

**INSTITUTIONAL STRENGTHENING FOR THE CONCESSION OF
PUBLIC WORKS AND SERVICES**

(TC-97-03-40-7)

EXECUTIVE SUMMARY

EXECUTING AGENCY: CORDIPLAN

BENEFICIARIES: Republic of Venezuela and Venezuelan state governments

OBJECTIVES: Support the Government of Venezuela and the Venezuelan state governments in the development of a system for awarding public works concessions and in the promotion of private sector participation in providing, operating, and maintaining transportation infrastructure.

The specific objective of the program is to improve the legal and regulatory framework applicable to private sector participation in providing operating, and maintaining transportation infrastructure, giving national and state authorities the institutional and technical capacity to carry out this process, strengthening the system for regulating concessions, and promoting and taking part in specific projects.

FINANCING:	Modality:	grant - Window 1
	Beneficiary:	US\$1,500,000
	MIF:	US\$1,500,000
	Total:	US\$3,000,000

**EXCEPTIONS TO
BANK POLICY:** None.

**CONTRACTUAL
CONDITIONS:** The first disbursement will be conditional upon submission by the executor of evidence that the project's executing unit has been set up, its structure has been determined, the mechanisms for coordination with the states and MTC have been established, a coordinator has been appointed, and provision for sufficient operating resources has been made. Sixty days from signature of the technical cooperation agreement, the executor shall submit a plan of action which includes: (a) the timetable of activities; (b) preliminary terms reference for the main consultancies and studies to be performed under contract for the project; and (c) terms of reference for the personnel to be hired with local matching

Executive Summary

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funds, together with the hiring schedule and training plan for such personnel.

I. COUNTRY ELIGIBILITY

- 1.1 The MIF Donors Committee declared Venezuela eligible for all types of Fund financing on September 20, 1995. This program is consistent with the Fund's general objective of increasing private investment and fostering private sector activities as a basis for accelerating the economic growth and social development of the country.

II. BACKGROUND

A. Legal and institutional framework

- 2.1 The legal framework for the system of concessions is contained in Decree No. 138, enacted April 20, 1994, which has the status and force of Basic Law on National Public Works and Service Concessions. This legal framework allows for private capital participation in areas traditionally reserved for the public sector, and regulates the award of concessions for transportation infrastructure. Also governing this process is the Decentralization, Delineation and Transfer of Public Sector Authority Act, approved in 1989, which provides for the active participation of state governments in the process of administering various forms of transportation.
- 2.2 The Ministry of Transportation and Communications (MTC) has national jurisdiction for granting concessions. It comprises a Ministerial Office of Concessions (OMC), with responsibility for developing, administering, and regulating concession contracts. There is also a Presidential Commission on Concessions (CPC), which reports directly to MTC and is responsible for carrying out financial feasibility studies for concession projects.
- 2.3 Institutional organization at the state level varies. Some states have established autonomous transportation or highway boards that have granted concessions; in other states this function is performed by public works departments. In most cases, coordination among the states, through these entities, and between states and the national government through the OMC-MTC, has been either nonexistent or inadequate.

B. Decentralization of infrastructure and public works

- 2.4 Under the Basic Decentralization Act the national government has retained ownership of public infrastructure and its authority for constructing new works, but responsibility for operation and maintenance have been transferred to the state governments. The central government also retains responsibility for determining sectoral policies, promoting activities, interpreting market

trends, and monitoring and regulation of the sector (including the setting of tariffs).

