

File classification: MICI-BID-BR-2022-0189

Date: August 30, 2022

To: Andrea Repetto Vargas, MICI Director

From: Pedro Martel, Head of Natural Resources, Rural Development, and Disaster Risk Management Division (CSD/RND)

CC: Executive Vice President, Vice President for Countries, Vice President for Sectors and Knowledge, Sector Manager for Climate Change and Sustainability, Southern Cone Manager, Representative in Brazil, Head of the Environmental and Social Solutions Unit, Head of the Sovereign Guaranteed Operations Division of the Legal Department.

Reference: Management's Response to the Notification to Management of the Filing of the Complaint and Request for Response MICI-BID-BR-2022-0189 referring to the "National Tourism Development Program - Prodetur Nacional - Rio de Janeiro" - (BR-L1210).

I. Introduction

1. On July 13, 2022, the Independent Consultation and Investigation Mechanism (ICIM) filed the complaint MICI-BID-BR-2022-0189 (hereinafter the "Complaint"), submitted by Mr. Amilcar Augusto Azevedo de Carvalho and Mr. Alexandra Campos (hereinafter the "Claimants", Mr. Amilcar Carvalho being the "First Requester," and Ms. Alexandra Campos, the "Second Requester"), in relation to the project "Sanitation, Drainage and Development of Vila do Abraão, Ilha Grande, Angra dos Reis" (hereinafter, the "Project"), under the "National Tourism Development Program - PRODETUR NACIONAL - Rio de Janeiro" BR-L1210 (hereinafter the "Program"), financed by the Inter-American Development Bank (hereinafter, the "Bank") through loan No. 2411/OC-BR. In line with the deadline indicated in the communication sent by MICI to Management on August 2, 2022, this memorandum presents Management's Response to the aforementioned Request.
2. The Request mentioned that:
 - a. The Project has allegedly failed to comply with at least three of the Bank's operational policies: (i) Environmental Compliance and Safeguards Policy

- (OP-703); (ii) Operational Policy on Indigenous Peoples (OP-765); and Natural Disaster Risk Management Policy (OP-704);
- b. As a result of non-compliance with the Bank's operational policies, socio-environmental impacts had been caused in the Project area, in addition to alleged damage to the property of one of the Claimants (specifically the First Claimant), which occurred during the execution of the Project; and,
 - c. Management has allegedly not responded to communications from the Requesters.
3. Management submits its response to MICI for consideration, focusing on the following aspects: (i) background of the Prodetur Rio de Janeiro Program, and the Sanitation, Drainage and Urban Development Project of Vila do Abraão, Angra dos Reis; (ii) elements presented in the Complaint and Management's Response; and, (iii) conclusion.

II. Background of the Program and Project that is the subject of the Request

4. **Program.** The loan proposal for the National Tourism Development Program - Prodetur Nacional - Rio de Janeiro (BR-L1210) was approved by the Bank's Board of Executive Directors on September 15, 2010 (Resolution DE-106/10); the corresponding Loan Agreement No. 2411/OC-BR was signed on August 8, 2011, and eligibility for the first disbursement was established on November 3, 2011. Throughout its execution, the aforementioned Loan Agreement underwent three contractual amendments: (1st) on May 9, 2012, whereby the executing agency was changed, due to the disbanding of the former State Secretariat of Tourism, Sports and Leisure to become the State Secretariat of Tourism (SETUR); (2nd) on October 8, 2015, whereby the deadline for disbursement of the loan funds was extended from August 8, 2015 to August 31, 2017; and (3rd) on November 26, 2018, which included the extension of the disbursement deadline from August 31, 2017 to June 30, 2020, a partial waiver of loan funds, a decrease in counterpart funds planned for the Program, the reallocation of funds between components, the modification of expected products under each of the Program's components, as well as the establishment of execution conditions associated with the commitment of funds for the works of the Museum of Image and Sound (MIS) and its management model. The Program had its last disbursement on June 30, 2020.
5. The borrower of the Bank's loan for the Program is the State of Rio de Janeiro (the "Borrower"). Originally with a total budget of USD 187,000,000.00, the resources for the Program were reduced, as mentioned in the previous paragraph, with a final value of USD 82,045,692.47 (of which USD 41,486,692.47 were from loan resources and USD 40,559,000.00 from State resources). The main goal of the Program was to contribute to increasing employment, revenues, and foreign currency generated by the tourism sector in the State of Rio de Janeiro, through the consolidation and diversification of its tourism offer. With a view to increasing tourist spending in the selected destinations, the Program sought, on the one hand, to bring in tourism towards the "Polo

