

GREEN TIER LEGISLATION
Purchasing Incentive
07/12/2008

ISSUE: At the June 6, 2008, the Advisors requested additional information and specific alternatives that might address concerns raised about the extension of an incentive to Green Tier companies for some form of recognition in state purchasing decisions. The first step was to confirm what the concerns are. The second step is to provide some background. The third step is to consider some alternatives that might address the concerns raised. Having had some further conversations, the concerns to be addressed are two-fold:

1. The current recommendation is too general by simply placing it in the powers and duties section of the law i.e. it is not clear exactly what the department would be doing and what incentive the participants would actually be getting.
2. The recommendation would put in place a transaction (granting purchasing preference) that is not arms length and could be open to mischief as the state is setting the qualifications, doing the certifying and then granting the incentive. Unlike preferences for female and minority purchasing where there is a discrete, clear and objective criterion, Green Tier is a much more complex set of criterion and there may be other equally as deserving and certified environmental performers who should get such a preference if one would be extended.

BACKGROUND: To accomplish the Advisors' original recommendation the following set of instructions was developed:

1. Amend section 299.83 (1m) to state that the Department shall attempt to do all of the following:
 - a. Recognize Green Tier participants through the state procurement process.
 - b. Recognize Green Tier participants in the award of state grants through the Departments of Natural Resources, Commerce, and Agriculture.
 - c. Recognize Green Tier participants through administrative decisions made by state bodies provided that the development of such recognition provides public notice and within 30 days after the public notice, interested persons may request the department to grant them authorization to participate in the negotiations. A person who makes a request under this provision shall describe their interests in the issues described in the public notice. The department shall determine whether a person who makes a request under this paragraph may participate in the negotiations based on whether the person has demonstrated sufficient interest in the issues in the public notice to warrant that participation.
 - d. Provisions developed under this section shall apply to both participants under 299.80 (Environmental Cooperation Pilot Program) and 299.83 (Green Tier) of the statutes.

General Background

When initially conceived, this was going to extend the ability to create the statutory ability to create incentives and grant flexibility through statutory authorities in other agencies. This was scaled back to be a recommendation that would add an expectation to what the department shall attempt to do through the existing incentive capabilities. This would presumably be done by tapping into the capabilities of other agencies to offer incentives through the program, by adding recognition for grants, purchasing and special consideration where those agencies currently have administrative discretion in each of three areas for multiple agencies:

- Green Tier companies recognized as a part of state procurement.

- Green Tier companies recognized as a part of state grant programs through Commerce, and Agriculture
- Green Tier companies recognized through administrative decisions made by state bodies – Transportation, PSC, Insurance, etc.

The actual change to the statutes would be to amend 299.83 (1m) – Administration of the program to indicate that the department shall attempt to create incentives that draw upon recognition provided by other state agencies through procurement, grants and administrative decision making that recognizes and in appropriate circumstances gives preference to Tier 1 and Tier 2 participants.

Rationale

While there might be value in amending the statutes to give the ability to use Green Tier flexibility in other agencies, the discussion has generally indicated that there has not been enough work done to develop the incentives with the use of existing administrative flexibilities. By setting expectation in the “Administration of the program” section of the law, there could be sufficient legislative direction for the department to work with other agencies in the establishment of incentives and working through those agencies to begin developing the working relationships to consider administrative decision making that might set the foundation for consideration of statutory flexibility in subsequent changes to the law. Currently the law presumes the development and delivery of incentives through the Department and the change would make clear that this can and should be a multi-agency endeavor.

Example

There are many different kinds of state procurement preferences that are given. By executive order or perhaps by working directly with the Department of Administration purchasing preference for Green Tier may be obtained. A second example would be in the development and administration of a grant program for areas such as business development for which there are options to recognize that a company is a Green Tier participant during the evaluation and selection process. A final example that would address the administrative decision making process would be decisions in which we work with Department of Transportation (DOT) on codes for culvert placements. We would have the flexibility to work with a participant and DOT (for example) to make the decisions in an expedited fashion given the superior environmental performance of the participant.

OPTIONS – These were crafted as initial concepts which may address in whole or in part the concerns of specificity and/or “arms length” transactions or making sure that Green Tier is a part of any Green Business Incentives that the state might extend to a broad universe of suppliers. The options take a first look at “purchasing” and, depending upon success finding a suitable option, a similar effort would be directed at grants and administrative decisions.

1. Have specific language stating that “in the event of a green procurement plan by the state government Green Tier Participants will be recognized and informed”
2. Direct the DNR to provide specific outreach to purchasing departments within state agencies to make them aware of product attributes that yield superior environmental performance that may be part of setting product expectations for all parties.
3. Award “preference points” in state bidding procedures for Green Tier Participants and others who are certified under ISO 14000 or other recognized certification body such as Chemical Responsible Care.

4. Allow parties preparing requests for proposals to have a criteria for selection be participation in the Green Tier Program and award points in the selection process for Green Tier.

These aspects are designed to be another benefit to make the Green Tier program worthwhile to participants and help build efficient working relationships between various agencies and participants.

NEXT STEPS – With a group of Advisors, take a look at how the recommendation might be modified to address concerns which have been raised. The goal is to have a modified recommendation by mid August so that it could be included in a draft that is projected for early to mid September.