



Maclean Health



To: Dr. Tomas Aragon, Director  
California Department of Public Health  
P.O. Box 997378  
MS 1700-1702  
Sacramento, CA 95899-7378

Cc: Governor Gavin Newsom  
Jim DeBoo, Executive Secretary  
Tara Lynn Gray, Office of Small Business Advocate  
Assemblyman Ken Cooley  
Senator Richard Pan

From: John Deterding, President/CEO  
The Maclean Group LLC  
2233 Watt Avenue, Suite 296  
Sacramento, CA 95825

Date: September 7, 2022

Subject: California Department of Public Health Statewide Test Kit Contract 21-11105

Dear Dr. Aragon,

The Maclean Group LLC d/b/a Maclean Health (“Maclean”) is a Sacramento based (“DVBE”) certified company that specializes in providing healthcare products to state and federal government entities. I am the owner and CEO of Maclean and am seeking your immediate intervention to assist in addressing what I view as unfair treatment of my company with respect to a California Department of Public Health contract we held until yesterday—September 7—to provide the State with its much-needed COVID-19 test kits. Under that contract, we delivered 30,000,000 COVID test kits to the State with a 100% performance record. In addition to the current test kit contract, we have successfully delivered tens of millions of units of other critical healthcare products to the State through some of the most challenging supply chain issues in recent history.

By way of background, at the beginning of 2022 and in the midst of the Omicron outbreak, COVID test kits became a particularly challenging product for the government to procure due to a global shortage. Maclean stepped-up to assist the State of California during that challenging time, and successfully delivered over 3,300,000 test kits from January to March. Of important note, 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. In fact, the market saw Covid test kit prices soar to over \$10.00 per test in many cases. 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, when those deliveries mattered most.

Based on Maclean's performance during that critical period, we were given the opportunity to present pricing and a distribution plan to provide the State with up to 100,000,000 test kits between April 2022 and March 2023. Through our partnership with our manufacturer, we brought to the State pricing well below the market rate which would save the State tens of millions of dollars over the course of the yearlong contract. The State agreed to our product and pricing proposal, and we signed a contract for up to \$397,000,000 to provide between 5,000,000 and 15,000,000 test kits per month. Importantly, we also agreed to a "damages" clause which required us to financially guarantee our performance on the contract. Since signing the contract in April, we have flawlessly executed each month's delivery of a significant volume of test kits.

On August 11, I received an email notice from the State's signatory on the CDPH contract stating that "[g]iven that there's an excess supply of covid test kits, [he] would like to discuss and reevaluate the test kit price." From there, we entered into discussions about lowering the price for the duration of the contract. The discussions rapidly turned into a "reverse auction" scenario where we were continuously told that a "competitor" was allegedly willing to go lower than every offer we could make. We were never informed adequately of the award process, the selection criteria, or the basis upon which a new contract might be awarded. Given the apparent surplus of test kits, this obscure and hasty process is impossible to justify.

We responded as best we could under the frustrating circumstances. Working with our current manufacturer, ACON, we were able to significantly reduce the price per test from \$3.925 to \$2.24, saving the taxpayers millions of dollars over the remainder of our contract. Meanwhile, concurrent to the discussions with the State regarding ACON pricing, we provided alternative test products for the State to consider which would allow us to get the price even lower, to approximately \$1.58 per kit. Such a request to switch products is allowed by the contract. We submitted those tests for analysis by the CDPH lab but were told – without explanation, and without documentation, and without opportunity to question or challenge – that the State was not interested in those particular tests. This peremptory exclusion was despite the verifiable fact that the alternatives we offered carry the same FDA approval status as the then-current product we were delivering, and the alternatives have been purchased in large quantities by several other states, including New York. We never received any information on the lab analysis done on the alternative tests, if such analysis actually was prepared, and we never have been told why the alternatives were rejected.

On August 25, we received a cryptic notice by email that future deliveries of test kits on the contract were "suspended" following the September delivery of 5,000,000 units. Finally, on September 7, we received a formal notice of termination of the contract without cause from the contracting officer. We understand that CDPH now intends to award a no-bid contract to iHealth, a Chinese-owned company, for future test kits as a replacement to our contract.

To better understand our rights and potential remedies with respect to the contract suspension and subsequent termination, we engaged a law firm, Rogers Joseph O'Donnell, PC, to review the

contract and relevant documents, including email communications. Our counsel found several flaws in the process leading to the termination of our contract and the apparent substitution of a different test vendor. We are communicating separately to CDPH that we invoke the Contract's Dispute Resolution Process. Our lawyers advise that the termination of our Contract can be rescinded before it takes effect in 30 days. As to the replacement contract, if we are correct that it is at the Notice of Intent to Award stage, the award can be cancelled; if already made, the award can be rescinded.

Apart from our legal objections, the termination of the contract under these circumstances is in contravention of public policy and not in the best interest of the people of California. Specifically, when there is a competent, California-based DVBE working in partnership with the State through an awarded contract, the State's decision to engage in discussions with our competitor, conduct a "reverse auction" and then terminate the contract without cause must be viewed as improper especially in light of the opaque and capricious nature of the unfair acquisition process. Given the State's stated preference for DVBE businesses, the concerns around the cancellation are further aggravated by the fact that, unless there is quick intervention by your Office, CDPH now intends to purchase test kits from a large, Chinese-owned company. We stress, further, that there is no basis for the State to conclude that it received the lowest possible price for an acceptable test where our two lower-priced, fully qualified alternatives were ignored

Accordingly, I respectfully request a meeting with you and your staff to discuss how we can resolve this matter, respect long-standing DVBE policies, and better serve the people of California. Thank you in advance for your time and attention to this matter.

Sincerely,



John Deterding, President/CEO  
The Maclean Group LLC