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**PUBLIC PRIVATE
PARTNERSHIPS OF THE
STATE OF BAHIA**

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Abstract: This article is a research on the contracting regime entitled Public-Private Partnership and addresses, in particular, the existing projects and those to be implemented, in this modality, in the State of Bahia. The research was developed by bibliographic, documentary and official websites of the Federal Government and the State of Bahia, which stands out, in the national scenario, for the vanguard in the adoption of this type of investment solution. We sought to report the main projects already implemented in the State, those that are still in the implementation phase and some still under study.

Keywords: Public procurement, Public-Private Partnership, Tenders and Contracts.

INTRODUCTION

Public-Private Partnerships (PPP) as the name suggests, are agreements signed between a public agency and a private entity whose object is the implementation of projects of social interest. As a counterpart to the partial financing of the project, which exempts the State, the private sector receives the right to explore the enterprise for a given period, thus, the Public Administration reaches the intended objective in a shorter time with a smaller initial financial disbursement, Camacho (2008).

PPPs are relatively recent instruments in our legal system and aim to bring advantages to Public Administration contracts, especially in a scenario of scarcity of resources that makes it difficult to carry out infrastructure works that, as a rule, are expensive and compromise the public budget and, therefore, on the other hand, they do not arouse the interest of the private sector, as they do not guarantee rewarding returns, Peci and Sobral (2007).

The creation of Public-Private Partnerships, in a way, is related to the weakening of the Social Welfare System that prevailed as a

public policy in the post-war period, especially in the Western world. The Welfare State was characterized by strong state action in the political, economic and social fields, aiming to ensure better material living conditions for the population, Martinez (2004).

The economic crises that followed from the end of the 1960s, associated with the excessive growth of state structures, made it impracticable to maintain the Welfare System, as increasing state expenditures resulted in fiscal deficits. On the other hand, in the political-ideological spectrum, the dissolution of socialist countries in Eastern Europe, from the 1990s onwards, made the welfare appeal of the State diminish in the scope of Western societies.

It is important to clarify that the Welfare State has a characteristic historical landmark that was the Marshall Plan adopted by the United States of America for the reconstruction of Western Europe. The Program had the political-diplomatic objective of containing the socialist advance in the region, thus, the breakup of the socialist bloc caused one of the reasons for encouraging Social Welfare to disappear, Martinez (2004).

The advent of the apparent impossibility of maintaining the Welfare State, for financial, political and ideological reasons, gives rise to the emergence of neoliberalism that advocates in favor of private initiative. The neoliberal ideal preaches the existence of a government that limits itself to providing the conditions of security and stability of society, which does not act as an economic agent. It is the conception of the Minimum State.

Some countries sought to implement the Minimum State to replace the Welfare State, while others, such as Brazil, conceived the Democratic State of Law. Among the attributes of the Rule of Law there is the humanized public interest, which is concerned with the essential values for a dignified existence, and

not just with the intended material goods, Doná (2009).

The design of humanized public interest gave rise to the concept of Subsidiary State or Regulatory State in which Governments must only invest in areas where the private sector could not or would not act, and on the other hand, must regulate and supervise activities that were of interest to the initiative. private sector, seeking to avoid economic abuses by companies in relation to the population. The idea of the Subsidiary State was to limit state action without, however, being confused with the concept of a minimal State preached by neoliberals, Doná (2009).

From the evolution of this context, a mixed investment model emerged that associated State action to private entrepreneurship, the Public-Private Partnerships, which aimed to allow companies to act in areas of public interest that were not very profitable and, on the other hand, allowed the government to reduce expenses in the execution of infrastructure works or services.

The current PPP model emerged in England in the mid-1990s, having been initially called the project finance initiative (PFI), and later called public-private partnerships. This model has spread around the world, being copied by countries such as France (*marché d'entreprise de travaux publics - METP*), Portugal, Italy, Spain, Australia, South Africa, Ireland, among others, Doná (2009).

