

118TH CONGRESS
1ST SESSION

S. 3390

To improve purchasing of food by the Department of Agriculture, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 4, 2023

Mr. MARKEY (for himself, Mr. BLUMENTHAL, Mr. BOOKER, and Mr. WELCH) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To improve purchasing of food by the Department of Agriculture, 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 “Enabling Farmer,
5 Food worker, Environmental, and Climate Targets
6 through Innovative, Values-aligned, and Equitable Food
7 Procurement Act” or the “EFFECTIVE Food Procure-
8 ment Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that the Department of Agriculture,
3 as one of the largest food purchasers in the world, has
4 the responsibility and opportunity to help spur a more
5 just, healthy, and sustainable food system by purchasing
6 more foods that support—

- 7 (1) regional and resilient food economies;
8 (2) worker well-being;
9 (3) a safe and healthy environment;
10 (4) equity and inclusion; and
11 (5) fairness for family farms, fishing busi-
12 nesses, and ranches.

13 **SEC. 3. DEFINITIONS.**

14 In this Act:

15 (1) **BEGINNING FARMER, FISHERMAN, OR**
16 **RANCHER.**—The term “beginning farmer, fisherman,
17 or rancher” means a person that—

18 (A)(i) has not operated a farm, fishing
19 business, or ranch; or

20 (ii) has operated a farm, fishing business,
21 or ranch for not more than 10 years; and

22 (B) meets such other criteria as the Sec-
23 retary may establish.

24 (2) **COVERED AUTHORITY.**—The term “covered
25 authority” means—

1 (A) section 32 of the Act of August 24,
2 1935 (7 U.S.C. 612c);

3 (B) the matter under the heading “RE-
4 MOVAL OF SURPLUS AGRICULTURAL COMMOD-
5 ITIES” under the heading “AGRICULTURAL
6 MARKETING SERVICE” in title I of Public Law
7 88–250 (7 U.S.C. 612c–1);

8 (C) section 10603 of the Farm Security
9 and Rural Investment Act of 2002 (7 U.S.C.
10 612c–4);

11 (D) section 4404 of the Food, Conserva-
12 tion, and Energy Act of 2008 (7 U.S.C. 612c–
13 5);

14 (E) section 14222 of that Act (7 U.S.C.
15 612c–6); and

16 (F) any other purchasing authority of the
17 Department of Agriculture.

18 (3) FISHING BUSINESS.—The term “fishing
19 business” means a business engaged in commercial
20 fishing (as defined in section 3 of the Magnuson-Ste-
21 vens Fishery Conservation and Management Act (16
22 U.S.C. 1802)).

23 (4) INDIAN TRIBE.—The term “Indian Tribe”
24 means an Indian tribe included on the list published
25 by the Secretary of the Interior under section 104

1 of the Federally Recognized Indian Tribe List Act of
2 1994 (25 U.S.C. 5131).

3 (5) NATIVE ALASKAN.—The term “Native Alas-
4 kan” has the meaning given the term “Native” in
5 section 3 of the Alaska Native Claims Settlement
6 Act (43 U.S.C. 1602).

7 (6) NATIVE HAWAIIAN.—The term “Native Ha-
8 waiian” has the meaning given the term in section
9 801 of the Native American Housing Assistance and
10 Self-Determination Act of 1996 (25 U.S.C. 4221).

11 (7) POLICY TO LIMIT DEFORESTATION.—The
12 term “policy to limit deforestation” means a policy
13 that includes, at a minimum, the following:

14 (A) Measures to identify the point of origin
15 of forest-risk commodities and ensure compli-
16 ance with the policy when supply chain risks
17 are present.

18 (B) Data detailing the complete list of di-
19 rect and indirect suppliers and supply chain
20 traceability information for each forest-risk
21 commodity found in products that may be fur-
22 nished to the Federal Government, including—

23 (i) refineries, processing plants,
24 farms, and plantations;

1 (ii) the respective owners, parent enti-
2 ties, and farmers of the entities described
3 in clause (i);

4 (iii) maps; and

5 (iv) geolocations.

6 (C) Measures taken to ensure that each
7 commodity described in subparagraph (B) does
8 not contribute to deforestation.

9 (D) Measures taken to ensure the process
10 of obtaining the free, prior, and informed con-
11 sent of indigenous peoples and local commu-
12 nities directly affected by the production of
13 commodities described in subparagraph (B).

14 (E) Measures taken to protect biodiversity
15 and prevent the poaching of wildlife and trade
16 in bushmeat in all operations and areas adja-
17 cent to the production of commodities described
18 in subparagraph (B).

19 (F) Measures taken to ensure compliance
20 with the laws of countries where forest-risk
21 commodities in the supply chain of the con-
22 tractor are produced.

23 (8) SECRETARY.—The term “Secretary” means
24 the Secretary of Agriculture.

