



DOCUMENT OF THE INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM

MICI-BID-BR-2019-0142

COMPLIANCE REVIEW RECOMMENDATION

SÃO JOSÉ DOS CAMPOS URBAN STRUCTURING PROGRAM – REQUEST III

(BR-L1160)

(2323/OC-BR)

This document was prepared by Arantxa Villanueva, Compliance Review Phase Coordinator, and Mariana Clemente Fábrega, Compliance Review Phase Case Officer, under the supervision of Victoria Márquez-Mees, MICI Director.

This document contains confidential information relating to one or more of the ten exceptions of the Access to Information Policy and will be initially treated as confidential and made available only to Bank employees. The document will be disclosed and made available to the public upon approval.

INFORMATION NOTE

GUIDELINES FOR THE COMPLIANCE REVIEW PHASE

These Guidelines for the Compliance Review Phase were prepared in accordance with paragraphs 36 to 41 of the MICI Policy (document MI-47-6).

A Compliance Review is a fact-finding process to determine whether or not Management at the Inter-American Development Bank (IDB) has complied with the Relevant Operational Policies for the operation(s) in question and whether the alleged Harm is related to failure by the Bank to comply with the Relevant Operational Policies.

A Compliance Review by the MICI is subject to authorization by the IDB Board of Executive Directors, which receives a Recommendation from the MICI for consideration once the latter, within a maximum period of 21 business days, has reviewed the main documents relating to the operation, the information provided by Management, the Request, and the Relevant Operational Policies. In its Recommendation, the MICI states its decision whether or not to recommend an investigation considering the value added for the specific case, and for the Bank in general, in terms of relevance, impact, and efficiency.

For those cases in which an investigation is recommended, the MICI includes the terms of reference with the following information:

- The objectives of the investigation.
- The scope of the investigation, including the proposed investigative questions. The investigation is limited in scope to the allegations made in the Request and focuses exclusively on Bank acts or omissions in the context of the operation(s) relevant to the case, and in relation to compliance with the Relevant Operational Policies.
- The methodology to be used, including the proposed investigative method(s), the activities to be carried out, and the deliverables.
- The investigative team, which is made up of the Compliance Review Phase Coordinator serving as panel chair, as well as two members selected from the Roster of experts. These experts are selected based on their experience in the technical areas involved in the investigation and on their availability to participate in the investigation within the required timeframe. These experts are retained only after the Board of Executive Directors approves the investigation; their contributions are incorporated into the Compliance Review Report.
- The timeline for the investigation, generally not to exceed a maximum period of six calendar months from the date of establishment of the panel. If a longer period is needed, the Recommendation will indicate the required timeline and the corresponding rationale.
- The estimated budget for the investigation.

Prior to being presented to the Board of Executive Directors, a preliminary draft of the Recommendation and, where applicable, the Terms of Reference, is circulated to Management and the Requesters, and both parties have the opportunity to submit comments in writing to the MICI. The MICI reviews the comments and accepts those it deems relevant. The comments received from the two Parties are included as annexes to the Recommendation. The final version of the Recommendation and the Terms of Reference is submitted to the Board of Executive Directors for consideration by the short procedure. The Recommendation and, where applicable, the Terms of Reference, are

considered approved if, by the end of the period established for approval by the short procedure, the procedure has not been interrupted by any member of the Board. However, if an Executive Director interrupts the procedure, the item is placed on the agenda for discussion by the Policy and Evaluation Committee and subsequent consideration by the Board of Executive Directors.

The Recommendation and, where applicable, the Terms of Reference are public documents, and the Requesters, Management, and the general public are notified of the decision taken by the Board of Executive Directors with respect to them through the MICI Public Registry (www.iadb.org/en/mici).

CONTENTS

I.	EXECUTIVE SUMMARY	1
II.	THE PROGRAM	3
	A. Geographic and social context of the Program	3
	B. The Program	4
III.	THE REQUEST	6
IV.	MANAGEMENT'S RESPONSE	7
V.	THE MICI PROCESS TO DATE	8
VI.	COMPLIANCE REVIEW RECOMMENDATION	10

ANNEXES	
Annex I	Management's comments on the preliminary version of the Compliance Review Recommendation
Annex II	Requesters' comments on the preliminary version of the Compliance Review Recommendation

LINKS	
1.	Request MICI-BID-BR-2019-0142 in the MICI-IDB Public Registry https://www.iadb.org/en/mici/complaint-detail?ID=MICI-BID-BR-2019-0142
2.	[REDACTED] [REDACTED] [REDACTED]
3.	IDB Management's Response to Request MICI-BID-BR-2019-0142 regarding the São José dos Campos Urban Structuring Program - Request III (BR-L1160) http://www.iadb.org/document.cfm?id=EZSHARE-87499670-69
4.	Record of São José dos Campos Urban Structuring Program (BR-L1160) on the IDB website https://www.iadb.org/en/project/BR-L1160
5.	Loan Proposal for the São José dos Campos Urban Structuring Program (BR-L1160) https://www.iadb.org/Document.cfm?id=35152720
6.	Loan Contract for the São José dos Campos Urban Structuring Program (BR-L1160) https://www.iadb.org/Document.cfm?id=EZSHARE-2056220512-180
7.	Amendment to Loan Contract for the São José dos Campos Urban Structuring Program (BR-L1160) https://www.iadb.org/Document.cfm?id=EZSHARE-2056220512-6195
8.	Second Amendment to Loan Contract for the São José dos Campos Urban Structuring Program (BR-L1160) https://www.iadb.org/Document.cfm?id=EZSHARE-2056220512-5169
9.	Third Amendment to Loan Contract for the São José dos Campos Urban Structuring Program (BR-L1160) https://www.iadb.org/Document.cfm?id=EZSHARE-2056220512-6187
10.	Environmental assessment report for the São José dos Campos Urban Structuring Program (BR-L1160), 20 February 2008 https://www.iadb.org/Document.cfm?id=EZSHARE-175973580-12
11.	Environmental and social management report for the São José dos Campos Urban Structuring Program (BR-L1160) https://www.iadb.org/Document.cfm?id=EZSHARE-175973580-74
12.	Final version of the Environmental and Social Analysis (ESA), Environmental and Social Management Plan (ESMP), and the Public Consultation Report on the "Arco da Inovação" https://www.iadb.org/Document.cfm?id=EZSHARE-89975185-649
13.	Consultation Phase Assessment Report http://www.iadb.org/document.cfm?id=EZSHARE-87499670-99
14.	Request to extend deadline for preparation of Recommendation and Terms of Reference for the Board [REDACTED]
15.	Information about the "Arco da Inovação" on the Executing Agency's website http://www.sjc.sp.gov.br/servicos/gestao-habitacional-e-obras/arco-da-inovacao/