Serra,” and on the other, to improve the profile of international demand served in the Polo Litoral.

6. The Program was designed as a multi-works operation, in which the works were similar in scope and objectives, although independent from each other. During the preparation of the Program, the Bank's project team analyzed a representative sample of projects, which allowed it to assess the technical, financial and socio-environmental feasibility of the Program and to design the instruments that should be applied during its implementation to determine the eligibility of specific projects to be financed. During the execution phase, the Executing Agency submitted each specific project of the Program for no-objection by the Bank, thus offering its eligibility for execution and financing with Program resources.
7. The program was structured in five components that included interventions and actions related to tourism products; promotion and commercialization; institutional strengthening; destination access infrastructure and basic services; and environmental management. Based on the provisions of the Bank's Environmental and Safeguards Compliance Policy applicable to the project (OP-703, GN-2208-20), the Program was classified as Category B, based on the social and environmental impacts identified during the preparation and execution process of the operation. The Program's social and environmental management was based on an Environmental and Social Management Framework, prepared from a Strategic Environmental Assessment carried out during the preparation of the Program.
8. **Project** - The Sanitation, Drainage and Urban Development Project of Vila do Abraão, Ilha Grande, Angra dos Reis - the Request centered around Access to Destinations and Basic Services Infrastructure Component of the Program. The goal of the project was to execute drainage, paving, landscaping, lighting, and urban furniture works, in addition to the enlargement of the water supply system and the sewage system in Vila do Abraão. During the Project preparation phase, the local community actively participated in the discussions led by the state Government, which preceded the contracting of the services, as well as in the executive project phase, where changes, such as the substitution of cobblestone paving for concrete blocks, were promoted to meet local demands. The bidding process for the Project's works (hereinafter, “Works”) was completed in March 2016, and the contract was awarded to a specialized engineering company, Hécio Gomes Engenharia Ltda. (hereinafter, “Contractor”). The work contract (Contract 007/2016) valued at BRL 28,261,046.00 was signed on April 19, 2016, along with the Service Order. The deadline for the Works was 480 days, scheduled for August 19, 2017.
9. The works began with the opening of trenches for the installation of the trunk sewer collector in the street parallel to the waterfront, as well as the water supply network and part of the drainage network in several streets. However, on January 2, 2017, the Works were paused, and the contract suspended indefinitely by the Executing Agency. The work was paused due to judicial seizures that affected funds disbursed by the Bank in the Program's accounts, which prevented the continuation of the Program's projects and

caused the Executing Agency's initiative to halt all contracts in progress, through Resolution No. 1512, of 09/27/2017, published in the Official Gazette of the State of Rio de Janeiro (DOERJ) on 09/28/2017.¹ According to the records of the Program and the financial area of the Executing Agency, 6 measurements were made for a total amount of BRL 3,670,010.59, the last one, the 6th measurement, corresponding to the period September/October 2016, for an amount of BRL 453,992.03, paid on 12/01/2018. These amounts represented a cumulative value of 13% of the total value of the Project. On August 3, 2018, the Executing Agency and the Contractor amicably terminated Contract 007/2016, and the obligations agreed upon between the parties were released.