1 (9) SOCIALLY DISADVANTAGED FARMER, FISH-
2 ERMAN, OR RANCHER.—The term “socially dis-
3 advantaged farmer, fisherman, or rancher” means a
4 farmer, operator of a fishing business, or rancher
5 who is a member of a socially disadvantaged group
6 (as defined in section 2501(a) of the Food, Agri-
7 culture, Conservation, and Trade Act of 1990 (7
8 U.S.C. 2279(a))).

9 (10) TRADEOFF PROCESS.—The term “tradeoff
10 process” means a tradeoff process described in part
11 15.101–1 of the Federal Acquisition Regulation (or
12 a successor regulation).

13 (11) VETERAN FARMER, FISHERMAN, OR
14 RANCHER.—The term “veteran farmer, fisherman,
15 or rancher” means a farmer, operator of a fishing
16 business, or rancher who has served in the Armed
17 Forces (as defined in section 101 of title 38, United
18 States Code) and who—

19 (A) has not operated a farm, fishing busi-
20 ness, or ranch;

21 (B) has operated a farm, fishing business,
22 or ranch for not more than 10 years; or

23 (C) is a veteran (as defined in that section)
24 who has first obtained status as a veteran (as

1 so defined) during the most recent 10-year pe-
2 riod.

3 **SEC. 4. EQUITABLE FOOD PROCUREMENT.**

4 (a) **PURPOSES.**—The purposes of the requirements
5 described in subsection (b) are—

6 (1) to strengthen the resilience of the domestic
7 food system;

8 (2) to create more equitable opportunities for
9 small and family farmers, fishermen, and ranchers;

10 (3) to expand the choices available to school
11 food authorities and food banks participating in the
12 commodity procurement programs of the Depart-
13 ment of Agriculture; and

14 (4) to expand workplace protections in the food
15 supply chains of the Federal Government.

16 (b) **REQUIREMENTS.**—In the procurement of foods
17 under a covered authority, the Secretary shall make avail-
18 able and purchase a sufficient variety of—

19 (1) foods that support equity and inclusion, in-
20 cluding—

21 (A) foods that are produced by or sourced
22 from—

23 (i) beginning farmers, fishermen, or
24 ranchers;

1 (ii) veteran farmers, fishermen, or
2 ranchers; or

3 (iii) socially disadvantaged farmers,
4 fishermen, or ranchers; and

5 (B) foods that accommodate people with
6 religious or restricted diets;

7 (2) foods that support diversified and resilient
8 supply chains, including—

9 (A) foods that are produced by or sourced
10 from small or mid-sized family farms, fishing
11 businesses, or ranches;

12 (B) foods that are produced by or sourced
13 from agricultural cooperatives, producer asso-
14 ciations, or food hubs that principally work with
15 the entities described in subparagraph (A);

16 (C) foods that are produced by a certified
17 organic farm (as defined in section 2103 of the
18 Organic Foods Production Act of 1990 (7
19 U.S.C. 6502)); and

20 (D) foods that are produced by a farm
21 participating in an independent animal welfare
22 certification program;

23 (3) foods that support worker well-being, in-
24 cluding—

1 (A) foods that are sourced from vendors
2 with employees who are represented by a collec-
3 tive bargaining agreement or memorandum of
4 understanding;

5 (B) foods that are sourced from vendors
6 participating in a worker justice certification
7 program; and

8 (C) foods that are sourced from vendors
9 that have signed a labor peace agreement with
10 a bona fide labor union; and

11 (4) foods that mitigate the impacts on climate
12 change of the food purchasing by the Department of
13 Agriculture, including—

14 (A) foods that are produced using agricul-
15 tural practices that measurably reduce green-
16 house gas emissions and increase on-farm diver-
17 sification and resilience to climate impacts, in-
18 cluding perennial-based systems, crop rotations,
19 and pasture-based livestock;

20 (B) foods that are sourced from suppliers
21 with a policy to limit deforestation;

22 (C) foods that emit less greenhouse gas
23 emissions throughout the lifecycle of the prod-
24 uct, relative to nutritionally similar foods; and

1 (D) foods that provide environmental co-
2 benefits that increase climate resilience, such
3 as—

4 (i) improving soil health and water
5 quality;

6 (ii) increasing biodiversity and water
7 conservation; and

8 (iii) reducing the spread of invasive
9 species.