In fact, the role of the private sector in public goods, as well as the exploitation of production, distribution and control activities, under the command of the government, is an ancient tradition, not only in Brazilian history, but throughout the world. In the late 19th and early 20th centuries, much of the public infrastructure in Brazil was extremely successful, through partnerships between the public and private sectors, Cintra (2014).

As an example we have our railroads, built

and operated by the private sector, as well as the water concessions, the distribution of electric energy, the collective transport and the tram companies of São Paulo. However, this tradition has been forgotten in the national context, but has recently been revived through Public-Private Partnerships, Cintra (2014).

However, from the beginning of the 2000s, Public-Private Partnerships began to be included in the Brazilian legal system to make investments in infrastructure feasible, given the country's need for growth. The institution of this instrument occurred due to a long period of privatization that began in the 1980s, as a result of the creation of the National Privatization Program (FORTINI apud GRABRICH and FERNANDES, 2014).

After a long period of gradual increase in the government's role in the economy, which began in the 1930s, in the Vargas era, in the late 1970s the Brazilian State began to dispense with the need to reduce its role in the economic field. In 1979, President João Figueiredo announced the National Debureaucratization Program and the creation of the Special Secretary for State Control (Sest).

The point at issue at that time was not the inefficiency of state-owned companies, but the need to slow down the expansion of the state-owned commercial sector in order to control aggregate demand, a difficult task given the almost total lack of control of these companies by the federal authorities, Pinheiro (2000, page 11).

...The priority was no longer growth and import substitution, but controlling inflation and, above all, overcoming the exchange rate crisis. As state-owned companies were responsible for a considerable part of domestic investment and consumption, it would be almost impossible to stabilize the economy without some kind of control over their expenditures and without eliminating or at least reducing their deficits, Werneck apud Pinheiro (2000, p. 12).

The present study aims to expose the main characteristics of the contracting modality called Public-Private Partnership, particularly the existing projects and those to be implemented in the State of Bahia, as well as seeks to demonstrate the potential benefits that the projects listed by the Government may bring to the people of Bahia, especially to the populations directly affected by the works implemented.

THEORETICAL REFERENCE

In the Federal Constitution of 1988, the need to regulate the contracting of materials and services within the Public Administration was established:

Art. 37. the direct and indirect public administration of any of the Powers of the Union, the States, the Federal District and the Municipalities shall obey the principles of legality, impersonality, morality, publicity and efficiency, as well as the following: (Wording given by Constitutional Amendment number, from 1998)

XXI- except for the cases specified in the legislation, the works, services, purchases and disposals will be contracted through a public bidding process that ensures equality of conditions to all competitors, with clauses that establish payment obligations, maintaining the effective conditions of the proposal, under the terms of the law, which will only allow the requirements of technical and economic qualification indispensable to guarantee the fulfillment of obligations, Brazil (1988).

The Federal Constitution also stipulated that legal conditions be created to regulate other types of contracts that allow the provision of essential services to the population:

Art. 175. It is incumbent upon the Public Power, as provided by law, directly or under a concession or permission regime, always through a bidding process, to provide public services.

Single paragraph. The law will provide for:

I- The regime of public service concessionaires and permissionaires, the special nature of their contract and its extension, as well as the conditions for expiry, inspection and termination of the concession or permission;

II- The rights of users;

III- tariff policy;

IV- The obligation to maintain adequate service, Brazil (1988).

In 1993, Law 8,666 of November 23 regulated the system of bidding and contracts for all direct and indirect public administration entities in municipalities and foundations, Brazil (1993). Also in response to the Federal Constitution regarding the constant provision for public concessions, the National Congress enacted Law 8,987, of 1995, which provided for the concession and permission regime for the provision of public services provided for in art. 175 of the Federal Constitution, and other provisions, Brazil (1995).

