

118TH CONGRESS
1ST SESSION

H. R. 3794

To amend the Public Health Service Act to authorize the Biomedical Advanced Research and Development Authority to award follow-on production contracts or transactions, procure supplies for experimental or test purposes, and acquire innovative commercial products and commercial services, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 2023

Mr. ROBERT GARCIA of California introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Public Health Service Act to authorize the Biomedical Advanced Research and Development Authority to award follow-on production contracts or transactions, procure supplies for experimental or test purposes, and acquire innovative commercial products and commercial services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fast-track Logistics
5 for Acquiring Supplies in a Hurry Act of 2023” or the
6 “FLASH Act of 2023”.

1 **SEC. 2. AUTHORITY TO AWARD FOLLOW-ON PRODUCTION**
2 **CONTRACTS OR TRANSACTIONS, PROCURE**
3 **SUPPLIES FOR EXPERIMENTAL OR TEST PUR-**
4 **POSES, AND ACQUIRE INNOVATIVE COMMER-**
5 **CIAL PRODUCTS AND COMMERCIAL SERV-**
6 **ICES.**

7 Section 319L of the Public Health Service Act (42
8 U.S.C. 247d–7e) is amended—

9 (1) in subsection (a)(6)(B), by amending clause
10 (ii) to read as follows:

11 “(ii) design and development of—

12 “(I) tests and prototypes, includ-
13 ing obtaining sufficient quantities for
14 evaluation of such tests and proto-
15 types; and

16 “(II) models, including animal
17 models, for such testing and proto-
18 types;”; and

19 (2) in subsection (c)(5)—

20 (A) in subparagraph (A)—

21 (i) by redesignating clause (iv) as
22 clause (v); and

23 (ii) by inserting after clause (iii) the
24 following new clause:

25 “(iv) FOLLOW-ON PRODUCTION CON-
26 TRACTS OR TRANSACTIONS.—

1 “(I) IN GENERAL.—A transaction
2 entered into under this subparagraph
3 for the design or development of a
4 prototype may provide for the award
5 of a follow-on production contract or
6 transaction to the participants in the
7 transaction.

8 “(II) PROTOTYPE SUB-
9 PROJECTS.—A transaction entered
10 into under this subparagraph includes
11 all prototype subprojects awarded
12 under the transaction to carry out au-
13 thorities under this section.

14 “(III) EXCEPTION TO COMPETI-
15 TIVE PROCEDURES.—Notwithstanding
16 clause (ii), a follow-on production con-
17 tract or transaction provided for in a
18 transaction under this clause may be
19 awarded to the participants in the
20 transaction without the use of com-
21 petitive procedures, even if explicit no-
22 tification was not listed within the re-
23 quest for proposal for the transaction,
24 if competitive procedures were used

1 for the selection of parties for partici-
2 pation in the initial transaction.”; and

3 (B) by adding at the end the following new
4 subparagraphs:

5 “(I) PROCUREMENT FOR EXPERIMENTAL
6 OR TEST PURPOSES.—

7 “(i) IN GENERAL.—The Secretary
8 may purchase medical countermeasures,
9 products, and supplies, chemical materials
10 and reagents, manufacturing supplies, pro-
11 tective equipment, and such other supplies,
12 including parts and accessories, and de-
13 signs thereof, as the Secretary determines
14 necessary for experimental or test purposes
15 in the development of supplies that are
16 necessary for national public health and
17 health security.

18 “(ii) PROCEDURES.—Notwithstanding
19 subparagraph (A)(ii), the Secretary may
20 make purchases under this subparagraph
21 by contract, or by entering into a trans-
22 action other than a contract, using non-
23 competitive procedures.

24 “(J) ACQUISITION OF INNOVATIVE COM-
25 Mercial PRODUCTS AND COMMERCIAL SERV-

ICES USING GENERAL SOLICITATION COMPETITIVE PROCEDURES.—

“(i) IN GENERAL.—Notwithstanding subparagraph (A)(ii), the Secretary may acquire innovative commercial products and commercial services through a competitive selection of proposals resulting from a general solicitation and the peer review of such proposals.

“(ii) TREATMENT AS COMPETITIVE PROCEDURES.—Use of general solicitation competitive procedures under clause (i) shall be considered to be use of competitive procedures for purposes of chapter 33 of title 41, United States Code.

“(iii) LIMITATIONS.—

“(I) TRANSACTIONS IN EXCESS OF \$100,000,000.—The Secretary may not enter into a contract or agreement in excess of \$100,000,000 using the authority under clause (i), unless the Secretary makes a written determination of the efficacy of the effort to meet mission needs of the Department of Health and Human Services.

1 “(II) FIXED-PRICE.—Contracts
2 or agreements entered into using the
3 authority under clause (i) shall be
4 fixed-price, including fixed-price in-
5 centive contracts.

6 “(iv) CONGRESSIONAL NOTIFICATION
7 REQUIRED.—

8 “(I) SUBMISSION.—Not later
9 than 45 days after the award of a
10 contract for an amount exceeding
11 \$100,000,000 using the authority
12 under clause (i), the Secretary shall
13 provide notification of such award to
14 the Committee on Energy and Com-
15 merce and the Committee on Appro-
16 priations of the House of Representa-
17 tives, and the Committee on Health,
18 Education, Labor, and Pensions and
19 the Committee on Appropriations of
20 the Senate.

21 “(II) CONTENTS.—Notification
22 of an award under subclause (I) shall
23 include the following:

1 “(aa) Description of the in-
2 novative commercial product or
3 commercial service acquired.

4 “(bb) Description of the re-
5 quirement, capability gap, or po-
6 tential technological advancement
7 with respect to which the innova-
8 tive commercial product or com-
9 mercial service acquired provides
10 a solution or a potential new ca-
11 pability.

12 “(cc) Amount of the con-
13 tract awarded.

14 “(dd) Identification of the
15 contractor awarded the contract.

16 “(v) INNOVATIVE DEFINED.—In this
17 subparagraph, the term ‘innovative’, with
18 respect to a commercial product or com-
19 mercial service, means—

20 “(I) any technology, process, or
21 method, including research and devel-
22 opment, that is new as of the date of
23 submission of a proposal; or

24 “(II) with respect to a tech-
25 nology, process, or method, including

1 research and development, existing as
2 of the date of submission of a pro-
3 posal, any application of such tech-
4 nology, process, or method that is new
5 to the Federal Government as of such
6 date.”.

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