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MICI-BID-BR-2019-0142

**CONSULTATION PHASE ASSESSMENT REPORT
SÃO JOSÉ DOS CAMPOS URBAN STRUCTURING PROGRAM**

**(BR-L1160)
(2323/OC-BR)**

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LINKS
<ol style="list-style-type: none"><li data-bbox="251 264 1383 323">1. Request MICI-BID-BR-2019-0142 in the MICI-IDB Public Registry https://www.iadb.org/es/mici/detalle-de-la-solicitud?ID=MICI-BID-BR-2019-0142<li data-bbox="251 338 1383 396">2. Loan Proposal for the São José dos Campos Urban Structuring Program (BR-L1160) https://www.iadb.org/Document.cfm?id=35152720<li data-bbox="251 411 1383 470">3. Amendment to the loan for the São José dos Campos Urban Structuring Program (BR-L1160) https://www.iadb.org/Document.cfm?id=EZSHARE-2056220512-6187<li data-bbox="251 485 1383 596">4. Environmental and Social Assessment and Environmental and Social Management Plan for the Project to Implement Road Improvements-<i>Arco da Inovação</i> of the São José dos Campos Urban Structuring Program (BR-L1160) https://www.iadb.org/Document.cfm?id=EZSHARE-89975185-643

ABBREVIATIONS

Bank or IDB	Inter-American Development Bank
GDP	Gross domestic product
IBGE	Instituto Brasileiro de Geografia e Estatística [Brazilian Institute of Geography and Statistics]
Management	The Bank manager or managers (or any delegate thereof) responsible for the relevant Bank-financed operation
MICI	Independent Consultation and Investigation Mechanism of the IDB Group
MICI Policy	The Policy approved by the IDB Board of Executive Directors in December 2014 and revised in December 2015 that governs the work of the MICI regarding Requests related to operations financed by the IDB or the Multilateral Investment Fund (document MI-47-6)
Overpass project/works	Construction of the Arco da Inovação cable-stayed bridge overpass
Parties	The Requesters, Management, the Borrower, the Client, and/or the Executing Agency, as applicable
Program	São José dos Campos Urban Structuring Program
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

EXECUTIVE SUMMARY

The Inter-American Development Bank is financing the São José dos Campos Urban Structuring Program (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 so as to strike 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 modified in February 2019 to add the construction of the *Arco da Inovação* overpass—which was not envisioned in the original program—to the scope of the Program's Component II. The Request lodged with the MICI concerns this project, on which construction began in August 2018 and which is slated for completion in 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. The Requesters have asked to have their identities remain confidential out of fear of retaliation.

According to the Request, the *Arco da Inovação* overpass works began before a full study of the environmental and social impacts in its area of influence had been prepared. It also contends that the public consultation processes with the affected community were held after construction had already begun and alleges a lack of timely information about the project and that no formal channels of communication with the community had been established.

The Requesters state that the negative impacts the overpass project would have on the value of their property due to the proximity of the work and the express road were not taken into account. They also allege that both construction activities and the increased vehicle traffic once the work is completed will have environmental and health impacts and cause increased air, noise, and visual pollution. Lastly, they claim 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 MICI Memorandum declaring the Request eligible was distributed to the Board of Executive Directors on 26 April 2019, thus starting the Assessment stage of the Consultation Phase. This stage aims to understand in detail the context of the project out of which the Request arose, and the central issues causing concern and leading to disputes, and which may be addressed by the Parties in a Consultation Phase process.

As part of the assessment, program documents—particularly those relating to the overpass project—were reviewed. Telephone conversations were also held with the Parties prior to the field mission. During the assessment mission, two bilateral working sessions were held with the Requesters and the IDB project team and one meeting with the relevant authorities in the São José dos Campos municipal government. The MICI team also visited the overpass project site accompanied by the Requesters. These meetings were used to find out about the issues motivating the Request, potential solutions, and the possible formats for a dispute resolution process.

Following an in-depth analysis of the Parties' positions and interests, and considering the context of the project works, a number of significant difficulties in initiating a process of a joint search for solutions in the context of the Consultation Phase were detected. First, the time frame for building agreements is short, as activities under the financing operation are due to be concluded in December 2019, such that the overpass project is scheduled to be finished by that date. Second, high levels of mistrust are apparent, along with gaps in communication, a lack of information, and a series of disagreements surrounding the construction project, which has led to mutual accusations between the Parties. Third, the Requesters expressed an interest in addressing issues that, while directly related to the assumed impacts, would be outside the scope of the MICI process. Lastly, as the inquiries and exchanges on the conditions for a dispute resolution process delved deeper, the Requesters were able to see their objectives more clearly, reaching the conclusion that they preferred to end the Consultation Phase and process the complaint through the Compliance Review Phase. This conclusion was communicated to the MICI in writing.