Also in compliance with the constitution, in the same sense, Law 9,074 of July 7, 1995 was enacted, which established rules for granting and extensions of concessions and permissions for public services and other measures, Brazil (1995). However, the increasing reduction in the financial availability of the Union and other federative entities required measures more suited to the constant needs of investments in infrastructure.

In response to these demands, the Executive Power presented Law Project number: 2,546 to the National Congress in November 2003, which was approved after a long negotiation process, giving rise to Law number: which consolidated the general rules for public-private partnership bidding and contracting within the scope of public administration, Peci and Sobral (2007).

Public-private partnerships were established in the legal system as new types of public concessions provided for in article 175 of the CF and regulated in Law 8,987 of 1995, thus, according to article 2 of Law 11,079:

Art. 2 - Public-private partnership is the administrative contract of concession, in the sponsored or administrative modality.

§ 1 - Sponsored concession is the concession of public services or public works referred to in Law number: 8,987, of February 13, 1995, when it involves, in addition to the B tariff charged from users, a pecuniary consideration from the public partner to the private partner.

§ 2 - Administrative concession is the contract for the provision of services of which the Public Administration is the direct or indirect user, even if it involves the execution of work or the supply and installation of goods, Brazil (2004).

It is important to point out that, despite the maintenance of the deficit situation of many federated entities, and even after the creation and implementation of the general PPP law, the Brazilian State used this contractual modality little in the projects of large infrastructure works. However, lately, after more than ten years of the enactment of the aforementioned law, several public administration entities began their studies on contracting via Public-Private Partnerships, Grabrich and Fenandes (2014).

The State of Bahia stands out among those who seek to maintain the level of investment using Public-Private Partnerships, as well as among those who have improved the use of this promising tool. In addition, Bahia has already concluded projects that were executed in the PPP modality and that serve as an example of success or studies for improvements to the administrative instrument resulting from Law 11,079.

The projects developed by the Government

of Bahia and the potential benefits of each one of them implemented in the State and, mainly, in the locations where the projects are structured, will be presented in the following article, as well as new projects that are in the of development and the potential of each of them.

PUBLIC-PRIVATE PARTNERSHIPS OF THE GOVERNMENT OF BAHIA

FONTE NOVA ARENA

Although there is some controversy about the admissibility of framing the project of a football stadium as an infrastructure work, the restructuring of Arena Fonte nova took place along the lines of a PPP. The project was conceived within the adaptations that took place in the country for the reception of the Football World Cup, which took place in 2014, in Brazil.

The project was structured as an administrative concession for the reconstruction and operation of the Octávio Mangabeira – Fonte Nova stadium. Concessionária Fonte Nova Participações S/A was contracted in January 2010 for a period of 35 (thirty-five) years to rebuild and operate the Multiuso Arena, having until 12/31/2012 to complete the works and start operations in January 2012. 2013, SEFAZ (2009).

According to data available on the official website of the government of Bahia, the value of the annual consideration is R\$ 107.32 million to be paid over 15 years, from the start of operations of the enterprise. The conversion of the old stadium into a Multipurpose Arena, with capacity for 50,000 fans, aimed to provide the city of Salvador with a facility capable of hosting FIFA World Cup 2014 games, also allowing the population to have important leisure equipment, sport and entertainment, after the closing of the World Cup, SEFAZ (2009).

SUBMARINE OUTFALL PROJECT

From the railway suburb and from Lauro de Freitas to the sea at a distance of about 4 km from the shore, without polluting the environment, the project provided for works on the surface and underwater. consisted of construction and operation of the Jaguaribe Ocean Disposal System, and included the expansion of the Saboeiro Pumping Station, the implementation of pumping lines, the construction of a Preconditioning Station and the implementation of Land and Submarine Outfalls. The project provided for more than 1 million people from the municipalities of Salvador and Lauro de Freitas to benefit from the works, SEFAZ (2006).

