

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM
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August 6, 2020

Ms. Christi Grimm
Acting Inspector General
Department of Health and Human Services
Office of Inspector General
330 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Acting Inspector General Grimm:

The Subcommittee on Economic and Consumer Policy requests that your Office open an investigation into the recent \$646 million ventilator procurement contract negotiated between Philips Respironics (Philips) and the Department of Health and Human Services (HHS). Pertinent evidence of fraud, waste, and abuse was uncovered by the Subcommittee's investigation and is detailed in the attached staff report, which we released on July 31, 2020.

In 2014, HHS entered a contract with Philips to develop ventilators for a pandemic, with an option to buy 10,000 ventilators, at \$3,280 per unit, to be delivered by June 2019.¹ One extension was granted by the previous Administration, pushing delivery of the ventilators to November 2019, which would have still been in time for deployment during the current pandemic.

In 2017 and 2018, HHS granted a series of contract extensions, pushing off the delivery deadlines significantly.

On January 21, 2020, when the first coronavirus case was reported in the United States, Philips approached HHS about accelerating delivery under its current contract. That offer was ignored for six weeks, even as the coronavirus crisis escalated.²

¹ Subcommittee on Economic and Consumer Policy Staff Report, *The Trump Administration's Failure in Contract Management and Inept Negotiations by Senior White House Officials Denied Americans Ventilators During the Coronavirus Pandemic and Squandered Up to \$504 Million in Taxpayer Funds* (July 29, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Economic%20and%20Consumer%20Policy%20Subcommittee%20Staff%20Report%20on%20Ventilators%20Contract.pdf>).

² *Id.* at 6-7.

In early March 2020, HHS communicated with Philips about the company's offer. However, HHS executed a contract modification that did not move up delivery—to the contrary, it removed all delivery deadlines until September 19, 2022. Philips inaccurately conveyed to HHS that the modification Philips proposed was needed to *move up* production, while its plain language did the opposite. HHS agreed to the modification on March 5, 2020. On March 10, 2020, when HHS finally asked how much the modification would move up delivery, Philips answered: “We have not confirmed that we are able to provide early delivery.” The next day, HHS executed the modification anyway.³

The White House, led by Dr. Peter Navarro, on behalf of HHS, then negotiated a new contract with Philips. It appears that the White House negotiators conceded to Philips on all significant matters, resulting in an agreement whereby the United States would pay more than four times the price than under the previous contract. Though the new contract is for a nominally different ventilator model, they are functionally identical—no difference between models justifies this extraordinary markup. White House negotiators failed to ask the questions and examine the information available to them.⁴

No other U.S. purchaser paid more than HHS. Despite buying ventilators in bulk, the Administration paid \$15,000 per ventilator, while small purchasers across the country negotiated much better deals. One purchaser buying a single unit was able to negotiate a price of \$9,327. There is no indication that U.S. government negotiators ever counter-offered Philips' initial proposal.⁵

The waste of taxpayer funds under this contract could be as much as \$503,960,000, if HHS had purchased the same number and held Philips to the same price as the contract negotiated by the previous Administration.⁶ These funds could have gone towards the purchase of PPE and other critical materials during this pandemic.

For Philips' part, the company appears to have misled HHS into granting it a lengthy delay in delivering the cheaper model to pave the way to sell HHS the much more expensive one. Documents showed that Philips employees suggested to White House negotiators that they should buy the more expensive model because of its “more clinician-friendly screens,” when its screens are identical to the cheaper models. Company employees also directed negotiators to its most expensive of three functionally identical models and overcharged for the model it sold.⁷

The Subcommittee requests that you immediately open an investigation into this apparent waste of taxpayer funds, how it was able to happen unchecked, and how to prevent it in the future. Moreover, the Subcommittee requests that your office's review include an assessment of the reasonableness of the price of the contract and the amount of excess profits received.

³ *Id.* at 7-9.

⁴ *Id.* at 12-49.

⁵ *Id.* at 27-34.

⁶ *Id.* at 35.

⁷*Id.* at 23-26; 31-34; 36-49.

The Subcommittee is grateful for your attention to its request for an investigation on this matter and looks forward to hearing your findings and working with you to ensure that taxpayer money is spent responsibly and is properly directed to aiding our pandemic response. If you have any questions, please contact Subcommittee staff at (202) 225-5051.

Sincerely,

A handwritten signature in blue ink, appearing to read "Raja Krishnamoorthi", written over a horizontal line.

Raja Krishnamoorthi
Chairman
Subcommittee on Economic and Consumer Policy

cc: The Honorable Michael Cloud, Ranking Member