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# Combating the crisis through government procurement

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30 Possibilities  
for limiting the economic crisis  
through procurement

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# Introduction and background

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Governments want to help limit the effects of the economic crisis. The government, with its large purchasing power, plays a major role in diverse markets. It is essential that attention is paid to the difficult financial situations of potential contractors - i.e. companies - resulting from expensive credit and poorly-filled order portfolios. However, the main objective is still to procure effectively with the precondition of legitimacy.

## 30 suggestions

PIANOO offers 30 suggestions for deploying available resources as effectively as possible, in order to limit the consequences of the economic crisis. Important components of these are the acceleration of commissions and their method of financing. A large proportion of the suggestions are not new. What is new is the specific approach and their collection in a single place. Government employees can systematically run through all of these options, checking for applicability to their projects. As such this list functions as a checklist. Further in the document you will also find an elaboration, including the 'hows' and 'whys' of each option.

## How to use this list

PIANOO advises that you create an overview of potential projects. Place this overview alongside this list with a multidisciplinary team. Select the projects which can make the greatest contribution to combating the crisis.

Ideas for new projects can also be obtained by calling on the market. For example, as a government you can request the submission of an unsolicited proposal or organise a design contest.

## Suggestions in 5 categories

- **Speed up placing of commissions**
- **Reduce financial burden and risks for businesses**
- **Strengthen long-term positions of businesses**
- **Expand access to government commissions for businesses**
- **Use different granting criteria**

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# The suggestions in brief

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## 1. Speed up placing of commissions

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### Bring commissions forward

- A Create financial space by allowing projects for the next year to be carried out now
- B Make internal decision-making on commissions faster
- C Enter into contracts now to take effect in a year's time;
- D Countercyclical procurement or laying down stocks
- E Functional specification → quicker onto the market;
- F Keep reserve projects in stock for unforeseen free budget;

### Shorten the tendering procedure

- G Reducing the tendering procedure term;
- H Applying accelerated EU procedure for major projects;
- I Using lot regulation;
- J Carry out parts of development plans earlier (design, infra etc);
- K Faster decisions on tenders;
- L Granting according to lowest price → quicker decision on tender.

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## 2. Reduce financial burden and risks for businesses

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### Pay more quickly

- A Pay bills more quickly;
- B Direct Debit;
- C Have the supplier provide proof of 3-way-matching;
- D Supply chain finance (Vendor finance);
- E Instalment payments/advance payments/prepayment;

### Provide capital

- F Management supplies: contracting authority handles procurement for the contractor;
- G Contracting authority arranges any permits;
- H Allowing faster delivery or flexible delivery;
- I Leave more risks for governing authority (e.g. limit the contractor's liability).

### 3. Strengthen long-term positions of businesses

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- A More framework contracts (including mini-competition);
- B Include tendering procedure extension options;
- C Longer term (not large bulk) contracts.

### 4. Expand the access for businesses to government commissions

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#### **Do not make too high demands of contractor**

- A Limit demands on businesses' financial positions;
- B Do not cluster;
- C Multiple simultaneous contractors;
- D Make regional potential contractors aware of announcements;

#### **Make sure commissions are not too large**

- E Split into lots.

### 5. Use different granting criteria

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- A Focus on the intended economic spin-off effects.

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# Explanation of the suggestions

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## 1. Speed up placing of commissions

**One of the characteristics of the crisis is the drop in demand and the resulting decline in turnover for companies. The government can help to limit the drop in demand by speeding up the placing of commissions.**

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### Speed up placing of commissions

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#### **A Create financial space by allowing projects for the next year to be carried out now**

##### *How it works*

Funds have been reserved in the long-term budget for projects that are planned in the next year. Transfer those projects to the current financial year. This creates a budget deficit that is balanced by the removal of these projects from next year's budget.

##### *Why you should do it*

By carrying projects out now, economic activity and employment are stimulated. The effects of placing commissions more quickly are large: Three months acceleration on a procurement portfolio worth €10 million means an extra impulse to the economy of € 2.5 million, without any costs to the government, with the exception of interest at the most.

##### *Disadvantages/complications*

Leads temporarily to extra financial burdens and to a partial diminishment of demand in the future.

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#### **B Make internal decision-making on commissions faster**

##### *How it works*

The period between the initiative to a commission and the moment the commission is placed in the market is often long. This first part of the process occurs before either purchasing or calling for tenders takes place. In practice, this often takes longer than the whole of either process. This can be greatly accelerated by a sufficient sense of urgency on behalf of the contracting authority. This can save a great deal of time.

