

# Morth's New NH Guidelines: Balancing Progress with Pitfalls

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## Synopsis

The road sector in India has been grappling with intensified competition and execution challenges, which has also led to moderation in the road construction pace of National Highways. To address these issues Ministry of Road Transport and Highways (MoRTH) has issued circulars for changes in

- A. Additional Performance Security (APS) for bidders having an abnormally low bid price and**
- B. Synchronisation of Project approval, award, and appointed date declaration with milestones for land acquisition, as well as environment, forest & wildlife clearances**

MoRTH has modified the terms of the APS requirement for bids below authority cost to curb bidding aggression in the roads sector. Reducing the threshold requirement of APS from bids below 20% of the authority cost to 10% below authority cost, along with removing the cap of 3% of BPC for APS are welcome moves towards tightening of concession terms. Nevertheless, CareEdge Ratings expects that stringent norms for APS on their own, may not be sufficient to curb the intense competition in the roads sector meaningfully. At the same time, availability of 90% of the Right of Way (RoW) as per section 3G (finalisation of compensation amount for land acquisition) and requisite clearances at the time of awarding of the project are expected to minimize delays in the declaration of the appointed date and accelerate the pace of construction.

### **A. Changes in Additional Performance Security (APS) for bidders having an abnormally low bid price**

The change in the APS follows intensive bidding, which results in a low premium or discount over authority cost. It is a step towards curbing the high competition in the industry.

**Table 1: Key parameters: Previous vs. Revised APS**

Particulars	APS as per previous circular	APS as per revised circular
BPC ranging from 0-10% below authority cost	Nil	Nil
BPC ranging from 11%-20% below authority cost	Nil	0.1% of BPC for every 1% of BPC below 11% and up to 20%
BPC Below 20% of authority cost	$20\% \times [80\% \times \text{Authority Cost} - \text{Bid Project Cost}]$	0.2% for every 1% of BPC below 21%, in addition to 1% calculated as above
Capping	3% of BPC	No cap

BPC: Bid Project Cost

### **Impact analysis of the revised APS framework:**

Below is the illustrative impact of revised APS under a few scenarios. Assuming the authority cost to be Rs 1000 crore:

**Table 2: APS amount under previous Vs revised circular**

Bid Project Cost (Rs crore)	% Discount to Project cost	APS Amount existing (A) (Rs crore)	APS Amount revised (B) (Rs crore)	Incremental APS to be given (A-B) (Rs crore)
900	10%	0.0	0.0	0.0
850	15%	0.0	4.3	4.3
750	25%	10.0	15.0	5.0
650	35%	19.5	26.0	6.5
500	50%	15.0	35.0	20.0

1. **Removal of cap for APS- step in the right direction:** Previously, APS was capped at 3% of BPC, resulting in lower APS for BPC bid out at a discount beyond 30% to authority cost. For example, a bid of Rs 650 crore against an authority cost of Rs 1000 crore required Rs 19.5 crore APS, but a Rs 500 crore bid required Rs 15 crore APS due to the cap. The new circular removes this cap, making APS directly proportional to the bid deviation. This means lower bids now incur higher APS, addressing the loopholes of the earlier framework and taking a step in the right direction.
2. **CareEdge Ratings expects the increase in APS to have limited effectiveness in curbing bidding aggression due to the following reasons:**
  - a) **Modest financial impact on sponsors:** Under the revised APS norms, the financial impact on sponsors remains modest. For instance, a bid 50% below the authority cost of Rs 1000 crore (i.e., a BPC of Rs 500 crore) would now require an additional APS of Rs 20 crore, i.e., 4% of the BPC— a minor increase but unlikely to curb bidding aggression for sponsors. Even in case of sponsors securing multiple projects with aggregate BPC of Rs.2500 crore at an average discount of 50%, additional non-fund-based limits requirement shall be only Rs.100 crore.
  - b) **Increased non-fund-based requirements partly mitigated by freed-up BG limits:** National Highway (NH) project awarding activity declined 30% in FY24 and stayed muted in 11MFY25 (4,874 km vs. 4,872 km), with many projects awaiting appointed dates. CARE Edge Ratings had reported a drop in orderbook-to-income ratio from 2.78x in FY22 to 2.15x in FY24 (as cited in, "[INR 1 trillion NH HAM Projects Facing Severe Delays –Impacts Construction Pace](#)", dated February 07, 2025), indicating contraction in executable orderbook. All these factors have led to the freeing up of BG limits for sponsors across categories. Furthermore, large sponsors continue to access nil-margin or low-margin PBGs, thereby reducing the impact of APS as a deterrent.
  - c) **Early Release of Performance Security and APS:** The performance security (3% of BPC) remains in effect for one year from the receipt of the appointed date but can be released upon the concessionaire spending 30% of the BPC on project construction. Additionally, APS will be released upon achieving Project Milestone III —i.e., completion of 75% of the project. Given the release of performance as well as additional performance securities linked to the percentage of project completion, it is unlikely to address the perceived risk in the quality of construction due to bidding aggression. It is also pertinent to mention that the APS was introduced in August 2022 to address the rising competition in the industry. However, competition has since risen,