ABBREVIATIONS

Bank or IDB	Inter-American Development Bank
ESA	Environmental and Social Analysis
ESG	Environmental and Social Safeguards Unit
ESMP	Environmental and Social Management Plan
Executing Agency	Executing Agency for the program, the Prefeitura de São José dos Campos [São José dos Campos municipal government]
Management	The Bank or MIF's manager or managers (or any delegate thereof) responsible for the Bank-financed operation
MICI Policy	Policy of the Independent Consultation and Investigation Mechanism (document MI-47-6)
Overpass works	"Arco da Inovação" cable-stayed bridge/overpass
Parties	Requesters and Management
Program	São José dos Campos Urban Structuring Program (operation BR-L1160)
Request	A communication submitted by the Requesters or their representative that alleges that they have suffered or may suffer Harm due to the failure of the Bank to comply with one or more of its Relevant Operational Policies within the context of a Bank-financed operation

I. EXECUTIVE SUMMARY

The Inter-American Development Bank is financing the São José dos Campos Urban Structuring Program (operation BR-L1160) through a US\$85.67 million sovereign-guaranteed investment loan, which includes a local counterpart contribution for the same amount. The Borrower and Executing Agency is the municipal government of São José dos Campos in the state of São Paulo, Brazil.

The Program's objective is to contribute to the município's sustainable development through a better balance between economic, environmental, and social considerations, by improving and strengthening the município's physical infrastructure and urban management. The operation was approved by the Board of Executive Directors on 12 May 2010. The contract was amended in February 2019 to add the construction of the "Arco da Inovação" cable-stayed bridge to the scope of the Program's Component II, as this was not envisioned in the original Program. The Request lodged with the MICI concerns this work, the construction part of which was installed in August 2018 and completion of which is scheduled for December 2019.

On 4 February 2019, the MICI received a Request in connection with the Program from two residents of the Município of São José dos Campos. These Requesters have asked to remain anonymous out of fear of retaliation. According to the Requesters, the "Arco da Inovação" overpass works began before a complete study of the environmental and social impacts in the works' area of influence had been prepared. Additionally, the Requesters stated that the public consultation process with the affected community had taken place after construction work had started. They also noted a lack of timely access to information on the project and formal communication channels with the impacted community.

The Requesters allege that the negative impacts the overpass would have on their property values due to the proximity of the works and the express road were not taken into account. They also alleged current and future environmental harm and health impacts from increased air, noise, and visual pollution resulting from construction activities and increased vehicle traffic once the overpass is completed. Lastly, they mention that the works will be a risk to their physical safety, owing to the potential for traffic accidents resulting from the elimination of entry bays and parking spaces in front of the affected buildings. The Requesters stated their interest in the MICI's processing the Request through both the Consultation Phase and the Compliance Review Phase.

The Request was declared eligible for a MICI process and, following distribution to the Board of Executive Directors, it was transferred to the Consultation Phase on 26 April 2019. Given that the conditions for the process in this phase were not met, the case was transferred to the Compliance Review Phase on 9 July 2019.

Based on the preliminary findings and given that on the date of issuing the draft of this Recommendation, there was no certainty as to the Bank's involvement in the works,¹ the

¹ On 14 March 2019, IDB Management sent the MICI its response to the Request, in which it stated that the "Arco da Inovação" was not one of the elements envisaged in the project at the time of its approval by the Board of Executive Directors in 2010, but was added to the operation through the third modification of the loan contract, signed in February 2019. It reported that on that date it had received the final design of the works, which was being reviewed by the Bank to analyze and determine its technical feasibility, such that disbursements to finance it had not been made at that time. It also explained that the Executing Agency had been asked to comply with a series of requirements, such as publication of an environmental and social analysis and an environmental management plan, and to hold a public consultation, among other things, in order to fulfill the requirements of the Bank's Relevant Operational Policies.

MICI had to consider two alternatives regarding the appropriateness of recommending an investigation. These were set out in the Draft Compliance Review Recommendation and Terms of Reference: (1) if Management were to declare the works eligible for financing and/or counterpart funding, the MICI considered it necessary to recommend an investigation that would clarify whether the Bank had complied with the Relevant Operational Policies when approving financing of the works and supervising their execution; or (2) if Management were to declare the works ineligible for financing and counterpart funding, the MICI would analyze the appropriateness of conducting an investigation.

The MICI distributed the draft of this document to the Requesters and Management on 4 September 2019 in order to solicit their comments, so it could make the relevant changes before issuing the final version.

The MICI received comments from the Requesters and Management on 7 October 2019. In its comments, Management noted that “after analyzing the plans for the works and other relevant information on it submitted by the Borrower, on 16 August 2019, Management informed the Município of São José dos Campos that the ‘Arco da Inovação’ cable-stayed bridge could not be financed and/or recognized for counterpart financing under the program” as the requirements of Directives B.5 and B.6 had not been observed prior to commencement of works, the Borrower having undertaken to fulfill said requirements through the Environmental and Social Management Plan (ESMP).

In view of the foregoing, the MICI considers that an investigation would not contribute any information further to that already available, which led Management to deem the overpass works ineligible. The **MICI therefore recommended to the Board of Executive Directors that a compliance review should not be carried out.**

If the Board of Executive Directors approves this recommendation, the Requesters and Management will be informed of the decision, and the case with the MICI will be closed.