Based on the points identified and pursuant to paragraph 29(b) of the MICI-IDB Policy, it was concluded that conditions favorable to starting a Consultation Phase process do not currently exist. Consequently, once this report has been distributed to the IDB Board of Executive Directors, the case will be transferred to the Compliance Review Phase.

I. BACKGROUND¹

A. Geographic and social context of the Program²

- 1.1 The município of São José dos Campos is located in the east of the state of São Paulo, 97 kilometers northeast of the metropolitan area of the city of São Paulo, and covers a total of 1,099.6 square kilometers. The 2010 census projection estimates the município's population in 2018 at 713,943.³ 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.⁴
- 1.2 São José dos Campos is considered an important technology and research hub. Industry (51.16%) and services (48.64%) account for the largest share of the município's economy, whereas agriculture accounts for 0.2% of its GDP. The município is home to companies such as Johnson & Johnson, General Motors, and Embraer.
- 1.3 The growth of industry in the município since the 1980s has been accompanied by strong population growth, particularly in urban areas. According to the 2010 census, the west of the city saw the fastest population growth (4.99%) between 2000 and 2010.⁵ This area is also where the residential developments driving the city's population growth in that period are found. The per capita income of the western region's population is high compared to that of other areas of the city (east, center, and north).
- 1.4 The mayor's office has two main planning instruments with which 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 public space and transportation, based on principles such as equitable use of public thoroughfares and parks; efficient and effective provision of urban transportation services; safe transportation of goods and people, and reducing the environmental impact of urban mobility. It is in this context that the São José dos Campos Urban Structuring Program (BR-L1160) is set.

¹ Information taken from the Bank's website and public documents on the operations concerned.

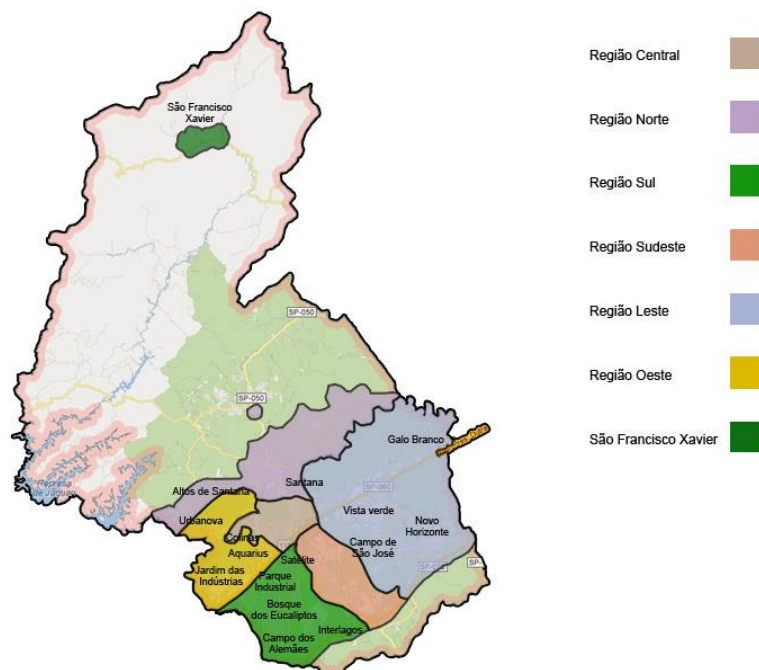
² The sources of information used in this section are available in the links section.

³ Brazilian Institute of Geography and Statistics (IBGE) (2019). Available at: <https://cidades.ibge.gov.br>.

⁴ Mayor's office of São José dos Campos (2016). Available at: http://servicos2.sjc.sp.gov.br/media/667370/sjdados_2016.pdf.

⁵ Ibid.

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



Source: São José dos Campos mayor's office.

B. The Program

- 1.5 The Inter-American Development Bank is financing the São José dos Campos Urban Structuring Program (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 program, which is currently in implementation, was approved by the Board of Executive Directors on 12 May 2010 via the simplified procedure.
- 1.6 The program's objective is to contribute to the município's sustainable development, so as to strike 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: (i) creation of urban parks to increase 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 restructure certain 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 an operations control center for roads; 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.