The administrative concession contract was signed in December 2006 with Concessionária Jaguaribe S/A, which was contracted for a period of 18 (eighteen) years to build and operate the system, with 2 (two) years for the execution of the works and another month of pre-operation, however, construction started only in June 2008 and, in 2011, with delay, the first part of the project was delivered, SEFAZ (2006).

The public consideration will be paid through receivables from Empresa Baiana de Águas e Saneamento - EMBASA, a non-dependent state-owned company. According to information available on the website of the Government of the State of Bahia, the value of the monthly consideration is R\$ 3.385 million, in 183 installments in a total amount of R\$ 619.46 million, SEFAZ (2006).

SUBURB HOSPITAL PROJECT

Hospital do Subúrbio, located in the town of Periperi, in Salvador, was the first public hospital in Brazil made possible by a Public-Private Partnership. The project started in 2010 and conceived a unit dedicated to urgent and emergency care. Initially with 298 beds, 30 of which were in home care, after the

delivery of the enterprise, in 2012, it started to accommodate 373 beds, of which 253 are hospital beds in a ward and 60 in intensive care, including ten beds in a pediatric Intensive Care Unit (ICU) and the others for adult patients. The unit also has 60 beds under home care, SEFAZ (2010).

The construction of the unit, carried out by the State, required an investment of approximately R\$ 54 million, and the initial investments by the private partner to equip and start the assistance were approximately R\$ 36 million. The hospital benefits about 1 million inhabitants from all over the suburbs, in addition to the population of neighborhoods such as Valéria, Cajazeiras, Castelo Branco and Pau da Lima and municipalities in the Metropolitan Region of Salvador, SEFAZ (2010).

It is operated by the Prodal Saúde SA consortium, winner of the Public-Private Partnership bid with a concession term of 10 (ten) years and the concessionaire's remuneration is solely through public consideration estimated at R\$1,075,002,835.08 (one billion, seventy-five million, two thousand, eight hundred and thirty-five reais and eight cents), SEFAZ (2010).

COUTO MAIA INSTITUTE

With new facilities in Águas Claras, it is one of the most modern hospitals specialized in treating patients with infectious and parasitic diseases in Brazil, with urgent, emergency and outpatient care, with 120 inpatient beds, 20 of which are in the Intensive Care Unit (ICU), SEFAZ (2013).

The hospital is managed by Concessionária Consórcio Couto Maia and was contracted in May 2013 for a period of 21 (twenty-one) years and 4 (four) months, with 1 (one) year and 4 (four) months of investments with a forecast of approximately R\$ 95 million and carrying out pre-operational activities and 20 (twenty)

years of operation. The annual amount of the State government consideration is R\$ 41.2 million to be paid over a period of 20 (twenty) years, from the start of operations of the concession services, SEFAZ (2013).

DIAGNOSTIC IMAGING PROJECT3

In order to provide the health system with telemedicine services, bioimaging diagnostics, the State government conceived the pioneering initiative in the country to establish an image diagnostic project, consisting of an Imaging Center and 12 Hospital Units that are part of the of the State Health Department's Own Network.

For the execution of the project, the Government of the State of Bahia hired, under a Public-Private administrative concession, the Concessionária Rede Brasileira de Diagnósticos SPE SA for the management and operation of the Diagnostic Support Service, which will provide the provision and will carry out the following types of exams: conventional radiology, mammography, computed tomography and magnetic resonance.

The concession period will be 11 years and 6 months, counting from the date of signature of the concession contract, the annual amount of the State government consideration is BRL 81,682,557 (eighty-one million, six hundred and eighty-two thousand, five hundred and fifty-seven reais) to be paid for 20 (twenty) years, from the beginning of the concession services operations, SEFAZ (2013).

LIGHT RAIL VEHICLE PROJECT

In the area of urban mobility, the government of Bahia launched the tender notice for the Light Rail Vehicle (VLT) that was published in May 2017. The purpose of the contract is the delegation, through a public-private partnership in the sponsored concession modality, implementation and operation of the VLT.