II. THE PROGRAM²

A. Geographic and social context of the Program

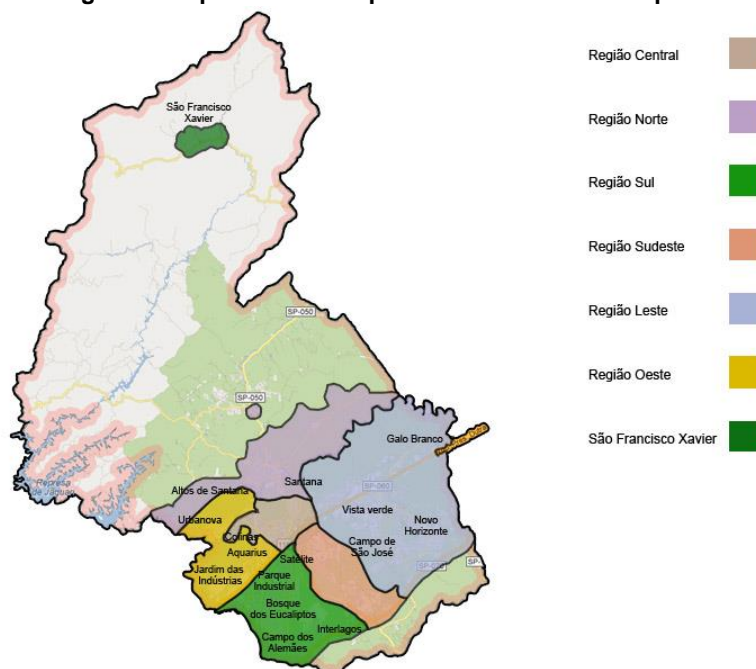
- 2.1 The município of São José dos Campos, in the state of São Paulo, is located 97 kilometers northeast of the metropolitan area of the city of São Paulo and covers a total of 1,099.6 square kilometers.
- 2.2 The city of São José dos Campos, the capital of the município, is home to over 630,000 people and is known for its business and industrial activity, particularly its aerospace research and technology activities. Industry (51.16%) and services (48.64%) are the sectors accounting for the largest share of the município's economy, whereas agriculture accounts for 0.20% of its GDP.
- 2.3 Burgeoning industry in the município since the 1980s has been accompanied by strong population growth, particularly in urban areas. Although the município has a large rural area—with 67.2% of its territory designated as an environmental protection area—approximately 97% of the population lives in urban areas.³
- 2.4 According to the 2010 census, the region west of the city saw the fastest population growth (4.99%) between 2000 and 2010.⁴ This region is also where the residential developments that drove the city's population growth over that period are found. The per capita income of the western region's population is high compared to that of other parts of the city (east, center, and north).
- 2.5 The mayor's office has two main planning instruments to address the city's population growth and industrial expansion. First, the comprehensive development master plan, which aims to regulate urban growth. Second, the municipal urban mobility policy, regulating the use of space and public transportation, based on the principles of equitable use of roads and parks; efficiency and effectiveness in delivering urban transportation services; safe transportation of goods and people, and reducing the environmental impact of urban mobility, among others. It is in this context that the São José dos Campos Urban Structuring Program (operation BR-L1160) is set.

² Information retrieved from the Bank's website and public documents on the operation concerned. These documents are available in the links section.

³ São José dos Campos mayor's office (2016). Available at: http://servicos2.sjc.sp.gov.br/media/667370/sjdados_2016.pdf

⁴ Ibid.

Figure 1. Map of the Município of São José dos Campos



Source: São José dos Campos mayor's office.

B. The Program

- 2.6 The Inter-American Development Bank is financing the São José dos Campos Urban Structuring Program (operation BR-L1160) through a US\$85.67 million sovereign-guaranteed investment loan, which includes a local counterpart contribution for the same amount. The Borrower and Executing Agency is the municipal government of São José dos Campos. The operation, which is currently in implementation, was approved by the Board of Executive Directors on 12 May 2010 via the simplified procedure.
- 2.7 The Program's objective is to contribute to the município's sustainable development through a better balance between economic, environmental, and social considerations by improving and strengthening the município's physical infrastructure and urban management. According to the loan proposal, the Program comprises the following three components:

Table 1. Program components

Component	Description
I. Urban environmental improvements	The component's objective is to improve the município's urban environmental quality and consolidate the integration between the urban space and the conservation zone through activities including: (i) installation of urban parks, with an increase in the percentage of green space; (ii) regularization of illegal subdivisions where families live with deficient infrastructure; (iii) installation of sites for voluntary recycling of construction and demolition waste; (iv) execution of rainwater catchment works for irrigation; and (v) execution of drainage works.
II. Improvements in urban mobility	This component's objective is to reconfigure a number of corridors and segments of the road system, thereby increasing the efficiency of public transportation, expanding bikeways, and improving traffic safety. Its main activities include: (i) works on two road corridors; (ii) construction of up to 13 bus transfer stations; (iii) support for modernization of the traffic signal system and installation of its operations control center; and (iv) development of an urban transportation master plan.
III. Institutional strengthening	The objective of this component is to increase public sector efficiency and effectiveness through information technology management in the municipal government, and electronic records and services management.

- 2.8 During Program execution, the loan contract has been amended three times from 2016 to 2019. The most recent modification was made on 18 February 2019 to add the design and construction of the “Arco da Inovação” overpass as a specific project within the Program. This work, which was not originally included in the Program, gave rise to the Request received by the MICI.
- 2.9 The “Arco da Inovação” consists of an overpass to ease vehicle traffic congestion on roads west of the city of São José dos Campos. Specifically, the work entails the construction of a cable-stayed bridge over the Colinas traffic circle at the intersection of Dr. Jorge Zarur, Dr. Eduardo Cury, and São João avenues in the Colinas district. The bridge would connect Dr. Jorge Zarur and São João avenues in both directions to create an X, as shown in the planned route marked on Figure 2.

Figure 2. Plan of the “Arco da Inovação” project



Source: Environmental and Social Management Plan.

- 2.10 When the operation was approved in 2010, the original Program was classified as Category “B” and the Operational Policy on Involuntary Resettlement (Operational Policy OP-710), the Environment and Safeguards Compliance Policy (Operational Policy OP-703), and the Access to Information Policy (Operational Policy OP-102) were established as Relevant Operational Policies.