with median bidding reducing from a 5% premium in FY22 to 15% to 20% discount in FY25 (refer chart 1).

**Chart 1: Trend in bidding premium (%) for NH-HAM**



**B. Synchronisation of Project approval, award, and appointed date declaration with milestones for land acquisition as well as environment, forest & wildlife clearances**

To address project delays, contractual disputes, and time & cost overruns, the MoRTH vide its circular, has introduced timelines to align key pre-construction activities with project approval and award processes.

As per the circular, environmental and wildlife clearances, along with General Agreement Drawings (GAD) from Railways and utility shifting estimates, must be finalised before receipt of bids for the project. Additionally, the general agreement drawings of the Inland Waterways Authority of India (IWAI) must be finalised before inviting bids, and forest clearance must be obtained before issuing the Letter of Award (LOA).

For land acquisition, over 90% of the ROW length is to be made available under section 3G (i.e., determination of the amount payable as compensation to landowners) of the NH Act, 1956, before LOA. Further to this, possession of 90% of the ROW length is to be available on or before the appointed date.

These new regulations will apply to all National Highway projects for which tenders are scheduled to be issued on or after June 1, 2025.

**What it implies**

Previously, delays in obtaining necessary clearances or acquisition of land after a project has been awarded have significantly contributed to a slowdown in construction pace and cost overruns. MoRTH, by implementing these new guidelines, has provided clarifications of various clearances by aligning them with the land acquisition milestones. These steps aim to ensure the timely completion of pre-construction phases and reduce the time lag in declaring appointed dates.

In a previous article dated February 06, 2025, CareEdge Ratings highlighted that 55% of under-construction projects (totalling Rs 1 lakh crore BPC) faced delays over six months by December 2024. Furthermore, Projects with a combined BPC exceeding Rs 40,000 crore have experienced delays of over a year in

receiving appointed dates, primarily due to land acquisition challenges associated with a focus on greenfield expressways and highways.

The new guidelines which necessitate over 90% of the ROW to be secured under section 3G before the issue of LOA is particularly crucial, as this will lead to reduced delays in receipt of appointed dates, resulting in an improvement in the pace of construction of National Highways. Additionally, the requirements for obtaining various clearances including environmental, forest, wildlife, and GAD, at different stages before LOA issuance helps avoid approval-related delays during the construction phase. However, the success of these measures will depend heavily on the timely and coordinated efforts of various stakeholders and the enforcement of contractual reforms on the ground, which are key monitorable.

**CareEdge Ratings View:**

"The increase in Additional Performance Security (APS) for aggressively bid projects is a constructive step towards promoting more responsible bidding. Removing the cap on the APS requirement addresses the existing loophole in concession terms. Nevertheless, CareEdge Ratings expects that stringent norms for APS on their own may not be sufficient to curb the intense competition in the road sector meaningfully.

Availability of substantial non-fund-based bank lines with moderate to strong sponsors amid lower project awarding activity, besides the release of performance security linked to project progress instead of quality of construction are prominent factors negating the favourable impact of APS in curbing bidding aggression in NH- HAM projects," said Maulesh Desai, Director, CareEdge Ratings.

"The synchronisation of project approval, award, and appointed date declaration activities with key milestones for land acquisition and statutory clearances, such as environment, forest, and wildlife, is a strategic step to mitigate the delays due to land acquisition challenges and prevent further cost overruns. These measures are intended to streamline pre-construction activities, minimise delays in declaring appointed dates, and help avert future project execution setbacks. However, the success of these measures will depend heavily on the timely and coordinated efforts of various stakeholders and effective enforcement of contractual terms on the ground," added Setu Gajjar, Assistant Director, CareEdge Ratings.

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