

THE BOND BUYER

NY Thruway P3 project dinged over construction delays

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Two years into a public-private partnership to rebuild and take over the New York State Thruway Authority's service areas, the project is 225 days behind schedule, a delay that has led to a technical default and prompted Fitch Ratings to revise its outlook to negative from stable.

AECOM Tishman, the design-build contractor who is responsible for the delays and on the hook for the default, has opened 12 of the 27 service areas that are part of the \$450 million project.

The contractor, which blames the delay on factors like COVID-19, supply chain and workforce problems and soil contamination, has filed so-called supervening event claims with the Thruway authority hoping for relief. The team is working under a fixed-price contract and is [therefore responsible for construction cost overruns](#).

"Construction is delayed but 12 sites are already open and the DB contractor is trying to mitigate these delays although some things are out of its control," said Anubhav Arora, an analyst with Fitch's global infrastructure group.



Anubhav Arora, a director with Fitch Rating's Global Infrastructure group, said the contractor working on the New York State Thruway Authority's rest stops is 225 days behind the original substantial completion date. *Fitch Ratings*

If the NYSTA grants the contractor's superseding event claims, then the technical default "can be cured," Arora said.

Fitch has a BBB-minus rating on the debt.

The project is part of a two-year-old design-build-operate-finance-maintain P3 that calls for a private entity, Empire State Thruway Partners, LLC, to take over the thruway's 27 rest areas, rebuilding 23 and significantly improving the remaining four.

The 33-year concession was financed in part with [\\$269 million of tax-exempt private activity bonds](#), issued on behalf of Empire State Thruway Partners and without recourse to the NYSTA.

Construction was expected to take just under five years.

Inflation and rising costs have battered the infrastructure space but most current projects structured as P3s have largely been protected from credit fallout because the private team is legally required to take on risks associated with cost and schedule.

"We do see projects getting impacted, especially after the pandemic due to labor challenges and supply chain issues," Arora said. "These delays are not uncommon."

The delayed opening will likely lead to lower-than-expected revenues, but any shortfalls in construction funding may be offset by the project's ability "to defer the construction fit-out payments for furniture, fixture and equipment to Applegreen NY Travel Plazas, LLC, which is a sponsor group company," Fitch said in its report.

The delays and technical default were noted in a [Nov. 2 construction progress report](#) filed on EMMA. The advisor noted that as a result of the delayed openings at some of the sites, the "accrued value of delay liquidated damages" that can be levied against the contractor are now in excess of the delay liquidated damages cap under the design-build agreement.

The contractor's "position in relation to the delay LD's is that the majority of delays were beyond their control (COVID impacts and soil contamination impacts at certain sites), and that delay LD's should not apply in such circumstances," the report said. "Discussions continue between the parties on this point.'

An effort [reported by the local press](#) earlier this year to have the state kick in additional funds in its latest budget appears to have been unsuccessful.

It's not known yet whether the NYSTA will grant the contractor's superseding events claims. A spokesperson for the authority said pursuant to the contract with Empire State Thruway Partners, "any issues related to scheduled opening dates will be addressed at the end of the project."

AECOM Tishman did not respond to a request for comment.