- 2.11 [REDACTED],⁵ [REDACTED]
[REDACTED] The cutoff date for disbursements under this Program is 31 December 2019.⁶

III. THE REQUEST⁷

- 3.1 On 4 February 2019, the MICI received a Request in connection with the Program from two residents of the município of São José dos Campos. The Requesters asked for their identities to be kept confidential for fear of retaliation. The public information is available in the MICI Public Registry (Request form [MICI-BID-BR-2019-0142](#)).
- 3.2 The Request concerns the “Arco da Inovação” overpass project, which was added to the Program in February 2019. The Request alleges that the Bank has failed to

⁵ Management’s comments on the preliminary version of the Compliance Review Recommendation and Terms of Reference, 7 October 2019, paragraph 2.

⁶ Third contract amendment, 18 February 2019, Article 1.3, modifying Clause 3.04 of the loan contract.

⁷ The Request and Annexes are available in the links section of this document.

- comply with its Operational Policies, primarily OP-703, resulting in actual and potential harm arising from the construction and operation of the overpass.
- 3.3 According to the Requesters, construction work on the “Arco da Inovação” began before a complete study of the environmental and social impacts was available. Specifically, they allege that: (i) the environmental assessment did not include the socioeconomic and environmental impacts on all the areas affected by the works; (ii) no account was taken of the adverse impacts of the works on property values, the increased risk to local residents’ physical safety, as the design of the works removed an island separating the express road, exposing them directly to the highway on their doorstep, and (iii) it did not include a study on the local population’s exposure to increased air, noise, and visual pollution due to the consequent increase in the number of vehicles. They also note that, although the Project was classified as Category “B,” they have not found any study explaining why the “Arco da Inovação” was classified in this category. Moreover, they state that the public consultation process with the local community was inadequate and took place after construction work had begun. Furthermore, they add that they were not guaranteed timely access to information and there were no formal channels of communication for the affected community, as they were informed of the works in the area “at the last minute and verbally,” without prior notice or the opportunity to seek clarification.
- 3.4 They allege that, in general, an effort has been made to rectify these presumed incidents of noncompliance with inappropriate post hoc actions and simple formalities intended to give the works the appearance of legality. They pointed out that attempts to regularize the status of the works while construction was under way was an infringement of normal procedures and made the normal sequence of planning, financing, and executing the works meaningless.
- 3.5 According to the Requesters, as a consequence of the alleged shortcomings, the construction and operation of the works could cause a series of environmental harms and impacts on their properties, physical safety, and health. On this point, they indicate that the construction and subsequent operation of the “Arco da Inovação” will cause (i) a loss of value of their properties, which front directly onto the road; (ii) increased air, noise, and visual pollution caused by increased motor-vehicle traffic, with the consequent increase in pollutant gases and airborne particulates, as well as increased noise, all of which could have potentially negative impacts on health; and (iii) increased risk to their physical safety due to the buildings’ direct exposure to the express road, which would increase the risk of traffic accidents.

IV. MANAGEMENT’S RESPONSE⁸

- 4.1 Management sent the MICI its response to the Request on 14 March 2019. In this response, Management confirmed that the “Arco da Inovação” was not included among the project components when the operation was approved by the Board of Executive Directors in 2010 but was added later in the third modification to the loan contract, signed in February 2019. It also stated that on 28 February 2019 it received the final design of the works (final engineering design), which was “being

⁸ Management’s written response is available in the links section.

reviewed by the Bank with a view to analyzing and determining its technical feasibility,” such that at the time of sending the response, “no loan disbursements had been made to finance it.”

- 4.2 Additionally, Management explained that “for the purposes of complying with the Bank’s requirements,” the Executing Agency had been asked to: (i) prepare and publish an Environmental and Social Analysis (ESA) and an Environmental Management Plan—these were posted on the Bank’s website on 24 January 2019 and on the São José dos Campos municipal government website; (ii) comply with the environmental licensing process for infrastructure works, which requires a simplified environmental study, which was prepared and published by the Executing Agency, and the environmental building permit, which was granted by the relevant authorities; and (iii) hold a public consultation with the affected community, following the parameters of a Category “B” operation, and to subsequently disclose the results of this process. As regards this latter requirement, Management reported that the public consultation meeting was held on 6 February 2019 on the premises of the São José dos Campos municipal government, with the participation of 59 people representing social organizations, academic bodies, and residents.
- 4.3 Moreover, Management explained that it instructed “the São José dos Campos municipal government that in order for the works to be approved and eligible for disbursements,” the works need to: (i) offer an internal rate of return of 12% or more; (ii) have environmental licensing documentation obtained by the competent environmental agency; (iii) cover the cost of environmental compensation; and (iv) meet the specific environmental criteria defined in the Environmental and Social Management Plan (ESMP).” Management said that “until these conditions had been met to the Bank’s satisfaction, it would not disburse loan proceeds for this purpose,” such that “it is still under review and technical analysis by the Bank.”

V. THE MICI PROCESS TO DATE

- 5.1 Table 2 below lists the main actions by the MICI since receipt of the Request.

Table 2.
Timeline of MICI actions to date

Date	Actions
2019	
4 February	Receipt of the Request
11 February	Telephone call with the Requesters
12 February	Request registered and notification of the Requesters and IDB Management
14 March	Management’s response received
22 March	Telephone call with the Requesters
12 April	Eligibility Memorandum issued
26 April	Eligibility Memorandum distributed to the Board of Executive Directors and case transferred to the Consultation Phase
29-31 May	Consultation Phase assessment mission to São José dos Campos
21 June	Assessment report of the Consultation Phase issued
9 July	Distribution of the Consultation Phase Assessment Report to the Board of Executive Directors and transfer of case to the Compliance Review Phase
26 July	Compliance Review Phase meeting with Management and request for extension to send draft Recommendation and Terms of Reference to the Parties

Date	Actions
2019	
29 July	Compliance Review Phase telephone call with Requesters
19 August	Approval of extension to send draft Recommendation and Terms of Reference to the Parties
4 September	Draft sent to the Requesters and Management for comment
17 September	Approval of extension of deadline to receive comments from the Parties
7 October	Receipt of comments from the Parties

