

118TH CONGRESS
1ST SESSION

S. 2874

To provide fresh produce to individuals facing food and nutrition insecurity,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2023

Mr. BROWN introduced the following bill; which was read twice and referred
to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To provide fresh produce to individuals facing food and
nutrition insecurity, 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 “Fresh Produce Pro-
5 curement Reform Act of 2023”.

6 **SEC. 2. CONTRACTS FOR FRESH PRODUCE.**

7 (a) DEFINITIONS.—In this section:

8 (1) BEGINNING FARMER.—The term “begin-
9 ning farmer” has the meaning given the term “be-
10 ginning farmer or rancher” in section 343(a) of the

1 Consolidated Farm and Rural Development Act (7
2 U.S.C. 1991(a)).

3 (2) ELIGIBLE ENTITY.—The term “eligible enti-
4 ty” means an entity that—

5 (A) is—

6 (i) a grower, packer, distributor, or
7 food-hub;

8 (ii) a nonprofit organization; or

9 (iii) a cooperative; and

10 (B)(i) is located in the State or locality in
11 which the produce shall be distributed; or

12 (ii) has demonstrated experience distrib-
13 uting to that State or locality.

14 (3) FAMILY FARM.—The term “family farm”
15 has the meaning given the term in section 761.2 of
16 title 7, Code of Federal Regulations (as in effect on
17 December 30, 2007).

18 (4) PROGRAM.—The term “program” means
19 the program established under subsection (b).

20 (5) QUALIFYING ENTITY.—The term “quali-
21 fying entity” means a nonprofit food bank, a non-
22 profit food pantry, a nonprofit school, a nonprofit
23 child or senior care center, a nonprofit youth-serving
24 community based organization, a Tribal organiza-
25 tion, or a public agency that—

1 (A) participates in a nutrition program ad-
2 ministered by the Secretary, including—

3 (i) the school lunch program estab-
4 lished under the Richard B. Russell Na-
5 tional School Lunch Act (42 U.S.C. 1751
6 et seq.);

7 (ii) the summer food service program
8 established under section 13 of that Act
9 (42 U.S.C. 1761);

10 (iii) the child and adult care food pro-
11 gram established under section 17 of that
12 Act (42 U.S.C. 1766);

13 (iv) the food distribution program on
14 Indian reservations established under sec-
15 tion 4(b) of the Food and Nutrition Act of
16 2008 (7 U.S.C. 2013(b));

17 (v) the commodity supplemental food
18 program established under section 4 of the
19 Agriculture and Consumer Protection Act
20 of 1973 (7 U.S.C. 612c note; Public Law
21 93–86); and

22 (vi) the emergency food assistance
23 program established pursuant to the Emer-
24 gency Food Assistance Act of 1983 (7
25 U.S.C. 7501 et seq.); or

(B) does not participate in a nutrition program described in subparagraph (A) but has demonstrated experience in serving the needs of vulnerable populations facing food and nutrition insecurity.

(6) SECRETARY.—The term “Secretary” means the Secretary of Agriculture, acting through the Administrator of the Agricultural Marketing Service.

(7) SOCIALLY DISADVANTAGED FARMER.—The term “socially disadvantaged farmer” has the meaning given the term “socially disadvantaged farmer or rancher” in section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)).

(8) STATE.—The term “State” means—

(A) a State;

(B) the District of Columbia;

(C) an Indian Tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)); and

(D) a territory or possession of the United States.

(9) VETERAN FARMER.—The term “veteran farmer” has the meaning given the term “veteran farmer or rancher” in section 2501(a) of the Food,

1 Agriculture, Conservation, and Trade Act of 1990 (7
2 U.S.C. 2279(a)).

3 (b) ESTABLISHMENT.—Not later than 90 days after
4 the date of enactment of this Act, the Secretary, in con-
5 sultation with the Administrator of the Food and Nutri-
6 tion Service, shall establish a program under which the
7 Secretary shall enter into contracts with eligible entities
8 to procure fresh produce (excluding legumes) for distribu-
9 tion to qualifying entities that serve individuals at risk of
10 food and nutrition insecurity.