- 2.5 There are internal inconsistencies and ambiguities in the law, and between the law and legislation being enacted by the states. The expansion and modernization of infrastructure are critical activities for which responsibilities have not been defined. It is not clear whether these activities are considered "new construction" (the responsibility of the national government) or "operation and maintenance" (the responsibility of the states). Due in part to this confusion, some states are exceeding the mandates of the Decentralization Act, establishing tariffs and expanding infrastructure without authorization from the central government. The transfer of infrastructure has been carried out through individual agreements with the states - agreements in which there is no clear delineation of national and state responsibilities, nor of the national government's authority to intervene in cases of inadequate operation or maintenance. There is a need for clear regulation of the Decentralization Act, specifically assigning these responsibilities and establishing parameters for the transfer of responsibilities to the states. At the same time, the transfers already carried out should be reviewed to bring them into line with the new regulations.
- 2.6 The contradictions and ambiguities of the Decentralization Act have resulted in conflicts and confusion over the respective roles of the national and state governments with regard to transportation infrastructure. This lack of clarity reflects errors at the national level in planning for long-term viability of the decentralization process, and will make private sector participation in providing services more problematic.
- 2.7 The Bank has recently approved a loan (VE-0058) in support of government modernization and decentralization through restructuring of the MTC and participation in the financing of public service subcontracting and concession pilot projects to be conducted in the states of Aragua, Mérida, and Falcón. The technical assistance proposed here would complement that loan, through development of a coherent legal and regulatory framework for the transport sector, institutional strengthening of the agencies responsible for the national- and state-level concessions, and the promotion of participation in the process by the community and sectors concerned.

III. PRIMARY COMPONENTS AND OBJECTIVES OF THE PROJECT

A. Objectives

- 3.1 The objective of the present technical assistance is to improve the legal and regulatory framework applicable to private sector participation in providing and operating transportation infrastructure, giving national and state authorities the institutional and technical ability to carry out this process, strengthening the system for regulating concessions, and promoting and taking part in specific projects.

B. Components

3.2 Component 1 - Policy framework:

- (i) establish a comprehensive transportation policy and strategy, clarifying the role of the nation and of the states in the sector, as well as specific policies and strategies for the different modes of transportation;
- (ii) clearly delineate the respective responsibilities and powers of the national government and the states in managing the transferred transportation infrastructure, defining a decentralization policy; and
- (iii) establish a concession policy governing private sector participation in providing, operating, maintaining, and financing transportation infrastructure and the roles of the national and state governments in this process.

3.3 Component 2 - Normative and regulatory framework:

- (i) review the existing legal and regulatory framework for transportation infrastructure and services concessions, including environmental factors, to gauge its effectiveness, identify shortcomings, and propose solutions in specific areas;
- (ii) review the existing legal and regulatory framework of the 1989 Decentralization Act, clarifying national and state responsibilities and powers; and
- (iii) define the inherent risks of concession projects, identifying the parties best able to withstand them. In particular, clarify the concept of "economic-financial balance" and determine what portion of the commercial risk will be absorbed by the government, and in what form.

3.4 Component 3 – Institutional Strengthening:

- (i) assist MTC in developing its capacity as the governing body for concessions, establishing strategies, technical standards, and tariff policies; strengthen its ability to provide technical and institutional assistance to state governments, facilitating the transfer of technology and information, as well as the sharing of experiences, etc.;
- (ii) improve the institutional capacity of state governments to develop their own concession and privatization programs, in accordance with national policies and guidelines, including training in the environmental management of their concession programs;
- (iii) training for professional staff in the MTC, CORDIPLAN and state governments, through technical visits to countries of the region, training courses, and workshops with international experts;
- (iv) develop a system for administering the concession contracts (regulatory system) at the national and state levels. Determine the advisability of establishing an independent, centralized body to regulate the state agencies, and the nature of its relationship with them; support its formation and implementation; and
- (v) provide a portion of the computer equipment needed by state concession and regulatory agencies.

3.5 Component 4 – Systematizing analysis and preparation of the bidding process:

- (i) review the concession contracts awarded at the national and state levels, including cofinancing policies and guarantees adopted by the state and national governments, providing assistance in the financial and technical analysis of such contracts;
- (ii) streamline and systematize the analytical methodology to be used by MTC and the state governments to determine which projects may receive concessions;
- (iii) prepare standard bidding documents and contracts for various types of transportation infrastructure and services;
- (iv) develop the technical environmental provisions to be included in concession contracts, specifying:
(1) methodologies for evaluating environmental liabilities and dividing responsibilities between

licensor and licensee; (2) the environmental requirements for highway construction, operation, and maintenance, and the responsibilities of the licensee; and (3) the penalties to be applied in cases of nonperformance.

