

File No.RW/NH-33044/76/2021-S&R(P&B)
Government of India
Ministry of Road Transport & Highways
(S&R Zone)

1, Parliament Street, Transport Bhawan, New Delhi-110001

Date: 6th Oct, 2021

To,

1. The Chief Secretaries of all State Governments/UTs.
2. The Principal Secretaries/Secretaries of all State/UTs PWD dealing with National Highways, other centrally sponsored schemes and state schemes.
3. The Chairman, National Highways Authority of India (NHAI), G-5&6, Sector-10, Dwarka, New Delhi-110075.
4. Director General (Border Roads), SeemaSadakBhawan, Ring Road, New Delhi-110010.
5. The Managing Director, National Highway Infrastructure Development Corporation Ltd., 3rd floor, PTI Building, Parliament Street, New Delhi-110001.
6. All Engineer-in-Chief and Chief Engineers of all States/ UTs PWD dealing with National Highways, other centrally sponsored schemes and state schemes.
7. All CE-ROs, ROs and ELOs of the Ministry.

Sub: Standard operating procedure to debar/penalize/declare the Contractor/Concessionaire as Non-Performer in National Highways and other centrally sponsored road projects.

Ref: (i) Ministry's letter No. RW/NH-37010/4/2010-EAP(Printing) Vol.-IV dated 05.03.2019.

(ii) Ministry's letter No. RW/NH-34066/01/2020-QCZ dated 14.06.2021

Sir,

It has been noticed that in many cases there are lapses on the part of Contractors/Concessionaires in fulfilling contract provisions during development period, construction period and O&M Stage, that causes delay/acceptance of sub-standard works leading to premature distress/failure during construction.

2. In order to ensure construction of roads as per standards and specifications laid down in the contract/concession agreements and to avoid project delays, it has been decided to debar/penalize/declare Contractors/Concessionaires as Non-Performer for their lapses in National Highways and other centrally sponsored road projects, as

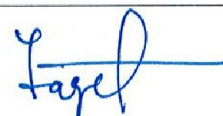
detailed herewith. It is clarified that such actions of the Authority would be without prejudice to the remedies available to Ministry of Road Transport & Highways (MoRT&H) or its executing agencies under the contract/concession agreement/governing laws. This circular is issued in supersession to Ministry's earlier issued circular dated 14.06.2021 at sl. no. (ii) of reference.

Sl. No.	Type of Deficiency	Action to be taken against Contractor/concessionaire
1	Failure to set up institutional mechanism and procedure as per contract.	Declaring the contractor / concessionaire as non- performer till institutional mechanism and procedure is properly set up as verified by the "Nominated Officer".
2	Fails to complete or has missed any milestone and progress not commensurate with contiguous unencumbered project length /ROW available even after lapse of 6 months from respective project milestone/Schedule Completion date, unless Extension of Time has been granted due to Authority's Default or Force Majeure.	Declaring the contractor / concessionaire as non-performer till milestone is achieved or project is completed as certified by the "Nominated Officer".
3	Fails to achieve progress commensurate with funds released from Escrow Account (Equity + Debt + Grant) in BOT or HAM project and variation is more than 25% in the last 365 days.	Declaring the contractor / concessionaire as non-performer till progress commensurate with funds released is achieved as certified by the "Nominated Officer".
4	Fails to achieve the target progress or complete the project as per schedule agreed at the time of sanctioning of funds under One Time Funds Infusion (OTFI) or relaxations to contract conditions to improve cash flow solely on account of concessionaire's failure/default.	Declaring the contractor / concessionaire as non- performer till completion of project or achievement of project target as certified by the "Nominated Officer".
5	(a) Fails to complete rectification (excluding minor rectifications) as	Declaring the contractor / concessionaire as non- performer till