10. Subsequently, the Works were not bid on again under the Program because the Project ceased to form part of the Program in November 2018, when the third, and final, [contractual amendment](#) was executed. Among the measures taken to allow a further extension of the disbursement period was that of canceling the suspended projects and those with a low performance rate, which was the case of the Project at Ilha do Abraão. In relation to the projects that would no longer be part of the Program's scope, Management agreed with the State that it would adopt the measures it considered appropriate for the cancellation or financing thereof, with its own resources, outside the Program. The decisions mentioned are contained in the [REDACTED] which we request that MICI exclude from publication in this Response, as it is a confidential document.

III. Main Aspects Presented in the Request and Management's Response

11. The Request states that the Requesters have “suffered or are likely to suffer damage(s) as a result of the IDB's, the MIF's, or the IIC's failure to comply with one or more of its Operational Policies pertaining to Environment and Safeguards Compliance, Disaster Risk Management, and Indigenous Peoples”. The Request also makes reference to the fact that the failure to comply with these policies “is causing, has caused, and will continue to cause immeasurable social and environmental impacts, not only due to the paralysis of the works, which leads to the environmental contamination of Bahia da Ilha Grande and seriously threatens the survival of the traditional communities present in the region, such as quilombolas, indigenous people, and fishermen of mixed heritage, which has even been awarded the UNESCO World Heritage recognition”. Additionally, the Request mentions that “the Project's resources were not properly allocated,” and that “damage was also done to the heritage of a traditional community member”. Finally, the Request indicates that complaints were made to Management “through the website and during a phone meeting,” and that such complaints were apparently not answered. Attached to the Request, the Requesters have included a copy of the First Requester's communication addressed to the MICI, undated, which allows the First Requester to be identified as the fisherman who owned the damaged vessel.

¹ According to State Decree no. 45.692/2016, published in the DOEJR on 06/17/2016, the State of Rio de Janeiro entered a state of public calamity, in the area of financial administration, and this situation led to the judicial blockage of some of the state Government's bank accounts, including the one related to the financing intended for the payment of the works linked to PRODETUR RJ.

12. Regarding the aspects highlighted above, Management considers it relevant to point out that, based on its analysis, the Project was designed and executed (its portion effectively carried out) in compliance with the environmental safeguards provided in OP-703 and OP-704, in order to ensure that it was environmentally sustainable. For this, besides the preparation of technical-financial and economic feasibility studies, the need was established to comply with specific conditions for its execution, aligned with those requested in the environmental licensing process required by the applicable national legislation. Among them is the preparation of the Degraded Area Recovery Plan (PRAD). It was also designed in compliance with Policy OP-765, as potentially negative impacts on the area and indigenous peoples' rights were assessed and necessary measures were designed to anticipate, minimize and mitigate these impacts. In this sense, the project contemplated a Management and Social Communication Program, partially implemented due to the cancellation of the works in question.
13. Management conducted, between June 3 and 5 2019, a Safeguards Compliance Review Mission to the Program, in which it verified compliance with IDB environmental and social safeguards, supervised the status of works in progress, and coordinated the preparation of corrective action plans, when necessary, for canceled or unfinished works, in order to mitigate potential consequences as previously stated. On that occasion, Management requested from the Executing Agency, among other things, a mapping of the situation of the works canceled under the Program, as well as an associated corrective action plan, when necessary, to be delivered by June 30, 2020 [REDACTED] which we also request that MICI exclude from the publication of this Response, since it is a confidential document). Along the same lines, a photographic and descriptive report on the execution status of this and other projects funded under the Program was requested in May 2018. The photographic and descriptive evidence about the degree of execution of the works sent on May 24, 2018 by the Program Executing Unit were input used to support such process [REDACTED]
14. Management recognizes that the benefits expected from the Project did not materialize, as the Project was cancelled and excluded from the Program's investments, and did not materialize in its entirety (13% of the total Project value, as measured).
15. About the material damage mentioned in the Request, related to the sinking of a small-scale fisherman's boat, because the Contractor had secretly loaded more cargo than the volume agreed with the fisherman, Management makes the following clarifications:
- a. For the duration of the Project there were no efforts made by the two Requesters to contact Management. The first and only direct communication that Management received was from the First Requester, on September 24, 2018, regarding the facts and by email. By this date, the contract between the Executing Agency and the Works Contractor had already been amicably terminated, for the reasons described above (paragraph 9).

