CAROLYN B. MALONEY
CHAIRWOMAN

ONE HUNDRED SIXTEENTH CONGRESS

JIM JORDAN, OHIO
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM
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http://oversight.house.gov

April 15, 2020

Vitor Rocha
Chief Executive Officer
Philips North America Corporation
3000 Minuteman Road
Andover, MA 01810

Dear Mr. Rocha:

The Subcommittee on Economic and Consumer Policy is requesting documents and information regarding your company's low-cost, portable ventilator—known as the Trilogy Evo—that was intended to be stockpiled by the federal government in the event of a pandemic, like the coronavirus crisis now ravaging the country.

Last September, the Department of Health and Human Services (HHS) entered into a contract with Respironics, Inc.—a subsidiary of Philips North America Corporation—to provide 10,000 ventilators to the Strategic National Stockpile by September 2022 at a cost of $3,280 each.[1]

When the coronavirus crisis hit at the beginning of this year, Respironics, Inc. did not expedite the delivery of ventilators under this contract. Instead, the company's spokesman reported that it would not begin producing those ventilators until at least next year.[2]

In the meantime, Philips reportedly has been selling ventilators to foreign clients at much higher prices.[3] Philips' foreign sales reportedly are topping $17,000 per ventilator—more than five times the price it would have received for ventilators under the HHS contract.[4]

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[1] General Services Administration, *Contract Data: Respironics, Inc.* (Sept. 19, 2019) (online at https://beta.sam.gov/awards/85564959%2BAWARD?keywords=respironics&sort=-modifiedDate&index=&is_active=true&page=1&organization_id=100004570).

[2] *Taxpayers Paid Millions to Design a Low-Cost Ventilator for a Pandemic. Instead, the Company Is Selling Versions of It Overseas*, ProPublica (Mar. 30, 2020) (online at www.propublica.org/article/taxpayers-paid-millions-to-design-a-low-cost-ventilator-for-a-pandemic-instead-the-company-is-selling-versions-of-it-overseas-).

[3] *Id.*

[4] *Stockpile of US-Manufactured Ventilators Sold Overseas: Report*, The Hill (Mar. 31, 2020) (online at https://thehill.com/homenews/news/490339-stockpile-of-us-manufactured-ventilators-sold-overseas-report).

The low-cost model of the ventilator was developed with the assistance of HHS's Biomedical Advanced Research and Development Authority (BARDA), and the Food and Drug Administration approved the design in July 2019. Experts believe it would be a "game changer" for hospitals confronting an influx of coronavirus patients because of its simple functionality and portability.[5]

On April 2, 2020, President Trump invoked the Defense Production Act (DPA) against Philips.[6] HHS Secretary Alex Azar praised that move by stating:

> President Trump's bold use of the Defense Production Act is activating America's industrial base to produce the medical equipment we need to combat the coronavirus. The DPA is allowing the federal government to work with manufacturers, such as Philips, to accelerate production of ventilators and ensure that they go where they're needed most.[7]

However, the President did not use the DPA to force Philips to speed up the delivery of $3,820 ventilators under the existing HHS contract or to increase the number of ventilators due under that contract. Instead, the Trump Administration struck a new deal to purchase 43,000 ventilators from Philips for more than $15,000 per ventilator—a deal worth approximately $646 million to Philips.[8]

During a press conference last night at the White House, President Trump appeared to denigrate the more inexpensive, portable ventilators developed over the last decade with BARDA, approved by the FDA in 2019, and under contract with HHS since last September. Instead, he boasted about ordering more costly ventilators, stating:

> These are high quality ventilators. We had a choice. We could do inexpensive, less productive ventilators, or high quality. We've done a high-quality ventilator.[9]

For these reasons, please produce the following documents and information by April 24, 2020:

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[5] *Taxpayers Paid Millions to Design a Low-Cost Ventilator for a Pandemic. Instead, the Company Is Selling Versions of It Overseas*, ProPublica (Mar. 30, 2020) (online at www.propublica.org/article/taxpayers-paid-millions-to-design-a-low-cost-ventilator-for-a-pandemic-instead-the-company-is-selling-versions-of-it-overseas-).

[6] The White House, *Statement from the President Regarding the Defense Production Act* (Apr. 2, 2020) (online at www.whitehouse.gov/briefings-statements/statement-president-regarding-defense-production-act-2/).

[7] Department of Health and Human Services, *HHS Announces Ventilator Contract with Philips Under Defense Production Act* (Apr. 8, 2020) (online at www.hhs.gov/about/news/2020/04/08/hhs-announces-ventilator-contract-with-philips-under-defense-production-act.html).

[8] *Id.*

[9] The White House, *Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing* (Apr. 14, 2020) (online at www.youtube.com/watch?v=ZDT3Kk34-MY).

1. All contracts regarding ventilators entered into between Philips and the federal government, including all amendments thereto, since January 1, 2015, including any new contracts or amendments that are entered into for the remainder of 2020;

2. A description of all negotiations regarding ventilators with the federal government since January 1, 2020, identifying the agencies or offices, the number and type of ventilators discussed, the price range of the ventilators, and whether the discussions involved potential new agreements or modifications of existing contracts, including:

    a. whether your company was asked to move up your production schedule under the September 2019 contract; and
    b. whether the reported Jared Kushner-led discussions for 43,000 additional ventilators involves the Defense Production Act or whether those are separate negotiations; and

3. A description of how other models of Philips ventilators, including Trilogy Evo Universal models sold to commercial clients, differ from the Trilogy Evo Universal model agreed to be sold to HHS pursuant to the September 2019 contract;

4. A list of all ventilator sales, including model, quantity, price, purchaser, contract date, and delivery date, from September 1, 2019, to the present;

5. All documents, including communications with federal employees, contractors, and consultants, regarding renegotiation of the September 2019 ventilator contract with HHS or negotiations for other contracts for sales of ventilators to the federal government, from January 1, 2020, to the present;

6. All documents, including communications with federal employees, contractors, and consultants, regarding the Defense Production Act, including the terms under which your company will produce and the compensation;

7. All documents regarding changes to production schedules, including decisions on how many of each model of ventilator to be produced, from January 1, 2020, to the present; and

8. All orders from HHS directed to Philips for production of ventilators pursuant to the President's April 2, 2020, Order under the Defense Production Act.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. An attachment to this letter provides additional instructions for responding to the Committee's request. If you have any questions regarding this request, please contact Subcommittee staff at (202) 225-5051.

Sincerely,

Raja Krishnamoorthi
Chairman
Subcommittee on Economic and Consumer Policy

Enclosures

cc: The Honorable Michael Cloud, Ranking Member

Responding to 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 Committees.

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 Committees' 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 Committees 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 Committees 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 Committees' 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 on Oversight and Reform, 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. When documents are produced to the Committee on Financial Services, production sets shall be delivered to the Majority Staff in Room 2129 of the Rayburn House Office Building and the Minority Staff in Room 4340 of the O'Neill House Office Building. When documents are produced to the Permanent Select Committee on Intelligence, production sets shall be delivered to Majority and Minority Staff in Room HVC-304 of the Capital Visitor Center.

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.