

CONSORTIA AGREEMENTS: STRUCTURING THE DEALS - PLMJ

Posted on 25/04/2009



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Lessons from the past can help consortia prepare for future Portuguese projects, says Maria Castelos, partner in the PLMJ project team.

The current 'boom' in Portuguese road, rail and projects, is just the latest stage in more than two decades of infrastructure developments in Portugal, for Maria Castelos, of PLMJ in Lisbon. The issue for potential investors, contractors and operators, is therefore what prior lessons have been learnt that can be applied by those involved in forthcoming projects consortia?



Over the coming year, Portugal will continue to see the development of its road concessions program, high speed rail links between Lisbon and Porto, which will ultimately connect to the border and Spain's own high speed AVE rail network and initial work begin on the new €4.9bn international airport to the south of Lisbon, at Alcochete.

El auge actual en Portugal de carreteras, ferrocarriles y proyectos no es más que la última etapa de

dos decenios de creación de infraestructuras en Portugal, según opina Maria Castelos, corresponsable del área de Mercantil en PLMJ en Lisboa. Por lo tanto, la cuestión para posibles inversores, contratistas y operadores es saber qué han aprendido con anterioridad que pueda ser aplicado por aquellos que vayan a participar en futuros consorcios de proyectos.

'These projects have been on the agenda for some time and to a certain extent it is now mere overlap that brings them. Although necessary they are also an expression of the government's established policy and, in the current environment, a political option to kickstart the economy in line with the global emphasis on the need for greater public investment.'

The Portuguese authorities, notes Castelos, now have a well-established framework for the award and management of major public projects and also a new Public Contracts Code.

'The government has an established bid process which is most commonly used, and which we expect to continue to be the case. Due however to the dimension of some of these projects they are being split into different smaller projects, in order to facilitate management as well as to lessen any risks associated with reliance on a single contractor or operator,' she says.

In relation to the development of Portugal's new high speed train network, the project has, for example, been segregated along construction, signalling and ultimately rolling stock.

Lessons learnt

But despite the long history of projects in Portugal, common 'sticking points continue to arise in both the bid and construction phases, adds Castelos.

'Issues around the allocation of risk to the entity best equipped to deal with it, the attainment of an adequate balance of risk and the consideration received by each group within a consortia, as well as corporate governance issues are, needless to say, usually the driving forces in negotiations.'

Different industry sectors bring different risks but so also might the different 'weight' of each of the several interested groups gathered in any one consortia, says Castelos. In order to overcome such issues, it is important therefore for the different elements to not only have a common goal, but to also understand the different motivational goals of each other.

'A clear identification of the different perspective and interests of each group within the consortia is fundamental, but so too is the need for adequate corporate structures to be set in place – to reflect at the governance level the different weight and allocation of risks agreed.'

It is also very important, she emphasises, that specific roles are agreed and assigned as early as possible in the project process, in order to ensure not only that the potential for friction is reduced, but also so that contractual bids are seen in the best possible light – that they can be compared to other bids, and any relevant background information sought by the awarding body.

'It is crucial that the roles of each group of members of the consortia are clearly defined and the adequate governance mechanisms in place to ensure smooth pre-bid and post-bid conduct of business,' says Castelos.

Her firm's track record in the projects arena since its earliest days helps to reaffirm a belief in the maxim that 'those who fail to prepare, prepare to fail' . 'Only failure in the projects arena has the potential to be much more high profile and costly than many other business arenas,' she says.