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September 22, 2022

The Honorable Mark Ghaly
Secretary
California Health & Human Services Agency
1215 O Street
Sacramento, CA 95814

RE: Maclean Health DVBE Contract Termination Inquiry

Dear Secretary  Ghaly:

Sacramento County is home to an outstanding and enterprising veteran who has contributed in outsized ways to help our state move through the COVID-19 crisis which has so bedeviled your responsibilities as I know well from our many conversations. I am speaking of Mr. John Deterding, President and CEO of The Maclean Group LLC, which does business as Maclean Health (Maclean).

It is my belief that Mr. Deterding, a constituent of mine, has very ably assisted the State of California confront many Covid-related challenges, performing vital services that have aided the management of this crisis by CDPH and its many public and private partners. You and I talked often in fall 2020 and spring 2021 about the challenges Covid presented with its slippery, chameleon-like qualities. It displayed an ugly and persistent habit of surprising the public health sector as you grappled with it. In that slow-motion, unfolding and constantly daunting crisis you and your team kept the state advancing and I know partners who had the capacity to manage amid crisis and the toughness to be resilient were vital.

That is how I view the work of MacLean Health under John Deterding's leadership. Despite the severely, indeed at times frightening crisis conditions your team and his have faced, MacLean Health has displayed a dependable capacity to get critical things done to move us all forward together. At any business school in the country, that would provide a case study of exceptional, high stakes and high performing contracting, and that case study would be worth the time invested to understand how it was executed amid global health and supply chain crisis-conditions even before one factored in the successful and dependable delivery of critically needed yet scarce healthcare products to your CDPH and other state entities.

Against this backdrop, it is an affront to notions of right conduct in government to now learn that staff to the Department have informed him that his currently active contract, which he competed for successfully just this spring as a qualified California Small Business and DVBE contractor, is now to be unilaterally terminated.

Secretary Ghaly, I have worked in and around state government for 45 years. It is my legal specialty. I know well that sometimes in the public realm, to merely be able to cite the letter of the law is not to provide a defensible answer for offensive conduct. This circumstance is one where in my view, "might" cannot make right. As a state, California needs, indeed depends on its ability to attract talented people to come join us in tackling the tough problems we face.



This idea that California's future is dependent upon us maintaining a pipeline full of talented people who can help us meet the state's challenges has been a preeminent State of California value for almost a century. It is bigger than your agency, bigger than the Governor, bigger than the Legislature. It certainly is a value of such critical importance to California's future that no agency bureaucrat's actions which would tend to make California appear a flighty, undependable partner to such people can expect such actions to go unremarked upon.

I am confident of that which I speak, for it's the message that was carved into the granite atop the state's first office building at the circle on the east end of Capitol Mall : "Bring Me Men (People) to Match my Mountains".

While I well know the state has power to terminate such contracts, that does not make it right. And it certainly does not make it right when it's the type of conduct that will make people of enterprise and talent deservedly wary of partnering with California. To me, what has been done is a heavy-handed move and seemingly inexplicable since it was just a few months ago that the contract was entered into. Power is one thing, but to terminate a small business/Disabled Veteran Business Enterprise (DVBE) vendor partner who supported Californians and CDPH by ably and repeatedly delivering exceptional results when other vendors could not during the COVID pandemic crisis is astonishing.

I would like to know, Mr. Secretary:

1. What conceivable rationale could warrant such a move and how this kind of abrupt and high-handed action can be reconciled with the state's preeminent, fundamental need to be a good partner who attracts other outstanding and capable partners. This termination is an affront to anyone who would consider entering into partnership with the state and therefore it is way beyond the pay grade of any lower echelon staff member; and
2. Has the CDPH initiated (or already completed) a new award for the items that were the subject of the terminated contract? As part of that I request an explanation of the procurement process that was used that led to the cancellation of the existing Maclean contract.
3. That explanation should identify whom and what offices were involved in that process. I am concerned the public interest implicit in this circumstance is one that should not be delegated to lower echelons of state government without substantial checks and safeguards consistent with the state's need to, on the one hand, attract outstanding partners and, on the other, extend opportunities to California small businesses and DVBE's.
4. I request your written assurances that this move is not initiated to redirect this contract or a contract for similar services and supplies to another non-small business DVBE enterprise. I expect testing assets for California will remain critical for some time since, with California businesses struggling statewide, and the state's revenue picture wavering, the need for such test kits will not abate in California or globally for a considerable time. (In economic terms, testing remains a path to full employment and that is a vital issue for California as well as its budget picture in the immediately upcoming years.)

Since my fundamental question goes to the violation of a good faith quality that is of the utmost importance to the state, it is right that I should offer a more specific underlying view of why I believe Maclean's performance amidst the globally chaotic and volatile COVID-19 crisis has been exemplary and thus deserving of better treatment.

I am informed that my constituent's firm specializes in providing healthcare products to state and federal government entities, and they held the state COVID-19 test kit contract until September 7th this year. Pursuant to that contract, Maclean oversaw obtaining, shipping and delivering 30,000,000 COVID test kits to the State with a 100% performance record. In addition to the current test kit contract, they have successfully delivered

tens of millions of units of other critical healthcare products to the State despite the difficulties – which they have borne – of surmounting the most challenging supply chain issues in recent history.

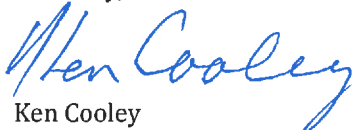
As you know, Mr. Secretary– and I know as Chair of the Assembly Rules Committee with direct responsibility to maintain a safe workplace and workforce amid the Legislature’s high public contact responsibilities, as 2022 began amidst the Omicron outbreak, COVID test kits became a particularly challenging product for the State of California to procure due to a global shortage. Maclean stepped-up to assist the State during that difficult time, and successfully delivered over 3,300,000 test kits to the Department from January to March. I am informed and believe that despite the crisis conditions then prevailing, Maclean was able to deliver those products at a fair market price, which was something the vast majority of distributors were unable to do during that time. (When even for the Legislature test kits were becoming pricey). Despite this price spike, Maclean was able to provide a premium brand–ACON FlowFlex–for just \$6.80 per test. While other distributors and manufacturers faltered with deliveries during that time, Maclean maintained a perfect record of delivery.

Based on Maclean’s exceptional performance and competitive pricing during that critical period, the Department made the decision to expand its relationship with Maclean and contract for a twelve-month agreement to provide the State with up to 100,000,000 test kits between April 2022 and March 2023. Despite the fact that this contract was let under emergency authority that waives many Government Code contracting requirements, the Department chose to award the test kit contract to a California certified small business and DVBE thus recognizing the State’s preference and policy goals in the California Government Code when contracting.

That is a very important California public value and I am very concerned that this move may be a precursor to CDPH “walking back” that very, very right decision.

The Department executed this contract with Maclean who was able to bring the State pricing (\$3.93) considerably below the market rate at that time which saved the State tens of millions of dollars over the course of the yearlong contract. The agreement called for Maclean to deliver between 5,000,000 and 15,000,000 test kits per month – a continuing yet herculean obligation that they agreed to at some possible risk to themselves (Maclean agreed to a “damages” clause which required Maclean to financially guarantee their performance on the contract.) Since signing the contract in April, they have flawlessly executed each month’s delivery of a significant volume of test kits.

Sincerely,



Ken Cooley
Assemblyman 8th District

Cc: Members of the Assembly Health Committee
Members of the Assembly Jobs, Economic Development, and the Economy Committee
Members of the Military, and Veterans Affairs Committee