- b. As a consequence of this contact, Management maintained direct communication with the Executing Agency responsible for implementing the Project. During this period, there was no direct communication between the Bank and any beneficiary or potential affected party of the Project.
- c. Management and the Executing Agency have exchanged information regarding the facts alleged by the First Requester on several occasions: September 25, 2018; October 1, 2018; October 15, 2018; November 12, 2018; and, finally, between March 19 and 28, 2019.
- d. Management requested that the Executing Agency, in addition to informative documentation, submit to the Bank the measures that were being taken to resolve the issue. The main documents sent by the Executing Agency in this period were: (i) Clarification Letter to the Contractor's Bank (11.08.2018); (ii) UCP/Prodetur 028/2019 Official Document (03.28.2019); (iii) Contract Termination Request and Contract Termination Agreement, between the Contractor and the Executing Agency (03.13.2018 and 08.03.2018, respectively); (iv) evidence of payments made to the Contractor; and, (v) Records of the inquiry of the Brazilian Navy, Angra dos Reis Port Authority Office (06.13.2017).
- e. The documents submitted to Management on these occasions presented diverse and inconclusive perspectives, which is why Management continued to insist that the Executing Agency provide complete information regarding the case. While the First Requester claimed that the Contractor had contracted the services for transporting materials on its vessel on July 14, 2016 and loaded its vessel with a weight that exceeded that agreed between the parties, which is why the vessel sank, and there was no liability for the damage; the Contractor claimed that the contracted vessel, which belonged to the First Requester, had specific characteristics of maritime transport, and could charter up to 7 (seven) metric tons per voyage. The Contractor also claimed that they provided the necessary assistance when the vessel partially sank, still moored at the pier, in a place of low depth, and that when it was rescued, it was fully functional after the event. There is documentation of the Inquiry conducted by the Port Authority to inspect the accident, and the conclusion of the inquiry determined that the cause of the accident was the recklessness of the master and owner of the boat, for having left the site and not having accompanied the shipment of the construction material.
- f. On June 1, 2022, the First Requester submitted a new complaint to Management, made via email to the Bank's Complaint Portal. In this second communication, the Requester asked for the Bank's position on the case and mentioned that he needed help. The action was registered through Case 00001282, and on June 6, 2022, Management responded informing that it would seek updated information from the Executing Agency regarding the progress of the Project. In response, the Executing Agency sent documents previously presented to Management, once again stating that there is a Civil Inquiry by the Public Prosecution Service of Rio de Janeiro related to the subject in question, and a lawsuit for Compensation for Material Damage/Consumer Rights is underway in the Court of Justice of Rio de Janeiro.

IV. Conclusions

16. As mentioned above, the Project in question was designed in compliance with the social and environmental safeguards set forth in OP-703, OP-765, and OP-704. Social and environmental technical feasibility analyses were conducted, management and social communication programs were carried out and, during the construction period and after its conclusion, measures were established to prevent and mitigate the risks associated with the Works. Failure to achieve the Project's objectives was due to the non-completion of the work in its entirety, once the Project was cancelled and excluded from the Program's investments at the time of the third contractual amendment.
17. With respect to the fact brought to Management's attention by the First Requester, claiming that its vessel was damaged as a result of the Project works, this was brought to Management's attention, and on several occasions Management has requested updates on this matter from the Executing Agency; and, provided a response to the First Requester on both occasions when he contacted Management directly (by email to the Program Team, and by email to the Bank's complaint portal, and indirectly, through Requests for the Executing Agency to communicate with stakeholders), as described in the preceding paragraphs.
18. Management includes a Single Annex containing the documents referenced in this Response and requests that they be excluded during Publication due to the confidentiality of the documents submitted.
19. Finally, Management is available to collaborate with the MICI with any information or documentation about the Program object of the Registration.