- 1.7 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.
- 1.8 The work consists of an overpass to ease vehicle traffic congestion on roads west of the city of São José dos Campos. Specifically, it would construct a cable-stayed bridge over the Colinas traffic circle at the intersection of the 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 creating an X-shaped overpass, 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.

C. The Request⁶

- 1.9 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 have asked for their identity to be kept confidential for fear of retaliation. The corresponding public information is available in the MICI Public Registry (Request [MICI-BID-BR-2019-0142](#)).
- 1.10 The Request concerns the *Arco da Inovação* overpass project, which was added to the Program in February 2019. The document alleges current and future harm related to the construction and operation of the overpass.
- 1.11 According to the Requesters, construction work on the *Arco da Inovação* overpass began before a complete study of the environmental and social impacts was available. They also claim that the public consultation processes with the affected community was inadequate and was held after construction had started. They allege that timely access to information was not given, and no formal channels of communication were established with the affected community.
- 1.12 As a result of the alleged shortcomings, and of the construction and operation of the overpass in general, the Requesters claim that there could be environmental impacts and other adverse effects on their property, physical safety, and health.

⁶ The Request and its annexes are available in the links section of this document.

- 1.13 The environmental impacts mainly relate to the air, noise, and visual pollution deriving from the construction work and subsequent use of the overpass as a result of increased motor vehicle traffic. The Requesters also claim that the increase in particulate emissions and noise could have harmful impacts on their health.
- 1.14 In the case of physical safety, the Request states that buildings' direct exposure to the express road would increase the risk of traffic accidents. Finally, they claim that the project did not take into account the negative impact of the overpass on the value of adjacent properties.

D. MICI process to date

- 1.15 Table 2 lists the main actions by the MICI since receiving the Request.

Table 2. Timeline of MICI actions to date

Date	Actions
2019	
4 February	Request received
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
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	Assessment mission to São José dos Campos
21 June	Assessment Report issued

II. CONSULTATION PHASE

A. Policy framework

- 2.1 The Independent Consultation and Investigation Mechanism is governed by the Policy set forth in document MI-47-6, approved by the Board of Executive Directors of the IDB on 16 December 2014 and updated in December 2015. Pursuant to that policy, Requesters may choose the Consultation Phase, the Compliance Review Phase, or both. When both options are selected, the process begins with the Consultation Phase.
- 2.2 The Consultation Phase aims to provide a flexible, consensus-based forum in which the Parties have the opportunity to address the issues raised in the Request. It is based on a series of methods that foster impartial, equitable treatment of all Parties involved in the process. This phase is also governed by the Consultation Phase Guidelines (document MI-74), which aim to facilitate, complement, and operationalize the effective application of Section H of document MI-47-6, and, particularly, paragraphs 24 to 35 thereof.
- 2.3 The Consultation Phase comprises three sequential stages: Assessment, Consultation Phase Process, and Monitoring. The Policy establishes the purpose and time limits for each stage. The objective of the Assessment stage is to determine if conditions are favorable for initiating a dispute resolution process mediated by the MICI. This stage is designed to achieve an in-depth understanding of the context of the project that gave rise to the Request and the central topics that the Parties could

address in a potential Consultation Phase process. Views are exchanged with the Requesters, the Executing Agency, and Management to determine whether it is feasible to initiate that process. Lastly, this stage should identify the individuals who could represent the Parties as well as their preferred methodologies for a potential process.

- 2.4 The aim of the Consultation Phase process is to reach an agreement between the Parties in response to the issues raised in the Request and addressed over the course of the MICI Process, reinforcing the Bank's commitment to comply with its relevant Operational Policies.

