

Expressions Of Interest (EOI) procedures as a means to develop national infrastructure



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In order “to ensure national development”, which was elevated to the level of a fundamental goal of the Federative Republic of Brazil by the constitution, the Brazilian State must invest in the country’s infrastructure, in particular in the areas of economic infrastructure (telecommunications, sanitation, roads, transportation, etc.), as defined by the World Bank.

The Federal Constitution distributes the responsibility for the development and exploitation of different infrastructure areas among the federal entities. The legal means for the exploitation of infrastructure range from administrative contracts, governed by the general law of tenders, to concession contracts – common, administrative or sponsored concessions – the last two juridically referred to as public-private partnership contracts.

Regarding the modeling of concession projects, the country’s legal framework allows private individuals, specialists in each of the infrastructure branches, to submit their projects to the Public Administration, according to the provisions of Art. 21 of the Law on Concessions, art. 31 of Law No. 9.074/95 and Art. 3 of the Law on PPP’s.

These legal instruments are regulated, at the federal level, by Decree no. 8,428, dated April 2, 2015, which disciplined the procedure called “Expressions of Interest” (EOI), by means of which private individuals can be, and have been, invited to provide infrastructure projects in various sectors of the economy.

Yet, the Federal Decree offers the possibility for companies to present an infrastructure project to the public sector by means of a Private Expression of Interest. If the project is of interest by the Public Administration, it may give rise to an EOI, which will make it possible for the administration to receive projects to improve, preserve or create infrastructure. The EOI’s around the country show that the Public Administration has been opening up to the possibility of receiving projects drawn up by the infrastructure market itself.



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Competition within the market for the choice of the best project has the potential to bring benefits to the Brazilian State, since the private individuals will have to show to the public administration what public necessity will be met by completing the project at hand and, more importantly, what the most appropriate means to achieve the goal to develop or improve that infrastructure is.

It is important to emphasize that modeling an infrastructure project must combine knowledge and practice in several areas, including the legal one. Those responsible for the legal modeling must, at least, do research on the legal framework regarding the infrastructure project that they intend to build, establish parameters for the concession contract, allocate the concession risks between the public and the private parties, and structure guarantees that keep the project running, in order to attract the attention of the private market and financiers.

The general guidelines outlined above show that the Brazilian legal framework, as a result of the various problems that the infrastructure sector has faced with unfeasible projects, continually fosters the Brazilian State to fulfill its constitutional mission to promote national development.