

भारतीय राष्ट्रीय राजमार्ग प्राधिकरण  
(सड़क परिवहन और राजमार्ग मंत्रालय)  
**National Highways Authority of India**

(Ministry of Road Transport and Highways)

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May 18, 2011

**POLICY MATTER – TECHNICAL (76/2011)**  
**(Decision taken by Technical Division file No.CGM(T)RKS/1/2010/Vol III)**

**Sub: Revised criteria for assessment of performance of Contractors/Concessionaire**

It has been decided that following criteria shall be followed for assessment of Performance of Contractor / Concessionaire for declaring Non-Performer for NHAI Projects.

- (I) **Item Rate / EPC Contracts:**  
(A) **Individual Contract Package**

Any bidder / contractor not meeting either of the following criteria as on the date of review would be declared as non-performer.

1. Associate and or promoter/shareholder of any contractor in a Contract awarded by NHAI whose Contract has been terminated on account of contractor event of default in the past 3 years as assessed from the date of review.
2. Associate and or promoter/shareholder of any contractor in a Contract awarded by NHAI, in which Contract, submission of the 'Statement at Completion' or 'Draft Final Statement or Final Statement' or any payment is due to be made to NHAI under the 'Final Payment Certificate', beyond their respective due date/s as provided for in the requisite contracts unless there is a stay/a bar against proceedings contemplated on the above through an order of a court of competent jurisdiction as on the date of review.
3. Criteria on time elapsed and progress achieved:

If the progress achieved by contractor on a project as on the date of review is less than the progress given in Col. 2 & 3 (as the case may be) of the following Table, then that contractor would be non-performer.

1	2	3
Time	Progress (If full land available as per handing over schedule)	Progress (if full length not available as per handing over Schedule) = Progress in column 2 to be multiplied by multiplying factor [average of length (work front) made available at the beginning & end of the period (0-33,33-67, 67-100, 100-175 as the case may be) divided by total length to be made available as per handing over schedule]
33%	15%	To be calculated by evaluator e.g. if total length of road is 100 km. and as per handing over schedule 50 km is to be given by 33% time and 10km was given at the start of work (time 0) and 30 km at 33% time then average of length (work front) made available at the beginning and end of the period would be $10+30/2=20$ and the multiplying factor would be $20/50 = 0.4$ . Accordingly, the progress would be $15\% \times 0.4 = 6\%$ .
67%	30%	
100%	60%	
175%	100%	

contd...2

Note: 1. Upto 33% time, no review is envisaged since mobilization time and other teething problems may be encountered in the initial phase of the Contract.

Note 2. Linear interpolation in between the above progress milestones is applicable depending upon the time of review.

Note 3. The affected length due to encumbrances shall mean absence of statutory/legal clearances resulting in work not getting executed e.g land not acquired, clearances of Railways, Forest, Environment, etc; not obtained, utilities not shifted, etc. Shifting of utilities where this has to be done by the Contractor himself and for which land is not a constraint, shall not be considered an encumbrance. Obstruction or agitation by locals for providing additional facilities, etc shall also not be considered as encumbrances unless the same has been approved as a EOT event by the client.

**(B) Multiple Packages**

Where a contractor (or his JV partners) is implementing more than one contract and the percentage of non-performing contracts is more than 33% of the total contracts being implemented by him, he should be considered a non-performer contractor.

**(C) Joint and several liability**

If a contracting firm is a Joint Venture firm, all the partners of non-performing contracting firm will be declared non-performer.

**(II) DBFOT Projects :**

**(A) Individual Contract Package :**

**A Concessionaire would be declared non-performer if either of the following events take place :**

1. Associate and or promoter/shareholder of any concessionaire in a Concession awarded by NHAI whose Concession has been terminated on account of concessionaire event of default in the past 3 years as assessed from the date of review.
2. Associate and or promoter/shareholder of any concessionaire in a Concession awarded by NHAI who after award of the Concession, could not achieve Financial Close in any project and Concession Agreement was therefore terminated in the past 3 years as assessed from the date of review.

3. The Concessionaire could not achieve minimum 67% (2/3 rd) of the progress prescribed in various project milestones in Schedule 'G' after applying the multiplying factor (**average of length (work front) made available at the beginning & end of the project divided by total length to be made available as per handing over schedule**) as also explained in para (I)(A)(3) above.
4. During O&M period, if damages/penalties are imposed on the Concessionaire or developer/developer consortium or their associates of the said concession for not meeting his obligations or the remedial works are carried out by the Authority at the cost of the Concessionaire on three occasions on any project during last three years from the date of review.

**(B) Multiple Packages**

Where a concessionaire (or his JV partners) is implementing more than one concession and the percentage of non-performing concessions is more than 33% of the total concessions being implemented by him, he should be considered a non-performer concessionaire.

**(C) Joint and several liability**

If a concessionaire firm is a Joint Venture firm, all the partners of non-performing concessionaire firm having more than 10% stake in the SPV will be declared non-performer.

**(III) Other criteria applicable for both EPC & DBFOT:** The following provisions as per the standard RFQ document shall also apply:

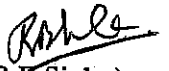
1. Any entity which has been barred by the Central/State Government, or any entity controlled by it, from participating in any project (BOT or otherwise), and the bar subsists as on the date of Application, **would be considered as non-performer and the firm** would not be eligible to submit an Application, either individually or as member of a Consortium.
2. **A firm would be taken as non-performer** if the firm including any Consortium Member or Associate should, in the last 3 (three) years, have failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, Consortium Member or Associate, as the case may be, or has been expelled from any project or contract by any public entity or have had any contract terminated by any public entity for breach by such firm, Consortium Member or Associate.

**(IV) Date of Review:** Date of review for the purpose of establishing the non-performer status of any or all the Contractors/Concessionaires individually may be any date as decided by the Chairman NHA I or where review is done collectively the said review date shall be the 30<sup>th</sup> June and 31<sup>st</sup> December of the year.

**(V)** It has also been decided that Contract Management Cell will deal further with the subject of Non-performance of Contractor/Concessionaire.

(VI) All Technical Divisions of NHAI HQ, Regional Officers and Project Directors of field units of NHAI are requested to assess the performance of Contractor/Concessionaire based upon the new criteria and send the status of performance of Contractor/Concessionaire under their jurisdiction to Contract Management Cell through the concerned GM (Tech.) in NHAI HQ.

(VII) This issues with the approval of Competent Authority.

  
(R.B.Sinha)  
General Manager(CMC)

To

PS to Chairman  
All Members  
All CGMs/CVO/ GMs  
All ROs/PIUs/CMUs/SPVs  
All DGMs/Managers at HQ

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Librarian/Hindi Officer