	<p>per time given in non-conformity reports (NCR) in design/completed works/maintenance or reported in Inspection Reports issued by Quality Inspectors deployed by the Authority or Officers of the Authority.</p> <p>(b) Fails to complete minor rectifications exceeding 3 instances in a project not completed as per time given in non-conformity reports (NCR) in design/completed works/maintenance.</p>	<p>rectification(s) is completed as certified by the "Nominated Officer".</p>
6	<p>Fails to start the work or causes delay to maintenance & repair/overlay of the project.</p>	<p>Declaring the contractor / concessionaire as non-performer till it is completed as certified by the "Nominated Officer".</p>
7	<p>Fails to complete Punchlist items even after lapse of time for completion of such items excluding delays attributable to the Authority.</p>	<p>Declaring the contractor / concessionaire as non-performer till punch list items are completed as certified by the "Nominated Officer".</p>
8	<p>Occurrence of minor failure of structures/highway due to construction defect wherein no causalities are reported. [Causalities include injuries to human being or animals]</p>	<p>Rectification by contractor/concessionaire at its own cost. In addition, penalty of 5% of contract value of failed/defective work or 0.5% of contract value of whole work, whichever is more, shall also be imposed and written warning. The key personnel (head of the Structures in case of failure occurred on structures or head of Pavement/Highways in case of pavement failure) may be kept on watch list for any future recurrence besides issuing written warning. The rectification shall be certified by the "Nominated Officer".</p>
9	<p>Occurrence of major failure of structures/highway due to construction defect wherein no</p>	<p>Rectification by contractor/concessionaire at its own cost and debarment up to 1 year or till</p>

	<p>casualties are reported. [Causalities include injuries to human being or animals]</p>	<p>completion of instant work, whichever is higher, in NH or centrally sponsored road works. In addition, penalty of 5% of contract value of failed/defective work or 0.5% of contract value of whole work whichever is more, shall also be imposed.</p> <p>The key personnel (head of the Structures in case of failure occurred on structures or head of Pavement/Highways in case of pavement failure) will be removed from the project and debarment of concerned key personnel up to 2 years in NH or centrally sponsored road works.</p> <p>The rectification shall be certified by the "Nominated Officer".</p>
10	<p>Occurrence of major failure of structures/highway due to construction defect leading to loss of human lives besides loss of reputation of the Authority etc.</p>	<p>Rectification by contractor/concessionaire at its own cost and debarment up to 3 years or till completion of instant work, whichever is higher in NH or centrally sponsored road works. In addition, penalty of 10% of contract value of failed/defective work or 1.0% of contract value of whole work, whichever is more, shall be imposed.</p> <p>The key personnel (head of the Structures in case of failure occurred on structures or head of Pavement/Highways in case of pavement failure) will be removed from the project and debarment up to 3 years in NH or centrally sponsored road works.</p>



		The rectification shall be certified by the “Nominated Officer” or a 3 member Committee.
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["Nominated Officer" is any officer other than the concerned Technical Division/Zone or 3 member committee, for ensuring independent certification/verification nominated by Director General (RD) & Special Secretary/ Chairman, NHAI/Managing Director, NHIDCL/ Director General (Border Roads) for this purpose.]

3. Following amendments shall be made in the provisions of Model Request for Proposal (RFP) Document for National Highways and other centrally sponsored road works proposed to be implemented on EPC mode of contract. Similarly, amendments shall also be incorporated in the Ministry's Standard RFP for Hybrid Annuity Model (HAM) & Build Operate Transfer (BOT) concession agreement.

Sr. No.	Clause No. of Model RFP Document for EPC mode of Contract	Existing provision	Amendments made
1.	Clause 2.1.14 of Section 2: Instruction to Bidders (from start to end of sub-clause (xiii))	The Bidder, including an individual... following parameters: (xiii)hearing of such party.	The Bidder, including an individual or any of its Joint Venture member, should not be a non-performing party on the bid submission date. The Bidder, including any Joint Venture Member, shall be deemed to be a non-performing party, if it attracts any or more of the following conditions in any of its ongoing or completed project: (i) Fails to set up institutional mechanism and procedure as per contract. (ii) Fails to mobilize key construction equipment within a period of 4 months from the Appointed Date;