##### *Why you should do it*

To be able to place a tender in the market more quickly.

## C Enter into contracts now to take effect in a year's time

### How it works

Calling for tenders now for a commission that is to be carried out in the future.

### Why you should do it

Companies who have been awarded a contract are assured of future turnover and are therefore in a better position to survive the economic crisis. A full order portfolio strengthens the financial position of a company.

### Technical elaboration

The conditions of tender do not restrict the placing of commissions to be executed later on.

### Disadvantages/complications

It can be difficult to record all the specifications far in advance. This is particularly true of markets in which fast technological developments take place.

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## D Countercyclical procurement or laying down stocks

### How it works

Taking the product (countercyclically) at a moment when the contracting authority (and others) do not need it. For example, road salt.

Another suggestion is laying down greater stocks of products than usual.

### Why you should do it

To bring companies' turnover forward.

### Technical elaboration

Stock does not have to immediately and physically be in the possession of the contracting authority. They can easily be stored with the supplier or even with their supplier.

### Disadvantages/complications

Funds are stored in stocks earlier than is strictly necessary. On the other hand companies often offer better terms for larger orders or orders confirmed earlier.

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## E Functional specification → into the market more quickly

### How it works

Specifying a commission functionally instead of detailed elaboration saves the contracting authority preparation time. An additional advantage is that the design phase and work of the contracting authority goes to the market and that the innovation powers of the market can be used.

### Why you should do it

To be able to place a tender in the market more quickly.

Technical elaboration

Functionally specified commissions are more difficult to judge as they are less easily compared. Granting according to lowest price is not easily performed in conjunction with functional specification. For this reason it is important that the judging/granting criteria are well thought out beforehand, which demands extra time.

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**F Keep reserve projects in stock for unforeseen free budget**

How it works

Make sure there is a list of possible commissions in the case of unforeseen available budget, for example in the case of tendering windfalls!

Why you should do it

Maximum spending of the available budget.

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**G Reducing the tendering procedure term**

How it works

Electronic announcement and/or making tendering documents electronically available can genuinely reduce the turnaround time of a European tendering procedure.

Furthermore, it may be advisable to make an advance announcement<sup>1</sup>. Advance announcement enables potential tendering parties to prepare for and register in good time for upcoming commissions. The optimum effect is achieved if the advance announcement provides detailed information on the object of the commission and the criteria by which the tenders are assessed.

No term is set for commissions beneath the threshold and II-B list services. A 'reasonable' term should be used. Reasonable means sufficient time for companies to draw up a tender. The time this requires is dependent on the nature and size of the commission.

Why you should do it

To be able to place a tender in the market more quickly.

Technical elaboration

The term for the receipt of tenders can<sup>2</sup> be reduced by 7 days if announced electronically. The term for the receipt of tenders can<sup>3</sup> be reduced by 5 days if the tendering documents are made available electronically. Doing both can<sup>4</sup> reduce the term by 12 days.

Disadvantages/complications

Maintaining the absolute minimum term means there is only limited time available for drafting a tender. Especially in the case of complex commissions, the minimum term will be too short. A term that is too short may then lead to candidates dropping out or carelessly drafted tenders. Both of these disadvantage the contracting authority.

(<sup>1</sup> see art. 38 clause 4 European Directive 2004/18/EC, <sup>2</sup> see art. 38 clause 5, <sup>3</sup> see art. 38 clause 6, <sup>4</sup> see art. 38 clause 6.

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## H Applying accelerated EU procedure for major projects

### How it works

The European Commission has stated that in its view, the current economic crisis can justify the use of the accelerated procedure. This can reduce the overall time for a European, non-public procedure from 87 days to 30 days (incl. Alcatel term). This should apply to “all major public projects” throughout 2009 and 2010.

### Why you should do it

To be able to place a tender in the market more quickly.

### Technical elaboration

The 30 days comprise three terms of 10 days for the selection (in the case of electronic sending), the tendering term and the stand-still respectively.

### Disadvantages/complications

A condition on this is that the contracting authority must show that a direct relationship exists between the project and limiting the consequences of the economic crisis. It remains unclear what would constitute ‘sufficient’ evidence. It is not certain that the court will accept the grounds for urgency. Unclear what “major projects” are. Take care that there is sufficient time left for the market to draft a sound tender.