- (v) develop financial models for the different forms of transportation to determine the financial viability of private sector involvement.
- (vi) prepare a program of transportation concessions for the next three years;
- (vii) evaluate the economic and financial dimensions of the concessions to be awarded to determine their potential interest to private investors;
- (viii) develop financing mechanisms and options for government participation or guarantees to allow projects greater access to national and international financial markets; and
- (ix) develop the methodology to evaluate user ability and willingness to pay and the income elasticity of demand for specific projects.

3.6 Component 5 - Disseminating information about the program and promoting the participation of interested sectors in the concession program:

- (i) organize workshops to obtain input from all legitimately interested sectors in the formulation of policies and the new institutional, legal, and regulatory framework for concessions; distribute the standard policies, bidding documents, and contracts among them for analysis and discussion;
- (ii) disseminate information about specific projects, help MTC and state governments identify the interested sectors - the affected community in particular - and develop communication and participation strategies during project development; and
- (iii) organize workshops after the projects are defined to disseminate information about the program and inform potential investors;
- (iv) organize an information and community participation campaign to bring the concession program to the public's attention and explain the advantages of private participation in infrastructure management, the

use of toll revenues, and the setting of toll rates according to the benefits derived by users.

C. Environmental factors

- 3.7 The proposed program will give special attention to the social-environmental considerations involved in road and highway projects. The transfer of power over activities in this sector, whether through decentralization or privatization, should guarantee adherence to the principles of environmental protection and sustainable use of natural resources. The mechanism for doing so is environmental evaluation and authorization by the Ministry of the Environment and Renewable Natural Resources - MARNR - supplemented by standards for environmental quality and resource management.
- 3.8 The system of concessions will rely on coordination between CORDIPLAN, MTC, the state governments, and MARNR, which is responsible for the environmental procedures. For this purpose: (i) MTC will retain its responsibility for issuing specific environmental standards for the road and highway sector 1/ based on MARNR guidelines for the preparation of environmental impact assessments (EIAs) and specific environmental evaluations by environmental authorities; MTC will also retain responsibility for overseeing management plans and, through its agencies, for supervising the EIAs; (ii) the program's coordinating unit will specify in the bidding documents the environmental obligations the licensee must fulfill while the contract is in effect; (iii) the concession and regulatory units, in coordination with MARNR, will ensure compliance with the environmental provisions contained in the concession contracts, apply the appropriate sanctions in cases of noncompliance, and establish remedial action to be taken by the licensee in cases of nonperformance.

IV. FACTORS RELATED TO EXECUTION

- 4.1 CORDIPLAN will be the executing agency, through a coordinating unit created for this purpose. This unit will be responsible for coordinating and supervising all program activities. An advisory committee will also be formed, made up of representatives from CORDIPLAN, MTC, and the Association of Governors representing the states. This committee will have the ability to make decisions and will advise the coordinating unit in determining guidelines and

1/ The standards will be independent of the responsibility for executing road and highway projects, which could be the responsibility of the state governmental sector or of private licensees.

policies, as well as in the selection of projects for consideration. CORDIPLAN, MTC, and the state governments will contribute technical personnel for development of the project.

V. COSTS AND FINANCING DURING EXECUTION AND IN THE OPERATIONAL STAGES

- 5.1 The budget for the project will amount to US\$3 million. CORDIPLAN, MTC, and the state governments will contribute 50%. The project's coordinator will be financed through international technical cooperation assistance. In order to assure the availability of matching funds for the program in a timely way and by appropriate means, the formation of a trusteeship or similar mechanism is envisioned.
- 5.2 The timetable for execution of the project will extend over 18 months with a 24-month disbursement period. Both periods will be calculated from the effective date of the agreement. The executor may ask the Bank to make direct payments for the procurement of goods and services and the hire of consultants for the project.
- 5.3 Following, a summary of the budget is presented:

Tentative Budget (US\$ in thousands)

ACTIVITY	MIF	LOCAL CONTRIBUTION	TOTAL
1. Policy framework	50	50	100
2. Legal and regulatory framework	300	170	470
3. Institutional strengthening	410	300	710
4. Systematization of bidding analysis and processing	440	370	810
5. Dissemination of information on the program and participation of interested sectors	100	140	250
Subtotal	1370	970	2340
6. Coordination and supervision	120	280	400
7. Contingencies	130	130	260
TOTAL COST	1500	1500	3000