			<p>(iii) Fails to complete or has missed any milestone and progress not commensurate with contiguous unencumbered project length /ROW available even after lapse of 6 months from respective project milestone/Schedule Completion date, unless Extension of Time has been granted due to Authority's Default or Force Majeure;</p> <p>(iv) Fails to achieve progress commensurate with funds released from Escrow Account (Equity + Debt + Grant) in BOT or HAM project and variation is more than 25% in the last 365 days;</p> <p>(v) Fails to achieve the target progress or complete the project as per schedule agreed at the time of sanctioning of funds under One Time Funds Infusion (OTFI) or relaxations to contract conditions to improve cash flow solely on account of Concessionaire's/contractor's failure/default;</p> <p>(vi) Fails to complete rectification (excluding minor rectifications) as per time given in non-conformity reports (NCR) in design/completed works/maintenance or reported in Inspection Reports issued by Quality Inspectors deployed by the Authority or Officers of the Authority.</p>
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			<p>(vii) Fails to complete minor rectifications exceeding 3 instances in a project as per time given in non-conformity reports (NCR) in design/completed works/maintenance;</p> <p>(viii) Fails to fulfill its obligations to maintain a highway in a satisfactory condition in spite of two rectification notices issued in this regard;</p> <p>(ix) Damages/penalties recommended by Independent/Authority's Engineer during O&M Period and remedial works are still not taken up;</p> <p>(x) Fails to complete Punch list items even after lapse of time for completion of such items excluding delays attributable to the Authority;</p> <p>(xi) Occurrence of minor failure of structures/highway due to construction defect wherein no casualties are reported (casualties include injuries to human being / animals);</p> <p>(xii) Occurrence of major failure of structures/highway due to construction defect wherein no casualties are reported (casualties include injuries to human being / animals);</p>
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			<p>(xiii) Occurrence of major failure of structures/highway due to construction defect leading to loss of human lives besides loss of reputation etc. of the authority;</p> <p>(xiv) Fails to make premium payments excluding the current installment in one or more projects;</p> <p>(xv) Fails to achieve financial closure in two or more projects within the given or extended period (which shall not be more than six months in any case);</p> <p>(xvi) Fails to submit the Performance Security within the permissible time period in more than one project;</p> <p>(xvii) Rated as an unsatisfactory performing entity/ non-performing entity by an independent third-party agency and so notified on the website of the Authority;</p> <p>(xviii) Failed to perform for the works of Expressways, National Highways, ISC & EI works in the last 2(two) years, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitral award against the Bidder, including individual or any of its Joint Venture Member, as the case</p>
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			<p>may be;</p> <p>(xix) Expelled from the contract or the contract terminated by the Ministry of Road Transport & Highways or its implementing agencies for breach by such Bidder, including individual or any of its Joint Venture Member; Provided that any such decision of expulsion or termination of contract leading to debarring of the Bidder from further participation in bids for the prescribed period should have been ordered after affording an opportunity of hearing to such party.</p> <p>(xx) Fails to start the works or causes delay in maintenance & repair/overlay of the project.</p>
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2. Table below Para 3 (Name of Bidder/Member of JV: _____) of Clause 7 (b) of Annex I to Appendix IA shall be replaced as below

Sr. no.	Categories of Non-Performer	Name of the Project(s)
i.	Fails to set up institutional mechanism and procedure as per contract.	
ii.	Fails to mobilize key construction equipment within a period of 4 months from the Appointed Date.	
iii.	Fails to complete or has missed any milestone and progress not commensurate with contiguous unencumbered project length /ROW available even after lapse of 6 months from respective project milestone/Schedule Completion date, unless Extension of Time has been granted due to Authority's Default or Force Majeure.	
iv.	Fails to achieve progress commensurate with funds released from Escrow Account (Equity + Debt + Grant) in BOT or HAM project and variation is more than 25% in the last 365 days.	



v.	Fails to achieve the target progress or complete the project as per schedule agreed at the time of sanctioning of funds under One Time Funds Infusion (OTFI) or relaxations to contract conditions to improve cash flow solely on account of Concessionaire's/contractor's failure/default.	
vi.	Fails to complete rectification (excluding minor rectifications) as per time given in non-conformity reports (NCR) in design/completed works/maintenance or reported in Inspection Reports issued by Quality Inspectors deployed by the Authority or Officers of the Authority.	
vii.	Fails to complete minor rectifications exceeding 3 instances in a project as per time given in non-conformity reports (NCR) in design/completed works/maintenance.	
viii.	Fails to fulfill its obligations to maintain a highway in a satisfactory condition in spite of two rectification notices issued in this regard.	
ix.	Damages/penalties recommended by Independent/Authority's Engineer during O&M Period and remedial works are still not taken up.	
x.	Fails to complete Punch list items even after lapse of time for completion of such items excluding delays attributable to the Authority.	
xi.	Occurrence of minor failure of structures/highway due to construction defect wherein no casualties are reported (casualties include injuries to human being / animals).	
xii.	Occurrence of major failure of structures/highway due to construction defect wherein no casualties are reported (casualties include injuries to human being / animals).	
xiii.	Occurrence of major failure of structures/highway due to construction defect leading to loss of human lives besides loss of reputation etc. of the authority.	
xiv.	Fails to make premium payments excluding the current installment in one or more projects.	
xv.	Fails to achieve financial closure in two or more projects within the given or extended period (which shall not be more than six months in any case).	
xvi.	Fails to submit the Performance Security within the permissible time period in more than one project.	
xvii.	Rated as an unsatisfactory performing entity/ non-performing entity by an independent third-party agency and so notified on the website of the Authority.	



