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(Original Signature of Member)

118TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

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.

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**IN THE HOUSE OF REPRESENTATIVES**

Mr. ROBERT GARCIA of California introduced the following bill; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**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,*

1 **SECTION 1. SHORT TITLE.**

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

5 **SEC. 2. AUTHORITY TO AWARD FOLLOW-ON PRODUCTION**

6 **CONTRACTS OR TRANSACTIONS, PROCURE**  
7 **SUPPLIES FOR EXPERIMENTAL OR TEST PUR-**  
8 **POSES, AND ACQUIRE INNOVATIVE COMMER-**  
9 **CIAL PRODUCTS AND COMMERCIAL SERV-**  
10 **ICES.**

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

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

15 “(ii) design and development of—

16 “(I) tests and prototypes, includ-  
17 ing obtaining sufficient quantities for  
18 evaluation of such tests and proto-  
19 types; and

20 “(II) models, including animal  
21 models, for such testing and proto-  
22 types;”; and

23 (2) in subsection (c)(5)—

24 (A) in subparagraph (A)—

25 (i) by redesignating clause (iv) as  
26 clause (v); and

1 (ii) by inserting after clause (iii) the  
2 following new clause:

3 “(iv) FOLLOW-ON PRODUCTION CON-  
4 TRACTS OR TRANSACTIONS.—

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

12 “(II) PROTOTYPE SUB-  
13 PROJECTS.—A transaction entered  
14 into under this subparagraph includes  
15 all prototype subprojects awarded  
16 under the transaction to carry out au-  
17 thorities under this section.

18 “(III) EXCEPTION TO COMPETI-  
19 TIVE PROCEDURES.—Notwithstanding  
20 clause (ii), a follow-on production con-  
21 tract or transaction provided for in a  
22 transaction under this clause may be  
23 awarded to the participants in the  
24 transaction without the use of com-  
25 petitive procedures, even if explicit no-

1                   tification was not listed within the re-  
2                   quest for proposal for the transaction,  
3                   if competitive procedures were used  
4                   for the selection of parties for partici-  
5                   pation in the initial transaction.”; and

6                   (B) by adding at the end the following new  
7                   subparagraphs:

8                   “(I) PROCUREMENT FOR EXPERIMENTAL  
9                   OR TEST PURPOSES.—

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

21                   “(ii) PROCEDURES.—Notwithstanding  
22                   subparagraph (A)(ii), the Secretary may  
23                   make purchases under this subparagraph  
24                   by contract, or by entering into a trans-

1 action other than a contract, using non-  
2 competitive procedures.

3 “(J) ACQUISITION OF INNOVATIVE COM-  
4 Mercial PRODUCTS AND COMMERCIAL SERV-  
5 ICES USING GENERAL SOLICITATION COMPETI-  
6 TIVE PROCEDURES.—

7 “(i) IN GENERAL.—Notwithstanding  
8 subparagraph (A)(ii), the Secretary may  
9 acquire innovative commercial products  
10 and commercial services through a com-  
11 petitive selection of proposals resulting  
12 from a general solicitation and the peer re-  
13 view of such proposals.

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

20 “(iii) LIMITATIONS.—

21 “(I) TRANSACTIONS IN EXCESS  
22 OF \$100,000,000.—The Secretary may  
23 not enter into a contract or agreement  
24 in excess of \$100,000,000 using the  
25 authority under clause (i), unless the

1 Secretary makes a written determina-  
2 tion of the efficacy of the effort to  
3 meet mission needs of the Department  
4 of Health and Human Services.

5 “(II) FIXED-PRICE.—Contracts  
6 or agreements entered into using the  
7 authority under clause (i) shall be  
8 fixed-price, including fixed-price in-  
9 centive contracts.

10 “(iv) CONGRESSIONAL NOTIFICATION  
11 REQUIRED.—

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

1 “(II) CONTENTS.—Notification  
2 of an award under subclause (I) shall  
3 include the following:

4 “(aa) Description of the in-  
5 novative commercial product or  
6 commercial service acquired.

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

15 “(cc) Amount of the con-  
16 tract awarded.

17 “(dd) Identification of the  
18 contractor awarded the contract.

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

23 “(I) any technology, process, or  
24 method, including research and devel-

1                   opment, that is new as of the date of  
2                   submission of a proposal; or

3                   “(II) with respect to a tech-  
4                   nology, process, or method, including  
5                   research and development, existing as  
6                   of the date of submission of a pro-  
7                   posal, any application of such tech-  
8                   nology, process, or method that is new  
9                   to the Federal Government as of such  
10                  date.”.