VI. EVALUATION

- 6.1 The program will result in a framework of laws and standards clearly delineating the responsibilities and powers of the national and state governments in awarding concessions and privatizing transportation services and infrastructure. The necessary concession and regulatory units and institutions will be in place at both the national and state levels, along with the political/institutional framework and the tools and technical capabilities required to manage the concession process in a rational and efficient manner.
- 6.2 This experience can potentially be applied in other jurisdictions (states and municipalities wishing to use concessions in their own jurisdictions) or sectors (such as ports and airports) which can benefit from the experience gained in the course of this operation by MTC and the participating state governments.
- 6.3 The political readiness of the national and state governments to carry out the privatization and concession process suggests that no significant risks will be encountered in providing this technical assistance. The project's success will depend to a great extent on the national government's defining consistent national decentralization and concession policies, and on coordination with the states in developing these policies.

VII. CRITERIA FOR EVALUATING RESULTS AND PERFORMANCE

- 7.1 The execution of each project component requires strict coordination between the executor, MTC, the states, and the Bank. Bank supervision will be exercised through periodic meetings between its sectoral specialist, through the Bank's representative in Venezuela, and the executor and coordinator of the program. Annual administrative missions will also perform this function, and twice-yearly reports will be prepared and submitted to the Bank by the executor within thirty days following the end of each six month period. Within ninety days of project completion, the executor will submit a final report to the Bank.
- 7.2 Such reports shall include, at a minimum, the following information: (i) a summary of the activities executed during the period concluded; (ii) the degree to which the expected results, as set forth in the logical framework, have been produced; (iii) problems encountered during execution of the project, and measures taken to solve them; (iv) recommendations on funding transfers among different sections of the budget without changing the type or increasing the amount of funding, as well as possible reprogramming of activities due to difficulties encountered, with

any such recommendations requiring Bank approval; and (v) a short term plan of action for the succeeding period. In addition, the consultant reports and preliminary and final reports on specific studies should be provided to the Bank for review upon submission.

- 7.3 The criteria for evaluating the performance of specific tasks are detailed in the Annex.

VIII. EXCEPTIONS TO BANK POLICY

- 8.1 The program does not entail any exceptions to Bank policies or procedures.

IX. SPECIAL CONTRACTUAL CONDITIONS

- 9.1 Disbursements will be carried out according to Bank procedures. The first disbursement will be conditional upon submission by the executor of evidence that the project's executing unit has been set up, its structure has been determined, the mechanisms for coordination with the states and MTC have been established, a coordinator has been appointed, and provision for sufficient operating resources has been made. Sixty days from signature of the technical cooperation agreement, the executor shall submit a plan of action including: (a) the timetable of activities; (b) preliminary terms reference for the main consultancies and studies to be performed under contract for the project; and (c) terms of reference for the personnel to be hired with local matching funds, together with the hiring schedule and training plan for such personnel.

**VENEZUELA — MIF
INSTITUTIONAL
STRENGTHENING IN THE CONCESSION OF PUBLIC WORKS AND SERVICES
TC-9703407
ACTIVITIES AND RESULTS**

Objective: Support the government of Venezuela and the state governments in developing the system for public works concessions. The specific purpose of the project is to develop a legal and regulatory framework for private sector participation in providing, operating and financing transportation infrastructure, giving national and state authorities the legal and technical capabilities for carrying out this process, strengthening the system for regulating concessions, promoting and monitoring in specific projects.

Components	Activities	Expected Results
Public works	<ul style="list-style-type: none"> - Establish comprehensive transportation policy and strategy - Clarify responsibilities and powers of the central government and the states, defining the policy on decentralization of transferred infrastructure - Establish policy for concessions and define the roles of MTC and the states 	<ul style="list-style-type: none"> - Issuance of a policy document on public works concessions clearly delineating the roles and responsibilities of MTC and the states
Development of the legal and regulatory framework	<ul style="list-style-type: none"> - Review the existing legal and normative framework for awarding concessions, including environmental factors; develop new regulatory framework - Review the existing legal and normative framework of the 1989 Decentralization Act, clarifying national and state responsibilities and powers; develop new regulatory framework - Define the risks inherent in projects concessions, identifying the parties best able to withstand them 	<ul style="list-style-type: none"> - Approval — by law or decree — of a new legal framework regulating the relationship between the national government and the states - Signature of complementary agreements for the transfer of infrastructure