10 (c) BASELINE REPORT.—Not later than 1 year after
11 the date of enactment of this Act, the Secretary shall sub-
12 mit to the Committee on Agriculture of the House of Rep-
13 resentatives and the Committee on Agriculture, Nutrition,
14 and Forestry of the Senate a report that includes—

15 (1) the percentage of the total annual spending
16 of the Department of Agriculture spent on pur-
17 chasing foods in each category of foods listed in
18 paragraphs (1) through (4) of subsection (b), includ-
19 ing a record of each purchase the Department made
20 under each category that lists—

21 (A) the name of each supplier, distributor,
22 processor, and producer involved in the provi-
23 sion of the food product;

24 (B) the total contract obligation; and

25 (C) a description of the food purchased;

1 (2) an estimate, developed in consultation with
2 the Environmental Protection Agency, of the green-
3 house gas emissions associated with food purchasing
4 by the Department of Agriculture;

5 (3) targets to increase by calendar year 2032,
6 to the maximum extent practicable, the percentage
7 of the annual food spending by the Department of
8 Agriculture in each category of food listed in para-
9 graphs (1) through (4) of subsection (b);

10 (4) a target to reduce by calendar year 2032,
11 to the maximum extent practicable, the greenhouse
12 gas emissions associated with the annual food pur-
13 chasing by the Department of Agriculture relative to
14 calendar year 2024, in accordance with the procure-
15 ment-related targets established by Executive Order
16 14057 (42 U.S.C. 4321 note; relating to catalyzing
17 clean energy industries and jobs through Federal
18 sustainability); and

19 (5) any recommendations—

20 (A) to enhance supply chain transparency,
21 particularly for school food authorities that par-
22 ticipate in any Department of Agriculture foods
23 program;

24 (B) to restructure the commodity food pro-
25 curement programs of the Department of Agri-

1 culture to support a regional model with in-
2 creased local food purchasing, including rec-
3 ommendations for continuing and improving on
4 the Local Food Purchase Assistance Coopera-
5 tive Agreement Program; or

6 (C) to increase procurement of foods listed
7 in paragraphs (1) through (4) of subsection (b),
8 including any recommendations that would re-
9 quire new authority from Congress.

10 (d) ANNUAL REPORTS.—Not later than 2 years after
11 the date of enactment of this Act, and each year there-
12 after, the Secretary shall submit to the Committee on Ag-
13 riculture of the House of Representatives and the Com-
14 mittee on Agriculture, Nutrition, and Forestry of the Sen-
15 ate a report that includes—

16 (1) the percentage of the total annual spending
17 of the Department of Agriculture spent on pur-
18 chasing foods in each category of foods listed in
19 paragraphs (1) through (4) of subsection (b) during
20 the previous fiscal year;

21 (2) the names of all suppliers, distributors,
22 processors, and producers involved in the provision
23 of all foods purchased under a covered authority
24 during the previous fiscal year; and

1 (3) an estimate of the greenhouse gas emissions
2 associated with food purchasing by the Department
3 of Agriculture during the previous fiscal year.

4 **SEC. 5. BEST VALUE PROCUREMENT PILOT PROGRAM;**
5 **TECHNICAL ASSISTANCE; GRANTS.**

6 (a) BEST VALUE PROCUREMENT PILOT PROGRAM.—

7 (1) IN GENERAL.—The Secretary shall establish
8 and carry out a pilot program that uses a tradeoff
9 process to select bids for food procurement contracts
10 that deliver the overall best value and target pur-
11 chases under covered authorities of foods listed in
12 paragraphs (1) through (4) of section 4(b), using
13 evaluation criteria established under paragraph (2).

14 (2) ESTABLISHMENT OF EVALUATION CRI-
15 TERIA.—The Secretary shall establish the evaluation
16 criteria described in paragraph (1)—

17 (A) after providing notice and an oppor-
18 tunity for public comment; and

19 (B) by providing opportunities for engage-
20 ment with—

21 (i) beginning farmers, fishermen, and
22 ranchers;

23 (ii) veteran farmers, fishermen, and
24 ranchers;

1 (iii) socially disadvantaged farmers,
2 fishermen, and ranchers;

3 (iv) small and mid-sized farms, fishing
4 businesses, and ranches;

5 (v) individuals who follow religious or
6 restricted diets;

7 (vi) Indian Tribes;

8 (vii) Native Hawaiians;

9 (viii) Native Alaskans;

10 (ix) workers in the food system, in-
11 cluding workers employed on farms, in
12 food processing facilities and warehouses,
13 and in food transportation; and

14 (x) entities that use commodity pro-
15 grams of the Department of Agriculture,
16 including child nutrition providers and
17 food banks.

18 (3) REQUIREMENT.—The Secretary shall annu-
19 ally select bids under the pilot program established
20 under this subsection in an amount that is not less
21 than 20 percent of the annual food spending of the
22 Department of Agriculture under the covered au-
23 thorities.

