

ONE HUNDRED SIXTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

June 22, 2020

The Honorable Alex M. Azar II
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
245 Murray Lane SW
Washington, DC 20528

Dear Secretary Azar, Attorney General Barr, and Acting Secretary Wolf:

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee is investigating the response to the coronavirus disease of 2019 (COVID-19) pandemic. We write to express serious concerns regarding reports of health care providers and governments at all levels continuing to encounter challenges in reliably procuring vital medical supplies needed to combat COVID-19. We also want to better understand the extent to which the federal government is overseeing and coordinating these procurement activities.

Since the COVID-19 outbreak began, those on the front lines of the response have faced dire shortages of critical medical supplies, such as ventilators, N95 respirators, testing supplies, protective gowns, and other types of personal protective equipment (PPE). An April 2020 report issued by the Department of Health and Human Services (HHS) Office of Inspector General found that widespread shortages of PPE were putting the lives of both patients and health care providers at risk, and that hospitals were struggling with uncertainty about the availability of

medical supplies.¹ Recent reports indicate that health care providers across the country continue to face significant shortages of PPE and other critical supplies, especially those working in smaller safety net hospitals and nursing homes serving some of the most vulnerable communities.² The serious consequences stemming from these supply shortages have prompted officials to turn to new and unproven companies to provide vital medical supplies. In the absence of a centralized coordination effort at the federal level, health care providers and governments at all levels—which may lack experience in procuring scarce goods in a chaotic global market—have been forced to compete against each other to secure the supplies they need.³

In recent weeks, press reports have surfaced regarding inexperienced medical supply companies failing to fulfill contracts for substantial shipments of PPE and other medical supplies under the terms agreed upon. According to reports, some of these companies have required large upfront payments as a condition for securing the contract⁴—a practice that the Federal Bureau of Investigation has warned may increase the risk of fraud.⁵

The Committee is concerned about the extent to which state and local governments and health care providers are able to navigate the emerging marketplace for scarce medical supplies in the face of the COVID-19 epidemic. To that end, the Committee recently sent Blue Flame Medical LLC—a company that reportedly formed in the early weeks of the pandemic and offers

¹ U.S. Department of Health and Human Services, Office of Inspector General, *Hospital Experiences Responding to the COVID-19 Pandemic: Results of a National Pulse Survey March 23–27, 2020* (OEI-06-20-00300) (Apr. 3, 2020).

² *Few N95 Masks, Reused Gowns: Dire PPE Shortages Reveal COVID-19's Racial Divide*, NBC News (June 12, 2020).

³ *A Chaotic Gray Market Determines Who Gets Coronavirus Gear — and Who Doesn't*, Wall Street Journal (May 8, 2020); *States Still Baffled over how to get Coronavirus Supplies from Trump*, Politico (Apr. 13, 2020); *States And Hospitals Are Sourcing Their Own PPE From China*, NPR (Apr. 21, 2020); *see also* House Committee on Energy and Commerce, Testimony of The Honorable Gretchen Whitmer, Governor of the State of Michigan, *Hearing on On the Front Line: How Governors Are Battling the COVID-19 Pandemic*, 116th Cong. (June 2, 2020).

⁴ *See, e.g., He had Never Sold a Ventilator. N.Y. Gave Him an \$86 Million Deal*, New York Times (May 8, 2020); *China's Medical-Goods Market Is 'Wild West' Amid Surging Coronavirus Demand*, Wall Street Journal (Apr. 23, 2020); *Maryland Cancels \$12.5 Million PPE Contract with Firm Stated by GOP Operatives*, Washington Post (May 2, 2020).