Components	Activities	Expected Results
strengthening	<ul style="list-style-type: none"> - Assist MTC in its role as the governing body for concessions, and in the coordination of concession awards among the states; organize systems for providing national technical assistance to the states, facilitating the transfer of technology, information, experience, etc. - Develop the institutional ability of the state governments to develop their own programs of concessions and privatization, in accordance with national policies and guidelines. - Train professional personnel from the state governments and MTC through technical visits to countries of the region, attendance at courses, and seminars with international experts - Develop the system for administration of concession contracts (regulatory system) at the national and state levels. Determine the advisability of establishing an independent, centralized body to regulate the state agencies, and the nature of its relationship with them; support its formation and implementation - Provide a portion of the computer equipment needed by state concession and regulatory agencies 	<ul style="list-style-type: none"> - SAC formed and personnel trained - At least five states have participated in the - 25 professionals trained

Components	Activities	Expected Results
g analysis and preparation of process	<ul style="list-style-type: none"> - Review the concession contracts awarded at the national and state levels, including cofinancing policies and guarantees adopted by the state and national governments, providing assistance in the financial and technical analysis of such contracts - Streamline and systematize the analytical methodology to be used by MTC and by the state governments to determine which projects may receive concessions - Prepare standard bidding documents and contracts for various types of transportation infrastructure and services - Develop financial models for the different forms of transportation to determine the financial viability of private sector involvement - Prepare a program of transportation concessions for the next three years - Evaluate the economic and financial dimensions of the projects to be awarded to determine their potential interest to private investors - Develop financing mechanisms and options for government participation or guarantees to allow projects greater access to national and international financial markets; and - Develop the methodology to evaluate user ability and willingness to pay and the income elasticity of demand for specific projects 	<ul style="list-style-type: none"> - Methodologies for project selection and p financial evaluation - Approval of standard bidding documents contracts - Revised toll rate structure for the various f transport infrastructure; determination of c pay, with adjustments in the structure as a - Clear assignment of risks according to typ

Components	Activities	Expected Results
<p>g information about the promoting the participation sectors in the concession</p>	<ul style="list-style-type: none"> - Organize workshops to obtain input from all legitimately interested sectors in the formulation of policies and the new institutional, legal, and regulatory framework for concessions; distribute the standard policies, bidding documents, and contracts among them for analysis and discussion - Disseminate information about specific projects, and help MTC and state governments identify the interested sectors — the affected community in particular — and develop communication and participation strategies during project development - Organize workshops after the projects are defined to disseminate information about the program and inform potential investors - Organize an information and community participation campaign to bring the concession program to the public's attention and explain the advantages of private participation in infrastructure management, the use of toll revenues, and the setting of toll rates according to the benefits derived by users 	<ul style="list-style-type: none"> - Three seminars (one at the national level and two at the state level for participating states) - Publication and dissemination of the policies and regulations for concessions - System for providing public information on the use of toll revenues; collected funds will be used

PROPOSED RESOLUTION

**VENEZUELA. TECHNICAL COOPERATION. INSTITUTIONAL STRENGTHENING PROGRAM IN
CONCESSIONS OF PUBLIC SERVICES AND WORKS**

The Donors Committee of the Multilateral Investment Fund

RESOLVES:

1. That the President of the Inter-American Development Bank, or such representative as he shall designate, is authorized, on behalf of Multilateral Investment Fund, to enter into such agreements as may be necessary with the Republic of Venezuela and to adopt such other measures as may be pertinent for the execution of the plan of operations referred to in Document MIF/AT-_____, with respect to a technical cooperation in support of an Institutional Strengthening Program in Concessions of Public Services and Works.

2. That up to the amount of US\$ 1,500,000 is authorized for the purpose of this resolution, chargeable to the Technical Cooperation Facility of the Multilateral Investment Fund.

3. That the above mentioned sum is to be provided on a non-reimbursable basis.