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## I Using lot regulation

### How it works

By using the so-called lot regulation, part of the commission can be placed in the market in a different way to a European tendering procedure.

### Why you should do it

To be able to place part of a commission in the market more quickly.

### Technical elaboration

Lot regulation (art. 9 clause 5 European Directive 2004/18/EC) makes it possible to place lots with a collective value of up to 20% of the total commission on the market in a different way. In the case of works, there is also the condition that the lot is smaller than € 1 million. In the case of supplies and services, there is also the condition that the lot is smaller than € 80,000.00. To test whether a commission should be procured, all lots should be added up together (art. 9 clause 5 European Directive 2004/18/EC).

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## J Carry out parts of development plans earlier (design, infra etc)

### How it works

If a commission is divided into phases these can be placed in the market at different moments. In that case one does not have to wait for the entire commission to be ready for market in terms of permits and elaboration etc.

## Speed up placing of commissions

### Why you should do it

It is a variation on placing commissions more quickly.

### Technical elaboration

Example: even though the plan for the wiring has not yet been developed, the construction of a building can already be procured. That way, the total construction process can begin earlier. Division into lots changes nothing of any tendering obligation for the whole commission. If the overall commission is to be put out for tender, this also applies to lots (with the exception of lot regulation).

### Disadvantages/complications

Spreading over time demands greater coordination by the contracting authority.

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## **K Faster decisions on tenders**

### How it works

The period required by the contracting authority to decide on tenders offered is sometimes unnecessarily long. Strict planning and an adequate sense of urgency can reduce this period.

### Technical elaboration

Look for opportunities to optimise the decision-making process, for example by limiting the number of people involved and decision makers. Organise the decision mandate early and well, for instance, while the companies are submitting their tenders.

### Why you should do it

To be able to place a tender in the market more quickly.

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## **L Granting according to lowest price → quicker decision on tender**

### How it works

By using lowest price as granting criteria a selection from the submitted tenders can be made quickly

### Why you should do it

To be able to place a tender in the market more quickly.

### Technical elaboration

With sufficient knowledge of what the market provides, a procedure of contract awarding on lowest price with well-described minimum quality requirements is sufficient.

### Disadvantages/complications

To be able to grant according to the lowest price, it is necessary that the commission is able to be properly described. In practice, the clear description of quality requirements can be difficult.

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## 2. Reduce financial burden and risks for businesses

**Businesses struggle to obtain credit in the current crisis. Governments can help reduce the financial burden and risks of business for companies. By doing so, companies less well-off financially will also be able to take part in the tendering procedure.**

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### A Pay bills more quickly

#### How it works

Pay for supplies, services or works immediately on receipt (or within a few days).

#### Why you should do it

Credit is currently much more expensive for the supplier than for the government as the contracting authority.

#### Technical elaboration

It is always possible to pay sooner on ongoing contracts. Indicate in the specifications of new calls for tender how quickly you will pay. This could also lead to a better price from the supplier. Contracting authorities can also include a clause in the contract setting the condition that contractors pay their subcontractors on time.

As an example, in the government of England has indicated that they will provide payment within ten days as often as possible.

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### B Direct Debit

#### How it works

Give the contractor the right to collect payment himself after delivery. This leads to fast payment of the bill.

#### Why you should do it

Credit is currently much more expensive for the supplier than for the contracting authority.

#### Technical elaboration

If governing authorities do not allow payment via direct debit from their regular accounts, a separate account can be opened for this purpose.

#### Disadvantages/complications

It may be necessary to check later on the accuracy of what is delivered and the collections.

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### C Have the supplier provide proof of 3-way-matching

#### How it works

Have the supplier provide proof of ordering, delivery and conformity along with the contract.

Why you should do it

This speeds up the administrative handling of bills and reduces the payment term.

Technical elaboration

At the point of invoicing, have the supplier enclose a copy of a) the commission/order from the contracting authority, b) the receipt from the contracting authority that the goods/service have been received and c) a statement by the user in the organisation of the contracting authority that the invoice is conform the conditions of the contract. This reduces long internal procedures prior to payment.

Disadvantages/complications

Creates some extra work for the contractor but limits the amount of work for the contracting authority. It is even an option to pay for these services.

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## **D Supply chain finance (Vendor finance)**

How it works

The contracting authority's bank pays the vendor's bill at the time of ordering. The contracting authority pays the bank back at a later date.