The VLT was designed to replace the Suburb Train system and will be 18.5 kilometers long and have 21 stations. The estimated value for the entire project is around R\$ 1.5 billion (one and a half billion). The deadline for completion of the works was 24 months after signing the contract and provided for the execution of three sections:

Section 1: Part of the Calçada Railway Station, the main station of the current suburban train towards the Comércio district, with a total length of 3.5 kilometers.

Section 2: Extension from Estação da Calçada to Baixa do Fiscal, with approximately 1.1 kilometers.

Section 3: Part of the Baixa Fiscal stop to the final point in São Luís de Paripe, with about 13.9 kilometers, SEDUR (2017).

The Subúrbio VLT intends to replace the current train system that runs the line from Estação da Calçada to Bairro de Paripe, in the suburbs of Salvador, benefiting more than 600,000 residents in the region. It will connect the Comércio district, in Salvador, to São João Island, in the municipality of Simões Filho, in the Metropolitan Region of Salvador. With about 20 kilometers long, 22 stations and capacity to transport about 150 thousand users per day, the tram will be a monorail type, powered by electric propulsion, without emission of polluting agents that harm the environment, SEDUR (2017).

The contract was signed by the State Government and the Skyrail Bahia consortium, composed of the companies BYD Brasil and Metrogreen, responsible for the implementation and operation of the system, through the Public-Private Partnership modality. After signing the contract, which took place in February 2019, the work is expected to start within six months. Interventions are expected to be completed within 24 months of being initiated. The total planned investment of the Monorail VLT is 1.5

billion for phase 1, stretch between Comércio and São João Island, SEDUR (2017).

SALVADOR AND LAURO DE FREITAS METRO PROJECT

Also to serve the urban mobility of the city, the government of Bahia, through a sponsored concession, established a project for the implementation and operation of the Salvador and Lauro de Freitas Subway System, for the conclusion of the works of line 1, construction and construction of line 2 of the subway, connecting the municipalities of Salvador and Lauro de Freitas, with a total length of about 33 km.

The Salvador and Lauro de Freitas Subway System will cover the construction of a new section, from Pirajá to Águas Claras, with a length of 5.5 km, complementary to Line 1. With this, and the extension of Line 2, which includes the implementation from a station in Lauro de Freitas, the system will be 42 km long. Line 1 opened in December 2015 with 12 km of the original subway project. Line 2 began to be implemented in 2015 and went into operation in December 2016. In addition to the subway stations, the system has seven integration terminals with urban and metropolitan buses that were built or renovated by the State Government (SEDUR, 2013).

With an investment of R\$3.6 billion for the completion of Line 1 and implementation of Line 2, the Salvador and Lauro de Freitas Metro System has 20 stations in full operation and is used by an average of 370,000 users per day. Since the beginning of operations of the Salvador and Lauro de Freitas Subway System, managed by CCR Metrô Bahia, almost 180 million people have been transported.

The term for the concession is 30 years, between works and operation of the system. (SEDUR, 2013).

BA-52 ROAD SYSTEM PROJECT

The Government of the State of Bahia, through the Secretariat of Infrastructure (SEINFRA) and together with the PPP Unit of SEFAZ, are structuring a public-private partnership project for the BA-052 highway located in the hinterland of Bahia, which aims to maintain and of 684.6 km of highway and, possibly, the construction of a new bridge of about 1 km connecting the municipality of Barra to that of Xique-Xique. This project will promote the modernization of local infrastructure, helping to reduce bottlenecks in the transport of agricultural products and increasing the safety of pedestrians and drivers (SEINFRA, 2018).

The project provides that the BA-052 Highway System will comprise four segments of state highways (BA-052, BA-148, BA-160 and BA-432), totaling approximately 686.7 km in length. Currently, the BA-160 connects the municipality of Xique-Xique to the east bank of the São Francisco River, in the municipality of Barra, with the continuity of the crossing carried out through a river connection by means of ferries. The project provides for the construction of a road bridge between the mentioned municipalities, from which there will be better conditions for the flow of current and future vehicle flows on this axis (SEINFRA, 2018).