B. Assessment stage timeline

- 2.5 Pursuant to paragraph 29 of the MICI-IDB Policy, the maximum term for the Assessment stage is 40 business days from the date the Eligibility Memorandum is distributed to the Board of Executive Directors. The following activities took place during the assessment stage:

Table 3. Timeline of assessment stage activities

Date	Actions
2019	
26 April	Assessment stage started
29 April to 7 June	Review of project documents and compilation of similar impact-mitigation cases from around the world
7 May	Call with IDB Management
9 May	Call with the Requesters
29-31 May	MICI assessment mission
21 June	Assessment Report issued

C. Assessment methodology

- 2.6 In line with the MICI-IDB Policy and the Guidelines for the Consultation Phase, the MICI Consultation Phase team reviewed documentation, conducted phone and in-person interviews, and visited São José dos Campos. The main objectives of these activities were to study the project context, to jointly analyze the feasibility of a Consultation Process with the Parties, to determine the topics that the Process would cover, to learn the Parties' methodological preferences for a potential dialogue, and to identify alternative approaches given the risk of retaliation stated by the Requesters, which had led to their asking for confidentiality.
- 2.7 The MICI Consultation Phase team also analyzed several documents relevant to the processing of this case, including: the Request and its annexes; the project loan proposal and the contract amendment adding the overpass project to the program; the specific social and environmental impact assessment and social and environmental management plan for the overpass; and the information available about the project on the mayor's office website.
- 2.8 Prior to the assessment mission, the MICI team held telephone meetings with the Requesters and IDB staff responsible for the Program and, specifically, the overpass project. During the assessment mission, face-to-face meetings were held with the Requesters, the Project Team Leader, and the IDB Social and Environmental

Specialist, as well as with officials from the São José dos Campos mayor's office responsible for overseeing the works.

III. ANALYSIS

A. Current issues and context

- 3.1 **The issues.** As described in the Request (see Section I.C), the issues raised in the Request can be grouped into four areas. The first includes environmental and health impacts. This comprises allegations about the potential increase in air, noise, and visual pollution caused by the construction and operation of the overpass. The second area comprises the direct exposure of properties to the express road, and consequently the potential increase in accidents. The third concerns the potential decline in value of properties adjacent to the overpass. The fourth area covers timely access to information and communication mechanisms during construction and operation.
- 3.2 **Background and current context.** According to the Parties' statements, the dispute began around April 2018 when the bidding process began to select the company to carry out the construction work. Setup of the construction site began in August 2018, and work began in December.
- 3.3 On 6 February 2019, the mayor's office held a public-consultation event on the project. Lastly, on 18 February 2019, a contract amendment was signed by the IDB and the municipal government to include the works in the São José dos Campos Urban Structuring Program. The environmental and social impact assessment and the environmental and social management plan were published on the mayor's office website with the IDB logos, and the specialist presenting the studies and answering questions also introduced himself as an IDB specialist. Promotional material on the works including the IDB logo are on display at a shopping mall near the works.
- 3.4 At the time this report was prepared, no Bank disbursements for the project had been registered, and it was still being analyzed by the project team to determine whether it was eligible for financing under the program.

B. The Parties' viewpoints

- 3.5 In accordance with the definition given in the MICI-IDB Policy, the Parties for the Consultation Phase process are the Requesters, the Executing Agency—in this case the São José dos Campos mayor's office—and IDB Management.
- 3.6 **The Requesters** are two residents of the município of São José dos Campos whose homes are close to the project area and who would be impacted by the overpass. When the Request was submitted, the Requesters asked the MICI to keep their identities confidential for fear of retaliation.
- 3.7 During conversations and exchanges with the MICI, the Requesters reaffirmed the allegations of noncompliance and the impacts stated in the Request. First, they stated that they had not received timely information about the project and its construction and added that the project's complaints mechanism was not functioning correctly. Second, they highlighted their road-safety concerns for both vehicles and pedestrians, as buildings would be directly exposed to an express road. The road's