Why you should do it

As the bank pays more quickly, the supplier receives his money earlier and his need for credit is reduced. The supplier may even be able to offer a discount because of the fast payment. As credit is cheaper for the government than for businesses, this method does not only benefit the supplier but also the governmental contracting authority should a discount be offered.

Technical elaboration

This method works if there is a large difference between the cost of credit for the contracting authority (the government) and the contractor.

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## **E Instalment payments/advance payments/prepayment**

How it works

- As soon as a commission has been executed in part, pay this part immediately, or
- Prior to the presentation, partial delivery, or completion, pay an advance for the partial delivery of work, or
- Finance the entire commission in advance when granting the commission.

Why you should do it

Credit is currently much more expensive for the supplier than for the contracting authority. This can lead a better price from the supplier.

Technical elaboration

Include terms and conditions of payment in the specification.

### Disadvantages/complications

A number of risks should be taken care of. For example, the possibility of a company going bankrupt or not performing as it should.

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Reduce  
financial  
burden and  
risks for  
businesses

## **F Management supplies: contracting authority handles purchasing for the contractor**

### How it works

The contracting authority buys the materials (for example, bricks) and makes them available to the contractor (for example, roadworker).

### Why you should do it

The financial burdens for the contractor are considerably reduced. Credit is currently much more expensive for the supplier than for the contracting authority.

### Technical elaboration

Include in the specification that the materials will be made available. In the case of the contractor's bankruptcy during the work, the materials remain the property of the contracting authority.

### Disadvantages/complications

Contractor does not profit from the materials, though this does not affect pricing (in theory). Various risks (quality, quantity and punctuality) regarding the materials are with the 'supplying' contracting authority.

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## **G Contracting authority arranges any permits**

### How it works

As a contracting authority arrange the permits or exemptions required by the contractor.

### Why you should do it

Obtaining the necessary permits in time can be accompanied by risks. By doing this, the contracting authority takes the risks itself.

### Disadvantages/complications

Risks are for the contracting authority.

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## **H Allowing faster delivery or flexible delivery**

### How it works

- Allowing faster delivery than the agreement delivery term and therefore faster payment. The contractor can decide to bring work and therefore income forward.
- Another option is to give the supplier a flexible delivery time or completion date. This creates space for the contractor to spread the quantity of work better.

Reduce  
financial  
burden and  
risks for  
businesses

Why you should do it

The contractor has more space to schedule the available work better.

Technical elaboration

Include in the specification latest delivery dates and record that the payment is made within a certain period from delivery. If earlier delivery has (financial) advantages for the contracting authority then a bonus scheme can be used which is set out in the contract.

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**I Take more risks as contracting authority (e.g. limit the contractor's liability)**

How it works

Liability conditions in contracts and/or terms and conditions are sometimes unreasonably burdensome for the contractor, and therefore increase the costs. It is recommended that the liability is arranged case by case and where possible, to place more risk with the contracting authority.

Why you should do it

Part of the contractor's risk can be covered financially by pricing it or through insurance. That costs a lot of money, particularly now. He will bear another portion himself, which limits his credit opportunities.

Limiting risks will lead to a lower price as a rule.

Technical elaboration

Make sure that the contract or the applicable terms and conditions include more balanced liability provisions and do not place too many risks with the contractor.

Disadvantages/complications

Contracting authority bears greater risks.

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Strengthen  
long-term  
positions of  
businesses

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**3. Strengthen long-term positions of businesses**

**By giving companies (a chance of) income security their financial positions are strengthened in the short term.**

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**A Create framework agreements (including mini-competition)**

How it works

By creating **one** framework agreement with one or more companies, more businesses have an opportunity (though no security) for a government commission for the long term (up to 4 years).

Why you should do it

A credit provider will be interested in the fact that the company has been selected as a potential supplier.

Technical elaboration

A framework contract is entered into with one company, stipulating that over a certain period undefined quantities can be purchased at a certain price. This does not entail an obligation to buy for the contracting authority.

It is also possible to draw up a framework contract with multiple (at least 3) businesses and to organise a mini-competition for each specific commission.

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## **B Include tendering procedure extension options**

How it works

Include in a call for tender that the contractual duration or the size of a delivery can be extended or widened.

Why you should do it

Enables the contracting authority to extend the contract in the case of adequate satisfaction. Gives the contractor an outlook on greater turnover in future and as such strengthens the long-term position.

Contracting authorities may obtain a better price as a result.

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## **C Longer-term contracts**

How it works

Procure a contract for the longest possible duration.