- 5.2 The Request was received by the MICI on 4 February 2019 and registered on 12 February.
- 5.3 Following receipt of the Request, as well as the document review specific to this stage, various telephone calls took place with the Requesters and IDB Management in order to better understand the works and the allegations made in the Request.
- 5.4 On 14 March, the MICI received Management's Response to the Request (see Section IV above regarding the content of this Response). The Request was declared eligible by the MICI Director on 12 April 2019 as it met the eligibility criteria.
- 5.5 Given that the Requesters had asked the MICI to conduct both phases, on 26 April 2019 the Assessment stage of the Consultation Phase began. This phase was concluded on 21 June 2019 with the release of the Assessment Report, which concluded that conditions were not favorable for a dialogue process in this Phase, as one of the Parties did not wish to take part in the process.
- 5.6 On 9 July 2019, the case was transferred to the Compliance Review Phase. Owing to the existing workload and in order to thoroughly analyze the decision-making process that led to the work's inclusion in the Program, and the MICI asked the Board of Executive Directors for an extension to the deadline for the preparation of this Recommendation document.⁹ On 19 August 2019, the Board of Executive Directors approved the request for an extension of the deadline.
- 5.7 On 4 September 2019, the Spanish draft of this Recommendation and the Terms of Reference was distributed to the Requesters¹⁰ and Management in order to solicit their comments within the period of 15 working days stipulated in the MICI Policy. However, as the Portuguese version of this draft was only available to the Requesters on 13 September 2019, they asked the MICI for an extension until 7 October to send their comments. Consequently, the MICI informed the Board of Executive Directors of this request and asked for authorization to extend the deadline by the short procedure. On 24 September 2019 the extension was approved for both Parties.
- 5.8 The MICI received comments from the Requesters and Management on 7 October 2019. The comments were analyzed carefully and those considered relevant were retained. The MICI is grateful for the observations and clarifications received. The original comments from the Requesters and Management can be consulted in the annexes.

⁹ The deadline extension request may be found in the links section.

¹⁰ Pursuant to the MICI Policy and the IDB Access to Information Policy, any confidential information contained in this document has been redacted from the public version.

VI. COMPLIANCE REVIEW RECOMMENDATION

- 6.1 This section sets out the MICI's considerations regarding the conditions determining whether or not to recommend to the Board of Executive Directors that a Compliance Review be carried out in relation to the works giving rise to the complaint submitted.
- 6.2 In accordance with its mandate in this stage, the MICI has undertaken a preliminary analysis of some of the documentation concerning the obligations established in the Relevant Operational Policies that the IDB would have to fulfill in order to include these works in the Program, and the information provided both by Management and the Requesters since the Request was registered.
- 6.3 The MICI observed that the Requesters alleged a series of actual and potential harms linked to a potential noncompliance by the IDB with its Relevant Operational Policies. Specifically, they allege that their homes would lose value and that air, noise, and visual pollution and risk to their physical safety would all increase due to presumed incidents of noncompliance in terms of (i) the absence of a prior classification of the works (Directive B.3 of Operational Policy OP-703); (ii) an environmental and social assessment that is incomplete or has shortcomings (Directive B.5 of Operational Policy OP-703); (iii) absence of appropriate consultations (Directive B.6 of Operational Policy OP-703); and (iv) a lack of adequate and timely information (Operational Policies OP-703 and OP-102).
- 6.4 As regards the inclusion of the works in the investment loan operation approved in 2010, the MICI noted that it was included by means of a loan contract amendment on 18 February 2019.¹¹ [REDACTED]
[REDACTED]
[REDACTED]¹³
[REDACTED]
[REDACTED]
[REDACTED]¹⁴ This amendment also extended the deadline for disbursements until 31 December 2019.¹⁵
- 6.5 However, the MICI notes that the construction work on the overpass began in August 2018 with preparation of the ground, with work on the overpass proper

¹¹ Third amendment to the loan contract, Article 1.4, amending Clause 2.03 of the sole annex to the loan contract.

¹² Official letter 22/SGAF/DFOC/BID2018 from the municipal government, 7 November 2018. [REDACTED]
[REDACTED]

¹³ Letter dated 8 November from the IDB Representative in Brazil to the Secretary for International Affairs (CBR-3611/2018).

¹⁴ Information retrieved from the Convergence platform and electronic information system (SEI) report 3/2019/COF/PGACFFS/PGFN-ME from the National Attorney General's Office on Financial Matters; Information retrieved from Convergence and IDB memorandum, 24 January 2019 (CBR-122/2019).

¹⁵ At that time, the cutoff date for disbursements was 18 February 2019. Second amendment to the loan contract, Clause 1, amending Clause 3.04 of the special provisions of the loan contract. The original cutoff date for disbursements was 18 February 2017 (five years and six months from the contract effective date). Original loan contract from 18 August 2011, Clause 3.04 of the special provisions. Information confirmed on the Convergence platform.

- beginning on 15 December 2018.¹⁶ In early September 2019, the overpass works were 38% complete, with completion scheduled for December 2019.¹⁷
- 6.6 As noted above (see Section II.B), the Program itself was approved in 2010, following the operation's environmental assessment in February 2008, and the Program's Environmental and Social Management Report was completed in April 2008, as originally planned.¹⁸ As a result of the inclusion of the overpass works, with the third contract amendment (see paragraph 6.4 above), and as alleged by Management, the "Arco da Inovação" was being studied by Management to determine its eligibility for disbursements, and for this purpose, the Executing Agency was asked to prepare an Environmental and Social Analysis (ESA) and an Environmental and Social Management Plan (ESMP), and to hold a public consultation on the works.
- 6.7 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].¹⁹ [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. These documents were finalized in February 2019 and posted on the Executing Agency's website. The preliminary versions were posted on the Bank's website on 24 January and the final version on 7 May.²⁰

¹⁶ Press release of 13 August 2018 titled “Empresa inicia instalação do canteiro de obras da Ponte Estaiada.” Available at: <http://www.sjc.sp.gov.br/noticias/2018/agosto/13/empresa-inicia-instalacao-do-canteiro-de-obras-da-ponte-estaiada/>, and press release dated 11 January 2019: “Prefeitura inicia as obras de fundações da ponte estaiada.” Available at: <http://www.sjc.sp.gov.br/noticias/2019/janeiro/11/prefeitura-inicia-as-obras-de-fundacoes-da-ponte-estaiada/>.

¹⁷ Timeline of the “Arco da Inovação,” available at: <http://www.sjc.sp.gov.br/servicos/gestao-habitacional-e-obras/obras-publicas/ponte-estaiada>, and press release dated 6 August 2019: “Ponte estaiada está com quase 40% dos serviços realizados.” Available at: <http://www.sjc.sp.gov.br/noticias/2019/agosto/6/ponte-estaiada-esta-com-quase-40-dos-servicos-realizados/>.