⁵ Federal Bureau of Investigation, *FBI Warns of Advance Fee and BEC Schemes Related to Procurement of PPE and Other Supplies During COVID-19 Pandemic* (Apr. 13, 2020) (press release).

to supply ventilators, respirators, and other scarce PPE⁶—a letter requesting information on its contracts with state and local governments.⁷ According to reports, the company has received large upfront deposits under certain contracts but did not fulfill several supply orders under the terms agreed upon.⁸

Issues have been reported in other procurement arrangements. According to *The New York Times*, a Silicon Valley engineer secured an \$86 million contract with New York State to supply over 1,400 ventilators from Chinese manufacturers, despite lacking experience in the medical supply field.⁹ HHS reportedly referred state officials to this engineer—who required a \$69 million upfront payment—and represented that the federal government had vetted and approved him as a supplier.¹⁰ The deal, however, reportedly fell apart after a bank froze funds that New York had wired for the transaction and state officials were unable to confirm the stockpile of ventilators in China.¹¹

Around the same time, the *Los Angeles Times* reported that the State of California canceled a nearly \$800 million contract after a supplier, Bear Mountain Development Co. LLC, failed to timely deliver most of the supplies due under the contract.¹² According to the report, state officials have been in contact with federal authorities about this contract and have been working with the Department of Justice and the Federal Emergency Management Agency

⁶ *Maryland Cancels \$12.5 PPE Contract with Firm Started by GOP Operatives*, Washington Post (May 2, 2020); *The Race for Virus Money is On. Lobbyists are Standing By*, New York Times (Mar. 28, 2020).

⁷ Letter from Rep. Frank Pallone, Jr., Chairman, and Rep. Diana DeGette, Chair, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, to Blue Flame Medical LLC (May 18, 2020).

⁸ *A Chaotic Gray Market Determines Who Gets Coronavirus Gear — and Who Doesn't*, Wall Street Journal (May 8, 2020); *Medical Importer Launched by GOP Consultants Prompts Complaints, Federal Investigation*, Orange County Register (May 7, 2020); *Firm Set Up by G.O.P. Operatives Under Scrutiny Over Virus Contracts*, New York Times (May 6, 2020); *Maryland Cancels \$12.5 Million PPE Contract with Firm Started by GOP Operatives*, Washington Post (May 2, 2020).

⁹ *He had Never Sold a Ventilator. N.Y. Gave Him an \$86 Million Deal*, New York Times (May 8, 2020).

¹⁰ *Id.*

¹¹ *Id.*

¹² *A Politically Connected Firm Gets an \$800-Million Mask Contract with California. Then it Falls Apart*, Los Angeles Times (May 9, 2020).

(FEMA) in some capacity to ensure the equipment they obtain and suppliers they use are “legitimate.”¹³

Certain federal agencies have also reportedly encountered challenges in reliably securing critical medical supplies and dealing with questionable suppliers during the pandemic.¹⁴ For instance, the Indian Health Service (IHS) reportedly awarded a \$3 million contract to supply respirator masks to Navajo Nation hospitals to an individual who created a medical supply company less than two weeks before receiving the award but possessed no prior federal contracting experience.¹⁵ After receiving the shipment of supplies, IHS reportedly discovered that 247,000 masks delivered under the contract may be unsuitable for medical use, while an additional 130,000 masks are not of the type specified in the procurement data.¹⁶ According to reports, IHS has since acknowledged that one million respirator masks it purchased from this supplier do not meet the standards established by the Food and Drug Administration for “use in healthcare settings by health care providers,” while hospitals in the Navajo Nation continue to experience high numbers of COVID-19 infections and limited availability of protective supplies.¹⁷

These and other reports indicate that health care providers and governments at all levels have struggled, and may continue to struggle, to reliably secure medical supplies and effectively navigate supply chains in which the risk of error and fraud is dangerously high.¹⁸ Troublingly, an internal FEMA document released earlier this month estimates that nationwide shortages of certain vital PPE will continue until at least July, with demand exceeding domestic production and international imports.¹⁹ At a minimum, continued PPE shortages coupled with persistent outsized demand may contribute to further delays in the delivery of critical medical supplies urgently needed by those on the frontline of the COVID-19 response efforts.