11 (c) PURPOSES.—The purposes of the program are—

12 (1) to increase access of low-income households
13 to a wide variety of fresh produce;

14 (2) to directly connect produce producers and
15 distributors to nonprofit emergency feeding entities;

16 (3) to increase the procurement of fresh
17 produce by the Federal Government;

18 (4) to strengthen the local and regional food
19 supply chain;

20 (5) to reduce on-farm food loss caused by a
21 market disruption; and

22 (6) to model nimbleness and responsiveness in
23 and out of emergency situations relating to food in-
24 security, nutrition security, and disruptions to the
25 food supply chain.

1 (d) SELECTION.—

2 (1) CRITERIA.—In selecting eligible entities
3 with which to enter into contracts under the pro-
4 gram, the Secretary shall consider whether the eligi-
5 ble entity—

6 (A) has demonstrated experience in fresh
7 produce supply chain distribution;

8 (B) is a small business concern (as defined
9 in section 3 of the Small Business Act (15
10 U.S.C. 632));

11 (C) holds a PACA license, relevant food
12 safety certifications, and any other relevant li-
13 censes or certifications, as determined by the
14 Secretary;

15 (D) sources from small- and medium-sized
16 growers, and local and regional produce, as geo-
17 graphically and seasonally feasible;

18 (E) has demonstrated relationships with at
19 least 2 qualifying entities, including a qualifying
20 entity that does not receive resources through
21 the emergency food assistance program estab-
22 lished pursuant to the Emergency Food Assist-
23 ance Act of 1983 (7 U.S.C. 7501 et seq.); and

24 (F) offers the Secretary a price determined
25 by the Secretary to be the overall best value

1 without limiting evaluation factors to lowest
 2 price or highest technical rating.

3 (2) PRIORITY.—In selecting eligible entities
 4 with which to enter into contracts under the pro-
 5 gram, the Secretary shall give priority to eligible en-
 6 tities that—

7 (A) grow the produce that will be provided
 8 and distributed to qualifying entities;

9 (B) are, or source from—

10 (i) beginning farmers;

11 (ii) small or mid-sized farms that are
 12 structured as family farms; or

13 (iii) socially disadvantaged farmers,
 14 including women-owned and veteran-owned
 15 eligible entities; and

16 (C) are able to deliver to areas most in
 17 need of fresh produce, as determined by the
 18 Secretary.

19 (e) CONTRACT TERMS.—

20 (1) PERIOD OF PERFORMANCE.—The period of
 21 performance for a contract entered into under the
 22 program shall be—

23 (A) not less than 90 days; and

24 (B) not more than 120 days.

1 (2) PRICE.—The price paid by the Secretary
2 under a contract entered into under the program
3 shall be inclusive of all transportation and distribu-
4 tion costs associated with delivering fresh produce to
5 the final destination of the applicable qualifying en-
6 tity.

7 (3) PRODUCE MAKEUP.—A contract entered
8 into under the program shall require that the fresh
9 produce procured for distribution to a qualifying en-
10 tity meets the following requirements:

11 (A) The fresh produce is grown in the
12 United States.

13 (B) The fresh produce includes locally
14 grown produce as geographically and seasonally
15 feasible, as determined by the Secretary.

16 (C) Not fewer than 7 varieties of fresh
17 produce are distributed.

18 (D) The variety of fresh produce distrib-
19 uted is consistent with the most recent Dietary
20 Guidelines for Americans published under sec-
21 tion 301 of the National Nutrition Monitoring
22 and Related Research Act of 1990 (7 U.S.C.
23 5341).

