

119TH CONGRESS
1ST SESSION

S. 979

To promote defense innovation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 12, 2025

Mr. BANKS introduced the following bill; which was read twice and referred
to the Committee on Armed Services

A BILL

To promote defense innovation, 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 “Buying Faster than
5 the Enemy Act of 2025”.

6 **SEC. 2. MODIFICATIONS TO COMMERCIAL SOLUTIONS**
7 **OPENINGS.**

8 Section 3458 of title 10, United States Code, is
9 amended—

10 (1) by amending subsection (a) to read as fol-
11 lows:

1 “(a) AUTHORITY.—The Secretary of Defense and the
 2 Secretaries of the military departments may acquire com-
 3 mercial products, commercial services, and nondevelop-
 4 mental items through a competitive selection of proposals
 5 resulting from a general solicitation and the peer review,
 6 technical review, or operational review (as appropriate) of
 7 such proposals, and may issue, without further justifica-
 8 tion, follow-on contract awards or agreements, including
 9 sole source awards or agreements, to the recipient.”;

10 (2) by redesignating subsection (c), (d), and (e)
 11 as subsections (d), (e), and (h), respectively;

12 (3) by inserting after subsection (b) the fol-
 13 lowing new subsection:

14 “(c) SOLE-SOURCE FOLLOW-ON.—The Secretary of
 15 Defense and the Secretaries of the military departments
 16 may issue, without further justification, follow-on contract
 17 awards or agreements, including sole source awards or
 18 agreements, to a recipient competitively selected under
 19 subsection (a).”;

20 (4) in paragraph (1) of subsection (d), as redes-
 21 ignated by paragraph (2) of this section, by striking
 22 “the Under Secretary of Defense for Acquisition and
 23 Sustainment or the relevant service acquisition execu-
 24 tive” and inserting “the head of the contracting ac-

1 tivity (or the head of the contracting activity’s des-
2 ignated delegate)”;

3 (5) in subsection (e), as so redesignated—

4 (A) by striking “(1)”; and

5 (B) by striking paragraph (2); and

6 (6) by inserting after such subsection, as so re-
7 designated, the following new subsection:

8 “(f) NONTRADITIONAL VEHICLE.—(1) The Secretary
9 of Defense shall establish an open topic and enduring gen-
10 eral solicitation described in subsection (a) for each sys-
11 tems command, science and technology reinvention labora-
12 tory, and portfolio acquisition executive.

13 “(2) The preferred model for developing and pro-
14 ducing operational military capabilities using general so-
15 licitations in paragraph (1) shall be the urgent capability
16 acquisition, middle tier of acquisition, software acquisi-
17 tion, or services acquisition pathways of the Department
18 of Defense Adaptive Acquisition Framework described in
19 Department of Defense Instructions 5000.85 and
20 5000.2.”.

1 **SEC. 3. LIMITATION ON REQUIRED FLOWDOWN OF CON-**
2 **TRACT CLAUSES TO SUBCONTRACTORS PRO-**
3 **VIDING COMMERCIAL PRODUCTS OR COM-**
4 **MERCIAL SERVICES.**

5 (a) CONTRACT CLAUSES REQUIRED IN THE FED-
6 ERAL ACQUISITION REGULATION.—Chapter 247 of title
7 10, United States Code, is amended by adding at the end
8 the following new section:

9 **“§ 3459. Limitation on required flowdown of contract**
10 **clauses to subcontractors providing com-**
11 **mercial products or commercial services**

12 “(a) IN GENERAL.—The Secretary of Defense may
13 not require that a clause be included in a subcontract for
14 commercial products and services other than a clause re-
15 quired by a provision of law that is on the list required
16 by section 3452 of this title.

17 “(b) SINGLE CLAUSE REQUIREMENT.—The Sec-
18 retary of Defense shall provide for implementation of all
19 provisions of law applicable to subcontracts for commercial
20 products and services through—

21 “(1) a single clause applicable to contracts for
22 commercial products and services; and

23 “(2) a single clause applicable to contracts for
24 noncommercial products and services.”.

25 (b) EFFECTIVE DATES.—

1 (1) IN GENERAL.—The requirements under sec-
 2 tion 3459 of title 10, United States Code, as added
 3 by subsection (a), shall apply with respect to solicita-
 4 tions issued by the Department of Defense after the
 5 end of the 120-day period beginning on the date of
 6 the enactment of this Act.