¹⁸ Environmental Assessment Report and Environmental and Social Management Report for the Urban Structuring Program – São José dos Campos (BR-L1160). Available in the links section of this document.

¹⁹ Environmental and social supervision report, October 2018, p. 4 and Aide-Mémoire, Administration Mission 16-19 October 2018, p. 2.

²⁰ See Projects page of the Bank's website. Available in the links section. Preliminary versions of both documents were disclosed previously in January 2019 and circulated for the public hearing in February 2019.

Table 1
Timeline of actions regarding the “Arco da Inovação” project

Date	Relevant activities
2008	
20 February	Environmental assessment of the Program
April	Environmental and Social Management Report on the Program
2010	
12 May	Program approval by the Executive Directors
2011	
18 August	Signature of loan contract
27 September	Full Program eligibility
2016	
2 August	First contract amendment, whereby one road corridor in the contract was replaced by another, and other activities were added to Component II in the contract
2017	
31 May	Second contract amendment, whereby an activity was added to Component II of the contract
2018	
23 April	The municipal government reported in the media that the works were being executed with IDB financing
[REDACTED]	[REDACTED]
13 August	Start of preparation of the construction site for the overpass works
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
14 December	Start of road closures to set up signage and carry out electrical works
2019	
January	Issue of preliminary versions of the ESA and ESMP
[REDACTED]	[REDACTED]
24 January	Publication of preliminary ESA and ESMP on the Bank's website
4 February	Request sent to the MICI
6 February	Public hearing on the overpass works
18 February	Third contract amendment, extending the disbursement period until 31 December 2019 and including the "Arco da Inovação" in Component II of the Program.
[REDACTED]	[REDACTED]
22 March	Posting of the public hearing report on the overpass works and its annexes on the Bank's website
7 May	Posting of the final versions of the ESA, ESMP, and public consultation report on the Bank's website
26 August	Notification of the Borrower by the Brazil Country Office

Source: Program documentation, Management's Response, Request and annexes.

6.8 The documents analyzed show that the Bank financed the contracting of an environmental and social consultant to prepare the ESA and ESMP.²¹ Additionally, in January 2019 it indicated in an internal supervision report that the ESA on the overpass works “had concluded and it complies with the requirements of the

²¹ Procurement Plan, June 2019; Record of registration of IDB contract for an individual consultant; Program semiannual progress report for the second half of 2018, p. 32.

Bank's policies."²² In January and May 2019 the IDB posted these reports and the February 2019 public consultation report on its website.

- 6.9 However, in informal conversations with Management, the MICI became aware that the Bank had not yet made any disbursements to finance the overpass works, nor had it decided on the eligibility of the overpass works for financing or for retroactive recognition of expenditures from the loan's counterpart contribution.
- 6.10 In view of the foregoing, and given that on the date of issue of the draft of this recommendation there was no certainty as to the Bank's involvement in the overpass works, the MICI included two alternatives regarding the applicability of an investigation, which it set out in the draft recommendation, namely: (1) if Management were to declare the works eligible for financing and/or counterpart funds, the MICI considered it necessary to recommend an investigation that would make it possible to clarify whether the Bank had complied with the Relevant Operational Policies when approving financing of the works and supervising its execution; or (2) if Management were to declare the works ineligible for financing and counterpart funds, the MICI would analyze the appropriateness of conducting an investigation.
- 6.11 The MICI received comments from the Requesters and Management on 7 October 2019. In its comments, Management²³ noted that "after analyzing the plans for the works and other relevant information on it submitted by the borrower, on 16 August 2019, Management informed the Município de São José dos Campos that the "Arco da Inovação" cable-stayed bridge was not eligible for financing and/or to be recognized as counterpart financing under the program"²⁴ as the requirements of Directives B.5 and B.6 had not been observed prior to commencement of works, the borrower having undertaken to fulfill said requirements through the ESMP.
- 6.12 In view of the foregoing, the MICI considers that an investigation would not contribute any information further to that already available, which had led Management to deem the overpass works ineligible.
- 6.13 **The MICI therefore recommends to the Board of Executive Directors that a compliance review should not be carried out.**
- 6.14 If the Board of Executive Directors approves this recommendation, the Requesters and Management will be informed of the decision, and the case with the MICI will be closed.

²² ESG environmental and social supervision report, January 2019, p. 4.

²³ Management's comments on the preliminary version of the Compliance Review Recommendation and Terms of Reference, Case MICI-BID-BR-2019-0142 regarding the São José dos Campos Urban Structuring Program, 7 October 2019.

²⁴ idem, paragraph 7.

ANNEX I
MANAGEMENT'S COMMENTS ON THE PRELIMINARY VERSION OF THE
COMPLIANCE REVIEW RECOMMENDATION



Memorandum

File classification: MICI-BID-BR-2019-0142

Date: 7 October 2019

To: Victoria Márquez-Mees, MICI Director

From: Tatiana Gallego Lizon, Chief of the Housing and Urban Development Division (CSD/HUD)

CC: Executive Vice President, Vice President for Countries, Vice President for Sectors and Knowledge, Manager of the Climate Change and Sustainable Development Sector, Manager of the Southern Cone Country Department, Representative in Brazil, Chief of the Environmental and Social Safeguards Unit, and Chief of the Sovereign-guaranteed Operations Division of the Legal Department

Reference: Management's comments on the preliminary version of the Compliance Review Recommendation and Terms of Reference, Case MICI-BID-BR-2019-0142, regarding the "São José dos Campos Urban Structuring Program" – Request III (BR-L1160)

I. Introduction

1. The purpose of this memorandum is to present the comments of Management of the Inter-American Development Bank (the Bank) on the preliminary version of the "Compliance Review Recommendation and Terms of Reference" (the Recommendation), sent by the Independent Consultation and Investigation Mechanism (MICI) of the Bank to Management by email on 4 September 2019, in relation to case MICI-BID-BR-2019-0142, regarding the "São José dos Campos Urban Structuring Program" (BR-L1160) (the Program).