¹³ *Id.*

¹⁴ *Federal Agencies Turn to Untested Suppliers for Big PPE Contracts*, CNN (May 27, 2020).

¹⁵ *The Feds Gave a Former White House Official \$3 Million to Supply Masks to Navajo Hospitals. Some May Not Work*, ProPublica (May 22, 2020).

¹⁶ *Id.*

¹⁷ *Id.*; *Masks Sold by Former White House Official to Navajo Hospitals Don’t Meet FDA Standards*, ProPublica (May 27, 2020).

¹⁸ *See, e.g., ‘No Offense, but is this a Joke?’ Inside the Underground Market for Face Masks*, Washington Post (May 18, 2020).

¹⁹ *Internal Document Reveals Federal Plan to Ask Nurses to Reuse Masks*, Roll Call (June 9, 2020).

We are writing to each of you because your respective agencies may play a role in overseeing aspects of the complex and evolving global medical supply chain on which governments at all levels, health care providers, and other frontline workers depend to respond effectively to the COVID-19 pandemic. The Committee, which has considerable jurisdiction over matters related to the COVID-19 response, is interested in better understanding what efforts the federal government is undertaking to oversee suppliers of life-saving PPE and other critical medical supplies, and how your agencies are coordinating on these efforts. Given that the COVID-19 pandemic will continue in the coming months,²⁰ we expect many of the challenges faced in reliably procuring necessary medical supplies to likewise continue. Therefore, we are requesting that you respond to the following questions as soon as possible, but no later than July 6, 2020:

1. To what extent, if any, is the federal government involved in assisting state, local, tribal, and territorial governments and federal agencies in identifying and selecting suppliers, vendors, brokers, or distributors with which to contract for medical supplies for COVID-19 response efforts? In your response, please describe if your department has created a procurement response team or similar working group and the scope of that team's responsibilities.
2. Please describe the federal government's interagency coordination efforts with respect to oversight of suppliers, vendors, brokers, and distributors of medical supplies for COVID-19 response efforts. In your response, please provide a complete list of all federal departments and agencies involved in these matters.
3. Please describe the extent to which the federal government has provided guidance, recommendations, referrals, or other information to state, local, tribal, and territorial governments and federal agencies to assist in identifying suppliers, vendors, brokers, or distributors with which to contract for medical supplies for COVID-19 response efforts. In your response, please:
 - a. Describe the information and/or criteria used to determine contractor suitability before recommending or referring the contractor(s) to state, local, tribal, or territorial governments or federal agencies;
 - b. Describe the process by which the federal government vets prospective contractors prior to recommending or referring a contractor to state, local, tribal, or territorial governments or federal agencies, including the extent to which this process evaluates the manufacturer of the supplies being offered; and

²⁰ *Fauci Warns that the Coronavirus Pandemic Is Far from Over*, New York Times (June 9, 2020).

The Honorable Alex M. Azar II
The Honorable William P. Barr
The Honorable Chad F. Wolf
June 22, 2020
Page 6

- c. If the federal government does not engage in the vetting of contractors but has recommended or continues to recommend contractors to state, local, tribal, or territorial governments or federal agencies, please describe how such recommendations are made.
4. Since the onset of the COVID-19 outbreak in the United States, has your department notified any state, local, tribal, or territorial government or federal agency about potentially suspicious or fraudulent suppliers, vendors, brokers, or distributors of medical supplies? If so, please describe this notification process and specify the most common concerns conveyed in this process.
5. Please describe the federal government's interagency coordination efforts with respect to the detection, investigation, and prosecution of illegal contractor conduct related to the COVID-19 pandemic.

Thank you for your attention to this important matter. If you have any questions about this request, please contact Mohammad Aslami and Peter Rechter of the Majority staff at (202) 225-2927.

Sincerely,


Frank Pallone, Jr.
Chairman


Diana DeGette
Chair
Subcommittee on Oversight
and Investigations