7 (2) REGULATIONS.—Not later than 180 days
 8 after the date of the enactment of this Act, the Sec-
 9 retary of Defense shall amend the Defense Federal
 10 Acquisition Regulation Supplement to implement
 11 section 3459 of title 10, United States Code, as
 12 added by subsection (a).

13 **SEC. 4. MODIFICATIONS TO RELATIONSHIP OF OTHER PRO-**
 14 **VISIONS OF LAW TO PROCUREMENT OF COM-**
 15 **MERCIAL PRODUCTS AND COMMERCIAL**
 16 **SERVICES.**

17 Section 3452 of title 10, United States Code, is
 18 amended by striking subsections (b) through (f) and in-
 19 serting the following new subsections:

20 “(b) APPLICABILITY OF DEFENSE-UNIQUE STAT-
 21 UTES TO CONTRACTS FOR COMMERCIAL PRODUCTS AND
 22 COMMERCIAL SERVICES.—(1) The Defense Federal Ac-
 23 quisition Regulation Supplement shall include a list of de-
 24 fense-unique provisions of law and of contract clause re-
 25 quirements based on government-wide acquisition regula-

1 tions, policies, or executive orders expressly required in
2 law that are applicable to contracts for the procurement
3 of commercial products and commercial services by the
4 Department of Defense.

5 “(2) A provision of law or contract clause require-
6 ment described in subsection (e) that is enacted after Oc-
7 tober 13, 1994, shall not be included on the list of applica-
8 ble provisions of law and contract clause requirements re-
9 quired by paragraph (1) unless the Under Secretary of
10 Defense for Acquisition and Sustainment makes a written
11 determination that it would be in the best interest of the
12 Department of Defense to apply the provision or contract
13 clause requirement to the contract for the procurement of
14 commercial products and commercial services.

15 “(c) APPLICABILITY OF DEFENSE-UNIQUE STAT-
16 UTES TO SUBCONTRACTS FOR COMMERCIAL PRODUCTS
17 AND COMMERCIAL SERVICES.—(1) The Defense Federal
18 Acquisition Regulation Supplement shall include a list of
19 defense-unique provisions of law and of contract clause re-
20 quirements based on government-wide acquisition regula-
21 tions, policies, or executive orders expressly required in
22 law that are applicable to subcontracts for the procure-
23 ment of commercial products and commercial services. A
24 provision of law or contract clause requirement properly
25 included on the list pursuant to paragraph (2) must apply

1 to purchases of commercial products and commercial serv-
2 ices by the Department of Defense.

3 “(2) A provision of law or contract clause require-
4 ment described in subsection (e) that is enacted after Oc-
5 tober 13, 1994, shall not be included on the list of applica-
6 ble provisions of law and contract clause requirements re-
7 quired by paragraph (1) unless the Under Secretary of
8 Defense for Acquisition and Sustainment makes a written
9 determination that it would be in the best interest of the
10 Department of Defense to apply the provision or contract
11 clause requirement to the subcontract for the procurement
12 of commercial products and commercial services.

13 “(3) In this subsection, the term ‘subcontract’—

14 “(A) includes a transfer of commercial products
15 and commercial services between divisions, subsidi-
16 aries, or affiliates of a contractor or subcontractor;
17 and

18 “(B) does not include agreements entered into
19 by a contractor for the supply of commodities that
20 are intended for use in the performance of multiple
21 contracts with the Department of Defense and other
22 parties and are not identifiable to any particular
23 contract.

24 “(4) This subsection does not authorize the waiver
25 of the applicability of any provision of law or contract

1 clause requirement with respect to any first-tier sub-
2 contract under a contract with a prime contractor reselling
3 or distributing commercial products and commercial serv-
4 ices of another contractor without adding value.

5 “(d) APPLICABILITY OF DEFENSE-UNIQUE STAT-
6 UTES TO CONTRACTS FOR COMMERCIALLY AVAILABLE,
7 OFF-THE-SHELF ITEMS.—(1) The Defense Federal Ac-
8 quisition Regulation Supplement shall include a list of de-
9 fense-unique provisions of law and of contract clause re-
10 quirements based on government-wide acquisition regula-
11 tions, policies, or executive orders expressly required in
12 law that are applicable to subcontracts for the procure-
13 ment of commercially available off-the-shelf items by the
14 Department of Defense.

15 “(2) A provision of law or contract clause require-
16 ment described in subsection (e) that is enacted after Oc-
17 tober 13, 1994, shall not be included on the list of applica-
18 ble provisions of law and contract clause requirements re-
19 quired by paragraph (1) unless the Under Secretary of
20 Defense for Acquisition and Sustainment makes a written
21 determination that it would be in the best interest of the
22 Department of Defense to apply the provision or contract
23 clause requirement to the procurement of commercially
24 available off-the-shelf items.