A complete feasibility study of the project is in progress, as, among other aspects, the highway has very diversified traffic volumes, with a large flow of vehicles in the vicinity of Feira de Santana and small flows in the stretch between the municipalities of Morro do Chapéu and Irecê., with the exception of the vicinity of the latter municipality.

The BA-052 Highway is included in practically all of its extension in the BA-052 Highway System, from km n° 1, next to the junction with Federal Highway BR-116, in the municipality of Feira de Santana, to the

final end, along to the urban segment of the municipality of Xique-Xique.

Currently, BA-052 is 461.1 km long, in a single lane, with one traffic lane in each direction, a muster with variable dimensions, including segments without a muster, and constitutes the main penetration axis for the interior of the State (SEINFRA, 2018).

SÃO FRANCISCO LOGISTICS PLATFORM PROJECT

The implementation of this platform aims to provide the region of Juazeiro with a set of integrated equipment in which activities related to transport, logistics and distribution of goods will be developed, both for the domestic and international markets. The services offered by the platform must be accessible to different logistics operators and developed in specialized facilities that will bring synergy and economy of scale advantages.

The studies predict that the platform will also be equipped with public services that allow and speed up the execution of operations, as well as the intermodal transport infrastructure (road, rail and river) which will allow for the optimization of the different economic activities already implemented in the region., stimulating the attraction and development of other potentially viable, non-existent or of little current expression (SEFAZ, 2007).

The strategic location of Juazeiro is one of the main reasons why the municipality was chosen for the installation of the São Francisco Logistics Platform, one of the structuring projects of the Government of Bahia and a central element in the operation of the Juazeiro-Petrolina Logistics System. The prospect is that it will move up to 33 million tons per year and generate 2,400 jobs in its construction (TRIBUNA DA BAHIA, 2012).

SOLID URBAN WASTE MANAGEMENT AND MANAGEMENT

The government of Bahia launched an Expression of Interest Procedure (PMI) for the elaboration of a Public-Private Partnership project and Complementary Studies for the management and management of Urban Solid Waste in the State of Bahia, which aims to establish a Public Partnership program -Private for the implementation and operation of the set of activities, infrastructures and operational facilities for transport, transshipment, treatment of urban solid waste and environmentally adequate final disposal of tailings, for a period of 30 (thirty) years, SEFAZ (2014).

The PMI intends to count on the participation of municipalities in Bahia, public civil associations and the private sector to contribute with technical, legal and economic studies, as well as for the design of tariff structuring, economic and financial feasibility, structuring of guarantees, legal modeling and environmental assessment, of the set of activities to be developed in the implementation of the project.

FINAL CONSIDERATIONS

The Public-Private Partnership emerged as the legal instrument capable of allowing the private initiative to act in public policies, since our legislation does not provide the private entity with the possibility of establishing the collection of taxes in the face of the implementation or operation of public goods.

Concomitant to this issue, the scarcity of sufficient public resourcesthe investment needs, especially in the areas of infrastructure, made the Brazilian Public Administration seek, in examples from other countries, measures that would allow it to ensure economic and social development, even in a context of deficitary fiscal imbalance.

As with any new measure, especially those imported from other scenarios, there are always adjustments and improvements that aim to adapt the instruments to the national reality. Furthermore, after many decades of heavy State intervention in the Economy, it is natural that there is mistrust on the part of both the private sector and society in seeing public assets managed by private entities.

However, despite the difficulties encountered, the State of Bahia, with a certain vanguardism, has been demonstrating the feasibility of using Public-Private Partnerships, as, in recent years, it has a constant portfolio of projects that, for the most part, are carried out and result in real offers of improvement of public services to the society of the State of Bahia.

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