Why you should do it

Gives the contractor long-term security, and helps his credit rating. Contracting authorities may obtain a better price as a result.

Disadvantages/complications

May knock out competition for too long a time. The market operations must not be disrupted disproportionately without objective (e.g. economic) arguments being submitted.

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## 4. Expand the access for businesses to government commissions

**Offer more companies the opportunity to compete for government commissions.**

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### A Limit demands on businesses' financial positions

#### How it works

Do not set unreasonable demands on the financial positions of companies. Business will not be excluded unnecessarily then. The same applies to setting excessively high competence requirements by demanding unnecessarily great or specific experience. The requirements should be proportionate to the subject of the commission. Contracting authorities should be able to alert potential tendering parties to the fact that they may rely on the economic and financial support of other companies. These do not necessarily have to be companies with whom they are registered in combination or with whom there are legal associations.

#### Why you should do it

For the contracting authority it is important that the market is not reduced unnecessarily for its commission as suitable companies are excluded. Preventing that smaller (regional) bodies, starters etc are excluded from government commissions.

#### Technical elaboration

Use restraint when asking for banker's guarantees. These are expensive and limit the contractor's credit opportunities. If financial guarantees are requested, they may be reduced as the execution of the commission progresses, thus increasing the contractor's credit space.

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### B Do not cluster

#### How it works

Take account of the effects on the market of the clustering of commissions. After all, large-scale commissions can mainly be executed by large companies. In any case, consider breaking up a clustered commission into lots.

#### Why you should do it

To prevent that (regional) companies are excluded from (partial) commissions.

#### Technical elaboration

By clustering partial commissions into one and then dividing it into lots, scale advantages can be gained as large companies tender for multiple lots at the same time, in addition to the benefits of the low overheads of smaller companies if they tender for a single lot.

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### C Multiple simultaneous contractors

#### How it works

For one commission, enter into contracts with two contractors.



#### Why you should do it

The permanent presence of another supplier reduces the consequences for the contracting authority should one of the two contractors drop out (e.g. fold). This can allow the contracting authority to manage with less extensive financial security. In addition, two companies are given work instead of one.

#### Technical elaboration

Procure the commission in two equal lots granted to two different companies (dual sourcing) or a large and a small lot (second sourcing).

#### Disadvantages/complications

Potential loss of scale benefits.

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## **D Make regional companies aware of announcements**

#### How it works

Make suitable regional companies aware of the announcement of a commission.

#### Why you should do it

To keep the threshold for regional companies to compete for a government commission as low as possible.

#### Technical elaboration

Do not do more than announce. Further help can quickly become a form of prohibited preferential treatment.

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## **E Split into lots**

#### How it works

Split a commission into several lots.

#### Why you should do it

To offer smaller regional companies the opportunity to win a commission. A large company is at no disadvantage because it can bid on multiple lots.

#### Technical elaboration

One call for tender can contain several lots. Commissions may be split into lots. The methods used to create lots, (according to region, technology etc), are free from guidelines. This has nothing to do with the so-called splitting ban. This entails splitting up a commission with the aim of avoiding the tendering obligation. The lots must be added up to determine whether a commission is to be put out for tenders. The lots should be put out for tenders if the total exceeds the threshold.

No benefits of scale will be lost by splitting a procurement into lots, if large companies are allowed to tender for multiple lots at the same time, and advantage can also be taken of the low overheads of small companies when they tender for a single lot.

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## 5. Use different granting criteria

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### A Focus on the economic spin-off effects to be achieved

#### How it works

Think of the social (side-) effects you wish to achieve with a call for tenders. Take this into account while formulating the granting criteria.

#### Why you should do it

To stimulate the economy and employment in the region.

#### Technical elaboration

The granting criteria should be connected to the subject of the commission, although what can be considered granting criteria is free from restrictions. Possibilities:

- Multiplier effects of the commission;
- Economic spin-off for the region;
- Additional investments generated by the contracting authorities;
- The number of employees deployed for the commission (number of man-hours);
- The extent to which the commission contributes to the accumulation of knowledge and learning effects for the contractor (contractor who builds up a lot of knowledge, for example as his knowledge was lacking, scores well).

#### Disadvantages/complications

The economic benefits do not directly benefit the contracting authority. In this case, the authority pays extra to achieve social side-effects.

It is difficult for the contracting authority to specify granting criteria which are sufficiently connected to the commission. In addition, results mentioned in the quotations can often only be verified much later.

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