- lack of appropriate signage and separation would increase the accident risks. Third, they argued that the increase in vehicle traffic generated by the overpass would exacerbate noise and air pollution. Overall, they said the environmental damage would go beyond the impact just on their properties, and the air pollution and rise in particulate emissions would affect large areas of the city.
- 3.8 The Requesters felt the overpass to be incompatible with the principles of the município's urban mobility plan.
- 3.9 Accordingly, one week into the assessment mission, the Requesters informed the MICI in writing that they did not feel that a Consultation Phase process would be able to address the harm described in the Request.⁷
- 3.10 **Executing Agency.** Execution of the *Arco da Inovação* overpass is being overseen by the São José dos Campos mayor's office.
- 3.11 The mayor's office stated that the project has undergone the studies required by the Bank and by Brazilian legislation, and that a consultation process was held to exchange views with residents of the area impacted by it. It also stressed the importance of ensuring effective mechanisms for communication and participation with the persons affected and pointed out that a class action filed in December 2018 had been resolved in favor of the project's continuing. Additionally, the various polls on the overpass project found a high level of approval among the residents of its area of influence.
- 3.12 The mayor's office expressed its openness to exploring the impacts alleged in the Request and its willingness to take part in a rapid process focused strictly on finding solutions to the cited allegations.
- 3.13 **IDB Management.** The São José dos Campos Urban Structuring Program is under the responsibility of the Housing and Urban Development Division and is currently being supported by specialists from the Environmental and Social Safeguards Unit. As noted, the overpass project was added to the Program by a contract amendment on 18 February 2019.
- 3.14 IDB Management pointed out the importance of compliance with the environmental and social safeguards in the construction and operation of the overpass. Consequently, as part of project preparation, the Executing Agency had been required to prepare an environmental and social impact assessment and an environmental and social management plan. Management said those two documents were posted on the websites of the Bank and the mayor's office on 24 January 2019. Along the same lines, it indicated that the Executing Agency had held a Public Consultation on the project, attended by 59 people, on 6 February 2019.
- 3.15 Management stressed that it was conducting a feasibility analysis covering technical aspects of the overpass project. The completion of this process would determine whether the project is eligible for financing. Meanwhile, while the eligibility analysis is being completed, Management reiterated its openness to exploring solutions to the various impacts mentioned in the Request. Like the Executing Agency,

⁷ Written communication sent to the MICI by the Requesters on 10 June 2019.

Management expressed its interest in participating in a potential dialogue space addressing the impacts on the Requesters directly related to the overpass project.

C. Obstacles to starting a Consultation Phase or Dispute Resolution process

- 3.16 As a result of the assessment of the Parties' positions and interests and the analysis of the context of the overpass project, significant obstacles were identified to starting a joint process of identifying solutions in the context of the Consultation Phase. These included:
- 3.17 **Short time frame in which to produce agreements.** According to the information provided by the IDB project team, the operation is due to be completed in December 2019. The mayor's office also stated that the construction plans envisage completing the overpass on that date. Although all the processes are different and the methodologies used seek to adapt to specific situations, the rate of progress of the work does not help create the conditions for a dialogue. The task of rebuilding a minimum level of trust, preparing conditions, training the Parties, and exploratory activities take time, which is short in this case.
- 3.18 **Lack of minimum levels of trust between the Parties.** Although disputes often arise in relationships in which there is a lack of trust, in the case of the Request referred to here, the level of mistrust is high. Contributing factors in this situation include communication gaps and lack of information, compounded by a series of disagreements regarding the overpass project. Since the start of the dispute, the Parties' mutual accusations and blaming of each other regarding the environmental impact, acts that have been perceived as intimidation, breach of local legislation, and the use of informal channels and protests to express disagreement, etc. have become more pronounced.
- 3.19 **Issues.** Whereas a dispute resolution process would allow potential solutions and strategies for mitigating the specific impacts suffered by the Requesters to be explored, in this case they expressed an interest in addressing topics that, although directly related to the alleged impacts, were outside the scope of the MICI process. Examples include the usefulness and relevance of the overpass project in the context of the município's urban mobility policy, the município's policy on parks and green spaces, or the levels of air pollution the overpass could cause across the city of São José dos Campos as a whole.
- 3.20 **Insufficient willingness to start a Consultation Phase process.** Although the exchanges in the working meetings were substantive, enabled procedural matters to be clarified, and allowed certain technical options for the solution of the alleged impacts to be analyzed, the Requesters ultimately expressed their preference for their complaint to be processed in the Compliance Review Phase.

IV. CONCLUSION

- 4.1 On the basis of the analysis in the Assessment stage, it has been concluded that the conditions are not conducive to a potential dialogue process in the Consultation Phase.
- 4.2 Pursuant to MICI-IDB Policy paragraph 29(b) and Guidelines for the Consultation Phase paragraphs 5.6 and 7.6, the Consultation Phase is hereby deemed concluded. In line with the case-management preferences expressed in the

Request, and once this document is distributed to the Board of Executive Directors for its information, the case will be transferred to the Compliance Review Phase.

- 4.3 On 21 June 2019, the Requesters, the Executing Agency, and IDB Management were informed electronically of the results of the assessment in this report. The Board of Executive Directors will be informed once this document has been translated into English, after which it will be made publicly available on the online Public Registry at www.iadb.org/mici (Request file [MICI-BID-BR-2019-0142](#)).