xviii.	Failed to perform for the works of Expressways, National Highways, ISC & EI works in the last 2(two) years, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitral award against the Bidder, including individual or any of its Joint Venture Member, as the case may be.	
xix.	Expelled from the contract or the contract terminated by the Ministry of Road Transport & Highways or its implementing agencies for breach by such Bidder, including individual or any of its Joint Venture Member; Provided that any such decision of expulsion or termination of contract leading to debarring of the Bidder from further participation in bids for the prescribed period should have been ordered after affording an opportunity of hearing to such party.	
xx	Fails to start the works or causes delay in maintenance & repair/overlay of the project.	

4. Chief Engineer (RO/HQ), MoRTH / Chief General Manager, NHAI/ Executive Director, NHIDCL/ Chief Engineer, BRO shall be the competent authority for certifying the report submitted by "Nominated Officer" regarding completion of the rectification.

5. Before deciding a contractor/concessionaire as Non-Performer or debarring/penalizing it, the concerned authority shall issue a notice to the contractor/concessionaire by giving 15 days' time to furnish its written reply and allow personal hearing, if so desired by the contractor/concessionaire, before the competent authority or any person designated for the purpose. Such a notice shall not be issued without the approval of an officer below the rank of Chief Engineer/CGM/ED. In case of projects where public safety is endangered by the behavior/conduct/action of the consultant/contractor/concessionaire, the authority may temporarily suspend the consultant/contractor/concessionaire from participating in ongoing/ future bidding upto 1 month period during which the regular process of debarment shall be concluded.

6. The competent authority for approval of penal action as above will be the DG(RD) &SS in respect of NH works being implemented through State PWDs, Chairman, NHAI in respect of NH works being implemented through NHAI, MD, NHIDCL in respect of NH works being implemented through NHIDCL and Director General (Border Roads) for works entrusted to BRO.

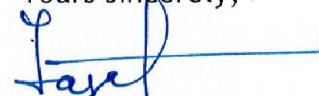
7. The firm/individuals on which penal/deterrent action is taken may represent to the "Reviewing authority" against the action/penalty imposed. The "Reviewing Authority" shall be the Secretary, RT&H in respect of all NH works and other centrally sponsored road works being implemented through State PWDs, NHAI, NHIDCL and BRO.

8. Upon declaration of non-performer/debarred, the contractor/concessionaire will not be able to participate in any bid with MoRTH or its executing agencies, till such time the contractor/concessionaire is removed from the list of non-performers or the debarment persists. The contractor/concessionaire shall include its JV partners, promoters etc. whose credentials were considered while qualifying them for the project. Non-performer/debarment status of a bidder on the bid due date will be the criteria for eligibility of a bidder to participate in the said bid.

9. Each implementation agency shall have a single source/designated officer for maintaining the record/data related to debarment. Ministry's Monitoring Zone with the help of NIC will maintain a real-time data-base of such Non-Performer and debarred contractor/concessionaire.

10. This issues with the approval of Competent Authority.

Yours sincerely,



(Jagat Narayan)

Superintending Engineers, S&R (R)
For DG(RD)&SS

Copy to:

1. All Chief Engineers in the Ministry of Road Transport & Highways.
2. The Secretary General, Indian Road Congress, IRC Bhawan, Kama Koti Marg, Sector-6, R.K. Puram, New Delhi-110022.
3. Technical Circular File, S&R (P&B) Section.
4. NIC for uploading on the Ministry's website.

Copy for information and necessary action to:

1. Sr.PPS to Secretary (RT&H).
2. PPS to DG(RD)&SS
3. PPS to SS/AS/AS&FA.
4. PS to all ADGs.
5. PS to all JSs.