24 (E) The fresh produce includes specialty
25 crops of cultural importance to the recipients of

1 the fresh produce, as determined by the Sec-
 2 retary, in consultation with the distributing
 3 qualifying entity.

4 (4) PAYMENT UNDER CONTRACT.—Under a
 5 contract entered into under the program, the Sec-
 6 retary shall—

7 (A) make a payment to the eligible entity
 8 of not less than 30 percent of the contract price
 9 in advance of the first distribution of produce
 10 under the contract; and

11 (B) after the eligible entity provides docu-
 12 mentation that the payment under subpara-
 13 graph (A) has been spent, pay the remaining
 14 amount under the contract in 2 disbursements
 15 of equal value.

16 (f) PROGRAM ADMINISTRATION.—

17 (1) QUALIFYING ENTITIES.—The Secretary
 18 shall—

19 (A) maintain a list of qualifying entities
 20 that participate in the program; and

21 (B) conduct outreach to ensure that quali-
 22 fying entities are made aware of the program.

23 (2) EQUITY AND GEOGRAPHIC REACH.—

24 (A) IN GENERAL.—In carrying out the
 25 program each fiscal year, the Secretary shall

1 enter into contracts with eligible entities in a
2 manner that ensures that the total value of con-
3 tracts entered into in each State is propor-
4 tionate to the number of households and indi-
5 viduals living in poverty within the State, as de-
6 termined by the Secretary.

7 (B) DIVERSITY.—The Secretary shall
8 award multiple contracts under the program to
9 eligible entities located in or serving each region
10 of the Food and Nutrition Service to provide
11 opportunities to a broad range of producers and
12 eligible entities.

13 (3) VULNERABLE AREAS.—In carrying out the
14 program, the Secretary shall establish a process—

15 (A) to determine the areas most in need of
16 produce provision under the program, including
17 rural areas, the territories and possessions of
18 the United States, and areas under the jurisdic-
19 tion of a Tribal government; and

20 (B) to ensure that those areas are served
21 by the program.

22 (4) FINANCIAL INFORMATION AND ASSIST-
23 ANCE.—The Secretary shall provide—

24 (A) information to assist small farmers,
25 beginning farmers, veteran farmers, and socially

1 disadvantaged farmers in obtaining food safety
2 certifications; and

3 (B) financial assistance to cover the associ-
4 ated costs of necessary changes and upgrades
5 to practices and equipment to improve food
6 safety.

7 (5) TECHNICAL ASSISTANCE.—The Secretary
8 shall provide technical assistance to eligible entities
9 participating in the program with respect to—

10 (A) the contract terms and expectations
11 applicable to those eligible entities;

12 (B) best practices for the distribution of
13 produce and expectations of the Secretary relat-
14 ing to distribution; and

15 (C) food safety certification.

16 (g) REPORTING.—

17 (1) IN GENERAL.—Not later than 1 year after
18 the date of enactment of this Act, the Secretary
19 shall submit to the Committee on Agriculture, Nutri-
20 tion, and Forestry of the Senate and the Committee
21 on Agriculture of the House of Representatives a re-
22 port that describes the activities carried out under
23 the program, including, within a State—

24 (A) the counties and percentage of coun-
25 ties served;

1 (B) the number of produce packages pro-
2 vided;

3 (C) the quantity and variety of fresh
4 produce distributed;

5 (D) the number of farms from which
6 produce is sourced, including the size of those
7 farms;

8 (E) the percentage of fresh produce pro-
9 cured locally and regionally; and

10 (F) any other data determined relevant by
11 the Secretary.

12 (2) GAO REPORT.—Not later than 1 year after
13 the date of enactment of this Act, the Comptroller
14 General of the United States shall submit to the
15 Committee on Agriculture, Nutrition, and Forestry
16 of the Senate and the Committee on Agriculture of
17 the House of Representatives a report that evaluates
18 the effectiveness of the program with respect to the
19 purposes of the program described in subsection (c).

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