II. Background

2. The Program was approved by the Board of Executive Directors of the Bank on 12 May 2010; the Borrower and Executing Agency for the operation is the municipal government of São José dos Campos (the Borrower). The Program is financed through a specific investment loan, with a sovereign guarantee from the Federative Republic of Brazil of up to US\$85,672,400, and an estimated local counterpart of the same amount. The loan contract between the Borrower and the Bank was signed on 18 August 2011 and the Program became eligible for disbursements on 27 September 2011. To date the Bank has disbursed 89.62% of the loan proceeds.
3. The contract for loan 2323/OC-BR was amended on three occasions: 2 August 2016, 31 May 2017, and 18 February 2019. In the last contract amendment, the

activities added to the Program included, among others, the works to build the “Arco da Inovação” cable-stayed bridge.

4. On 4 February 2019, the MICI received a Request in connection with the Program from a group of four residents of the município of São José dos Campos. The Request was presented by individuals (the Requesters) who alleged that they had been adversely affected by the “Arco da Inovação” works.
5. The Requesters allege that they have suffered, or may potentially suffer, harm in economic, environmental, road safety, and communication terms as a result of the works. They claim that the Bank’s Environment and Safeguards Compliance Policy (Operational Policy OP-703) had been infringed, in particular by noncompliance with Directives B.3, B.5, and B.6.
6. On 17 January 2019 the Borrower submitted the Environmental and Social Management Plan (ESMP) for the works to the Bank, summarizing the environmental and social safeguards applicable to the works. On 14 March 2019, the Borrower sent the plans for the works, which include the traffic study, engineering design, complementary plans, budget, and economic evaluation.

III. Management decision regarding the works giving rise to the complaint

7. After analyzing the plans for the works and other relevant information on them submitted by the Borrower, on 16 August 2019 Management informed the São José dos Campos municipal government that the “Arco da Inovação” works were not eligible for financing and/or recognition towards the counterpart contribution under the Program.
8. As the Borrower was informed at the time, Management’s decision was based on the fact that the requirements of Directives B.5 and B.6 of the Bank’s Environment and Safeguards Compliance Policy (Operational Policy OP-703) had not been met before execution of the works had begun—the Borrower having undertaken in the ESMP to meet these requirements.
9. In response to a further request from the Borrower that the Bank reconsider its decision, in Note CBR-2478/2019, dated 26 August 2019, Management reiterated its reply that the works could not be financed from the Bank’s loan proceeds nor be recognized as a counterpart contribution to the Program. A copy of this note is attached hereto.
10. In light of the foregoing, Management notes that the Bank has not made, nor will make, disbursements from the loan or recognize expenditures against the local counterpart for the works giving rise to the Request submitted to the MICI.

Attachment: Note CBR-2478/2019

ANNEX II
REQUESTERS' COMMENTS ON THE PRELIMINARY VERSION OF THE
COMPLIANCE REVIEW RECOMMENDATION

To:

Independent Consultation and Investigation Mechanism

Requesters' comments on the preliminary version of the Compliance Review Recommendation

First, we reaffirm our request that these works be considered ineligible for **Bank** financing, in view of the serious irregularities that exist.

The statement of grounds below is intended to complement our original complaint and the Request for a Compliance Review by the MICI.

1. Operational Policies

1.1. OP-703

In point eight of our initial request, we listed a series of infringements of the Environment and Safeguards Compliance Policy, Operational Policy OP-703, to which we add the following remarks:

- Safeguard "B.1. Applicable Legislation" states that "*The **Bank** will only support environmentally viable operations and activities. To be considered environmentally viable, all **Bank**-financed operations will comply with the directives of Policy OP-703, and the relevant environmental clauses of other **Bank** policies.*"
 - ✓ Infringement of the various safeguards mentioned above and those below automatically entails a noncompliance with Directive B.1.
- Safeguard "B.7. Supervision and Compliance" states that "*The **Bank** will monitor the executing agency / sponsor's compliance with all safeguard requirements stipulated in the loan agreement and project operating or credit regulations.*"
 - ✓ The **Bank** did not supervise proper fulfillment of the public consultation, Environmental and Social Analysis (ESA) and Environmental and Social Management Plan (ESMP) documents, or their formulation and disclosure; and
 - ✓ The Bank was negligent in relation to the **Borrower's** widespread dissemination of the claim that the works were financed by the IDB.
- Safeguard "B.11. Pollution Prevention and Abatement" states that "***Bank**-financed operations will include as appropriate, measures to prevent, reduce, or eliminate pollution emanating from their activities. The **Bank** will require clients to follow source-specific emission and discharge standards recognized by multilateral development banks. Taking into account local conditions and national legislation and regulations, the environmental assessment report or environmental management report will justify the standards selected for the particular operation, consistent with this Directive.*"
 - ✓ The noncompliance occurred because measures were not presented to control the pollution generated once the works had been completed, as there would be an increase in the number of vehicles and a consequent increase in noise, primarily as vehicles accelerate to climb up onto the bridge. The study of

Atmospheric Emission Inventories in the area of the works was also not presented; and

- ✓ We stress that noise pollution levels already exceed those permitted by law, as was even confirmed by the ESA and ESMP submitted by the **Borrower**. The indexes will undoubtedly be higher once the works are completed and the volume of vehicle traffic increases.

1.2 OP-102

In the case of Operational Policy OP-102 we have identified the following infringements:

- Disclosure of environmental and social information on the project was insufficiently timely for residents to be informed and take such action as they saw fit;
- The invitation to the public consultation was sent once the works were underway. The **Bank** was cited as a co-organizer, which contradicts the previous information provided by Mr. Jason Anthony Hobbs, a **Bank** staff member (see Annex V of the original Request);
- Dissemination of the invitation to a public consultation at the last minute, which was held mid-week (6 February 2019) in a single stage during business hours, lasting less than half a day, most of which was set aside for the **Borrower's** presentation;
- Not reporting that the works had not been declared eligible, as mentioned by the Bank itself, while the **Borrower** reported in various media that the IDB was financing the works (e.g. <https://www.sjc.sp.gov.br/noticias/2018/agosto/13/empresa-inicia-instalacao-do-canteiro-de-obras-da-ponte-estaiada/>); and
- Delay in disclosure of documents: After the complaint was submitted on **18 March 2019** on the nondisclosure of amendment three of the contract, dated **18 February 2019**, we found that the **Bank** only disclosed this document on **29 March 2019**. The same thing happened in the case of the final versions of the ESA and ESMP, dated **February 2019** but not disclosed on the **Bank's** website until as recently as **7 May 2019**.

