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SELECT SUBCOMMITTEE ON THE CORONAVIRUS CRISIS

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

PHONE (202) 225-4400

<https://coronavirus.house.gov>

July 14, 2020

Dr. Eric Edwards, M.D., Ph.D.
Chief Executive Officer
Phlow Corporation
737 North 5th Street, Suite 605
Richmond, VA 23219-1441

Dear Dr. Edwards:

The Select Subcommittee on the Coronavirus Crisis is investigating the federal government's efforts to procure personal protective equipment, testing supplies, and other medical supplies during the coronavirus outbreak. Recent reports indicate that federal agencies awarded contracts to businesses with political connections to the Trump Administration, that lacked federal contracting experience, and that were selected by the White House without competition or transparency. Some of these companies failed to provide the supplies promised. The Select Subcommittee is concerned that these contracting practices may have wasted taxpayer dollars and exacerbated shortages of critical supplies, contributing to the spread of the coronavirus and the death of Americans. I write to request documents and information regarding your company's federal contracts related to the coronavirus crisis and your company's performance under those contracts.

Your company, which was incorporated in January 2020, was awarded a \$354 million four-year contract on non-competitive basis to manufacture generic medicines, including drugs and drug ingredients that are necessary to fight the coronavirus, in the United States.¹ This contract is the largest ever awarded by the Biomedical Advanced Research and Development Authority and includes a 10-year option worth \$812 million. In addition to drugs used to fight the coronavirus, the award also provides for the domestic manufacturing of other generic pharmaceuticals.² White House Trade Advisor Peter Navarro asserted the contract was a

¹ *Generic Drugmaker Gets Contract to Make Covid-19 Medicines in U.S.*, Wall Street Journal (May 19, 2020) (online at www.wsj.com/articles/generic-drugmaker-gets-contract-to-make-covid-19-medicines-in-u-s-11589920608); USASpending.gov, *Definitive Contract 75A50120C00092* (online at www.usaspending.gov/#/award/CONT_AWD_75A50120C00092_7505_-NONE-_-NONE-).

² *Trump Administration Signs Up New Company to Make COVID-19 Drugs in U.S.*, Reuters (May 19, 2020) (online at www.reuters.com/article/us-health-coronavirus-usa-phlow/trump-administration-signs-up-new-company-to-make-covid-19-drugs-in-u-s-idUSKBN22V0LFF).

“historic turning point in America’s efforts to onshore its pharmaceutical production and supply chains,” even though many materials used in Phlow’s products are likely sourced overseas.³

This contract award raises serious questions as to why your company received this contract, how your company’s performance will impact the federal government’s response to the coronavirus crisis and ongoing shortages in critical supplies, and what steps the federal government should take now to address these issues.

For all these reasons, the Select Subcommittee requests that you produce by July 28, 2020, the following documents and information from January 1, 2020, to the present. These requests are consistent with House Resolution 935, which established the Select Subcommittee on the Coronavirus Crisis “to conduct a full and complete investigation” of “issues related to the coronavirus crisis,” including the “preparedness for and response to the coronavirus crisis, including ... the acquisition, distribution, or stockpiling of protective equipment and medical supplies.”

1. All documents and communications, including internal communications and communications with any federal employee or third party, related to any federal contract for personal protective equipment, medical supplies, or testing supplies. This includes but is not limited to documents and communications regarding:
 - a. your company’s interest in procuring supplies or in contracting with the federal government;
 - b. any solicitation or request for proposals or offers;
 - c. any offer, bid, or proposal from your company, including pricing information;
 - d. the award, modification, or termination of any contract or purchase order; and
 - e. your company’s performance under any contract or purchase order, including any deficiencies in performance; and
2. A list of all company employees or agents that communicated with the federal government regarding the subjects described in Request 1, including a description of the date and subject matter of any meetings or telephone conferences;
3. The following documents and information related to any federal contract to provide personal protective equipment, medical supplies, or testing supplies:
 - a. all agreements with subcontractors, suppliers, distributors, and other third-party sellers, including related price information;
 - b. a detailed description of your company’s actual and expected costs associated with the contract by product; and

³ *Trump to Tap New Company to Make Covid-19 Drugs in the U.S.*, New York Times (May 18, 2020) (online at www.nytimes.com/2020/05/18/us/politics/trump-coronavirus-drug-manufacturing.html).

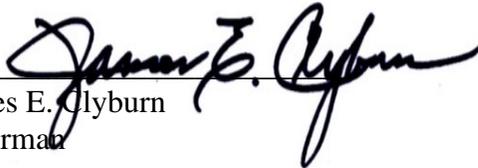
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- c. a detailed description of your company's actual and expected profits from the contract by product.

An attachment to this letter provides additional instructions for responding to the Select Subcommittee's request. If you have any questions regarding this request, please contact Select Subcommittee staff at (202) 225-4400.

Sincerely,


James E. Clyburn
Chairman

Enclosure

cc: The Honorable Steve Scalise, Ranking Member

Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.