24 (4) REPORT TO CONGRESS.—Not later than
25 January 1, 2025, and each year thereafter through-

1 out the duration of the pilot program under this
2 subsection, the Secretary shall submit to the Com-
3 mittee on Agriculture, Nutrition, and Forestry of
4 the Senate and the Committee on Agriculture of the
5 House of Representatives a report describing the
6 progress of the Secretary in implementing the pilot
7 program, including—

8 (A) the number of bid solicitations selected
9 under the pilot program;

10 (B) the total amount spent by the Depart-
11 ment of Agriculture on purchases made through
12 the pilot program;

13 (C) a description of the evaluation criteria
14 established under paragraph (2); and

15 (D) an evaluation of the solicitation proc-
16 ess used for the pilot program that includes
17 input from vendors.

18 (5) TERMINATION.—The pilot program estab-
19 lished under this subsection shall terminate on the
20 date that is 5 years after the date of enactment of
21 this Act.

22 (b) TECHNICAL ASSISTANCE.—

23 (1) PARTICIPATION IN PROCUREMENT PRO-
24 GRAMS.—The Secretary shall provide technical as-
25 sistance to support equitable participation in the

1 procurement programs of the Department of Agri-
2 culture, including technical assistance in obtaining
3 necessary food safety training or certification, to—

4 (A) beginning farmers, fishermen, and
5 ranchers;

6 (B) veteran farmers, fishermen, and ranch-
7 ers;

8 (C) socially disadvantaged farmers, fisher-
9 men, and ranchers; and

10 (D) small and mid-sized farms, fishing
11 businesses, and ranches.

12 (2) SMALL BUSINESS CERTIFICATION.—The
13 Secretary shall coordinate with the Administrator of
14 the Small Business Administration to provide tech-
15 nical assistance in becoming certified as eligible for
16 the award of contracts pursuant to section 8(a) of
17 the Small Business Act (15 U.S.C. 637(a)) to—

18 (A) beginning farmers, fishermen, and
19 ranchers;

20 (B) veteran farmers, fishermen, and ranch-
21 ers;

22 (C) socially disadvantaged farmers, fisher-
23 men, and ranchers; and

1 (D) small and mid-sized farms, ranches,
2 and fishing businesses that are structured as
3 family farms.

4 (c) GRANTS.—

5 (1) IN GENERAL.—The Secretary shall establish
6 a competitive grant program to assist eligible appli-
7 cants described in paragraph (5) in participating in
8 the procurement programs of the Department of Ag-
9 riculture.

10 (2) TERM.—The term of a grant awarded
11 under this subsection shall be not more than 3
12 years.

13 (3) USE OF FUNDS.—A grant awarded under
14 this subsection may be used for any of the following
15 activities:

16 (A) To make upgrades necessary to obtain
17 food safety accreditations and audits required
18 to become a vendor for the Department of Agri-
19 culture.

20 (B) To pay for the cost of a food safety ac-
21 creditation and audit.

22 (C) To purchase liability insurance.

23 (D) To develop and execute a food safety
24 plan.

1 (4) DISTRIBUTION.—The Secretary shall ensure
2 geographic diversity in grants awarded under this
3 subsection.

4 (5) ELIGIBILITY.—Applicants eligible for grants
5 under this subsection are—

6 (A) beginning farmers, fishermen, and
7 ranchers;

8 (B) veteran farmers, fishermen, and ranch-
9 ers;

10 (C) socially disadvantaged farmers, fisher-
11 men, and ranchers;

12 (D) small and mid-sized farms, fishing
13 businesses, and ranches;

14 (E) agricultural cooperatives, fishing co-
15 operatives, and producer associations composed
16 of the individuals or entities described in any of
17 subparagraphs (A) through (D); and

18 (F) food hubs that work with the individ-
19 uals or entities described in any of subpara-
20 graphs (A) through (D).

21 (6) MAXIMUM GRANT AMOUNT.—No eligible ap-
22 plicant described in paragraph (5) may receive more
23 than \$100,000 in grants under this subsection.

24 (7) REPORTS.—

1 (A) RECIPIENTS.—Not later than 1 year
2 after receiving a grant under this subsection,
3 and annually thereafter for the period of the
4 grant term, a recipient of a grant under this
5 subsection shall submit to the Secretary a re-
6 port describing—

7 (i) how the recipient used the funds;

8 and

9 (ii) the progress of the recipient to-
10 ward becoming a vendor, as described in
11 paragraph (3)(A), if applicable.

12 (B) SECRETARY.—Not later than January
13 1, 2025, and each year thereafter in which the
14 term of a grant under this subsection is ongo-
15 ing, the Secretary shall submit to the Com-
16 mittee on Agriculture, Nutrition, and Forestry
17 of the Senate and the Committee on Agri-
18 culture of the House of Representatives a re-
19 port containing a list of the recipients of the
20 grants, including a summary of—

21 (i) how the recipients used the funds;

22 and

23 (ii) the recipients that have become
24 vendors, as described in paragraph (3)(A),
25 if applicable.

1 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
2 authorized to be appropriated to carry out this section
3 \$25,000,000 for fiscal year 2025, to remain available
4 through fiscal year 2030.

○