1 “(e) COVERED PROVISION OF LAW OR CONTRACT
 2 CLAUSE REQUIREMENT.—A provision of law or contract
 3 clause requirement referred to in subsections (b)(2),
 4 (c)(2), and (d)(2) is a provision of law or contract clause
 5 requirement that the Under Secretary of Defense for Ac-
 6 quisition and Sustainment determines sets forth policies,
 7 procedures, requirements, or restrictions for the procure-
 8 ment of property or services by the Federal Government,
 9 except for a provision of law or contract clause require-
 10 ment that—

11 “(1) provides for criminal or civil penalties;

12 “(2) requires that certain articles be bought
 13 from United States sources pursuant to chapter 385
 14 of this title or section 5949 of the National Defense
 15 Authorization Act for Fiscal Year 2023 (Public Law
 16 117–263; 41 U.S.C. 4713 note); or

17 “(3) specifically refers to this section and pro-
 18 vides that, notwithstanding this section, it shall be
 19 applicable to contracts for the procurement of com-
 20 mercial products and commercial services.”.

21 **SEC. 5. NONTRADITIONAL DEFENSE CONTRACTOR COM-**
 22 **MERCIAL SOLUTIONS OPENING.**

23 Section 3458 of title 10, United States Code, is
 24 amended by adding at the end the following new sub-
 25 section:

1 “(j) NONTRADITIONAL VEHICLE.—(1) The Secretary
2 of Defense shall establish not fewer than 5 consortia to
3 conduct prototype projects and follow-on production under
4 the authority of section 4022 of this title for each systems
5 command and each portfolio acquisition executive.

6 “(2) The preferred model for developing and pro-
7 ducing operational military capabilities using the consortia
8 in paragraph (1) shall be the urgent capability acquisition,
9 middle tier of acquisition, software acquisition, or services
10 acquisition pathways of the Department of Defense
11 Adaptive Acquisition Framework described in Department
12 of Defense Instruction 5000.2.

13 “(3) Nothing in this subsection shall be construed to
14 limit the number of consortia established by the Secretary
15 of Defense.”.

16 **SEC. 6. ADVANCE PAYMENTS.**

17 Section 3805(c) of title 10, United States Code, is
18 amended by striking “not more than 15 percent of the
19 contract price” and inserting “not more than 30 percent
20 of the contract price”.

1 **SEC. 7. MODIFICATIONS TO COMMERCIAL PRODUCT AND**
2 **COMMERCIAL SERVICE DETERMINATIONS BY**
3 **DEPARTMENT OF DEFENSE.**

4 Section 3456 of title 10, United States Code, is
5 amended by striking subsections (a) through (c) and in-
6 serting the following new subsections:

7 “(a) IN GENERAL.—The Secretary of Defense shall
8 create a default determination that products and services
9 acquired by the Department of Defense are commercial
10 and shall be acquired using commercial procedures, and,
11 to the maximum extent practicable, general solicitation
12 procedures under section 3458 of this title, unless deter-
13 mined to be non-commercial by the Department of De-
14 fense contracting officer.

15 “(b) DETERMINATIONS REGARDING THE NON-COM-
16 Mercial NATURE OF PRODUCTS OR SERVICES.—A de-
17 fense-unique development product or service may not be
18 procured if there is a commercial product or service, with
19 or without customization, that meets the minimum re-
20 quirements of the Department of Defense. In making a
21 determination whether a particular product or service of-
22 fered by a contractor is non-commercial and does not meet
23 any definition for commercial products or commercial
24 services, a contracting officer of the Department of De-
25 fense shall submit a written memorandum summarizing
26 the determination for approval by the head of contracting

1 activity, prior to awarding the contract, and provide it to
2 the contractor or subcontractor offering the product or
3 service for which such determination is summarized in
4 such memorandum. The memorandum shall include—

5 “(1) a detailed justification why the product or
6 commercial service was determined to be non-
7 commercial including the results of market research;
8 and

9 “(2) a signed determination by the program
10 manager that the requirement could not be reason-
11 ably changed to accommodate a commercial product
12 or commercial service.

13 “(c) DEFINITION.—The term ‘defense-unique devel-
14 opment’ means a Department of Defense-financed devel-
15 opment, either to repurpose a commercial product or solu-
16 tion or to develop a new product or solution, to provide
17 a defense-unique capability.”.

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