2. On the public consultation, we have the following comments:

- Taking place in just one stage on 6 February 2019, with the works already begun, on a day and at a time that was inappropriate for the affected community to attend, being limited to part of the morning and with limited disclosure by the **Borrower**.
- The ESA and ESMP were published in draft form and did not consider harms arising after the works end. The only harms considered were those occurring during execution of the works, and even these were not properly mitigated.
- The **Borrower's presentations** took up most of the event, leaving little time for public involvement. A questions and answers format was adopted, but several questions were not answered immediately but addressed superficially a posteriori with no opportunity for a counter reply. There was no opportunity for presenting or **discussing proposals and alternatives**. Given the numerous approaches and complexity of the issue, devoting just a morning to it was a mockery, demonstrating the scant regard the **Borrower** has for this instrument.

- The consultant Marcelo Antônio da Costa was introduced as a representative of the IDB and signed the public consultation attendance list as a member of the IDB (see page 63 of the official document, published on <https://www.iadb.org/pt/project/BR-L1160>, IMPLEMENTATION item on the DOCUMENTS tab).
- We would highlight that the aforementioned consultant was responsible for preparing the ESA and ESMP, and it is interesting to note that there is no signature on them, either of the consultant or, in particular, the **Borrower**, the latter being ultimately responsible for delivering the documentation required by the **Bank** for the works' eligibility.
- To conclude this point, we would stress that the public consultation was organized in a way totally at odds with the guidelines in the Bank's document titled "**Meaningful Stakeholder Consultation**," which can be seen at: <https://publications.iadb.org/en/meaningful-stakeholder-consultation>.
 - ✓ As this document was one of the prerequisites for the works to be included in contract amendment 3, which was subsequently signed on 18 February 2019, is it not surprising that this contravention of the **Bank's** guidelines occurred? It can also be observed that the only difference between contractual amendments two and three was inclusion of the works.

3. On the Borrower's survey

In August 2018 the Borrower conducted a telephone survey on the cable-stayed bridge but did not make the reason for the survey clear to respondents. The survey followed a structured questionnaire, with closed-ended questions and no opportunity for respondents to give their reasoning. The survey took place over two days and involved 328 respondents, 27 of whom lived in other districts and very few of whom lived close to the works, compared with a local population of 700,000.

Apart from the survey not being representative and using directed questions, we also observed a lack of statistical method in the way it was conducted.

4. On the impact on residents

As a result of the aforementioned failures of compliance with the operational policies, we have suffered and will continue to suffer harm caused by the omissions. We would stress that the residents of the surrounding area were not given the opportunity to express their point of view and the impact on them can be analyzed on the following four dimensions:

- **Economic**, through the loss in value of their properties. Affected condominiums lost internal area needed to mitigate the lack of road safety to which they were exposed with the narrowing of the local road. The study referring to the increase in property values in the project's area of influence was based on the **increase in values in a suburban development project in Igarapé, Manaus (Amazon)** (Synthesis report, May 2018), a situation which differs entirely from our context.
- **Environmental**, through visual and air pollution, primarily because this is a road work and mobile sources (motor vehicles) are known to be one of the main sources of atmospheric emissions, emitting pollutants such as: carbon monoxide and dioxide (CO and CO₂), hydrocarbons (HC), sulfur dioxide (SO₂), aldehydes (CHO), nitrogen oxide (NO_x), and particulates. In this regard, air pollution in urban

environments has been associated with a worsening of respiratory, cardiovascular, and neurological diseases. In terms of the environment, residents of surrounding areas will also be affected by noise pollution, since, as reported by the Borrower in its ESA and ESMP, the noise measurements on 3 September 2018 between 2:26 p.m. and 2:44 p.m. (outside of working hours) were 70.2 and 71.8 dB(A), exceeding the maximum of 60 dB(A) stipulated in Article 3 of Law 8,940/2013. The construction of the bridge will tend to increase the number of vehicles in this location yet further, worsening the problem. In the case of noise pollution, this issue arises during construction of the overpass, as the fact that the Bank set 31 December 2019 as the date for completion of the works meant that the Borrower accelerated construction to allow it to be completed on time by working during quiet hours, causing noise and vibration in excess of permitted levels and denying local residents' the right to sleep.

In addition to the environmental impact, we observe an impact on the health of residents in the surrounding area.

- **Road safety:** Due to loss of the public thoroughfare and the fact that entrances to homes front directly onto the highway. This problem is all the more significant considering the visitors parking lot, which could significantly increase the risk of serious accidents.
- **Communication:** There has not been a single official document from the Borrower inviting local residents to a meeting to explain the programmed activities. All the actions taken were informal, ad hoc, random, and notified verbally at the last minute, and no minutes were taken as a record.

Lastly, we would highlight that:

- Residents will be affected by the noncompliance with the principles of the município's Urban Mobility Plan and Policy; and
- Residents will also be affected environmentally and economically, as the money invested in this project could have been used for higher-priority purposes for the city, as envisaged in the original contract, specifically issues such as:
 - (i) installing urban parks;
 - (ii) regularizing illegal subdivisions where families live with deficient infrastructure;
 - (iii) execution of drainage works; and
 - (iv) improvements in urban mobility, mainly aimed at mass transit rather than individual mobility, so as to be aligned with the município's Urban Mobility Policy.

The program executing unit's original plan envisages the program's objective to be to contribute to the município's sustainable development through a better balance between economic, environmental, and social considerations by improving and strengthening physical infrastructure and urban management.

5. On the Bank's mission:

At <http://www.iadb.org/pt/noticias/bid-inicia-processo-de-consulta-publica-para-expandir-suas-politicas-de-aquisicoes> we find that "the mission of the Inter-American Development Bank is improving lives."

Based on this premise, we feel the Board of Executive Directors should have the sensitivity to acknowledge the mistakes made by agreeing to include such a controversial project in the São José dos Campos Urban Structuring Program at the last minute (as expressed in our complaint to the MICI and by other sectors of society, such as the public consultation).