intergovernmental Agreement CTR05990, 18).

In other words, the HHS will determine what populations are at risk for COVID, and what populations are undeservedly at risk. In this way—no speculation required—the County will become an Agent/Instrument of the HHS and CDC directives and guidance.

4.1 (continued under Intergovernmental Agreement Scope of Work) further states that the Contract is intended to "reduce the burden of COVID-19" for "…other disadvantaged or marginalized groups, including members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) people; people with disabilities; people over the age of 65, and people otherwise adversely affected by persistent poverty or inequality; to advance health equity and address social determinants of health" (Intergovernmental Agreement CTR05990, 19).

Section 5.3 states further responsibilities of the County to the ADHS is to participate in all calls, including ad hoc (that is, unscheduled) calls by ADHS, as well as scheduled site visits. 5.4 goes on to state that the County is expected to "participate in the development of a shared comprehensive evaluation plan and report out on any performance measures related to the implementation of their activities process and/or intermediate), or as defined by the funding source." I include that quotation as yet another requirement that is not well stated, where ADHS expects the sort of performance reporting (is the County meeting its COVID-19 requirements and if not, then why? Typical of employees of ADHS. This is because the Contract effectively makes the County its Agent/Instrument in this one-sided agreement of data collection and goal-setting. Admittedly, the term "shared comprehensive evaluation plan" leaves room for the idea that the County may to some extent work with ADHS to determine its performance requirements. However, that it is not stated clearly, so it is unknown in what sense the evaluation plan is shared and comprehensive (Intergovernmental Agreement CTR05990, 19).

One last aspect of the Contract bears mention, namely, the concrete program to be implemented. The County is required to under 9 Deliverables (this is corporate-speak for "job responsibilities) to develop a 2-year. Part of the plan calls for an Expenditure Report for each month the Contract is in effect. The County is further required to provide the COVID-19 Health Equity Coordinator/Program Manager (corporate-speak for "bean counter" with contact information of all program staff funded under the Contract within 30 days of the Contract becoming effective. Such contact in includes name, title, email, phone, and program area assigned (it's unclear whether "program area" means "County Department" or something else.) (Intergovernmental Agreement CTR05990, 22).