

Tele: 23015930

Engineer-in-Chief's Branch  
Military Engineer Services  
Dte of Contract Management  
Kashmir House, Rajaji Marg  
New Delhi - 110 011

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### **CHANGE IN CONSTITUTION OF ENLISTED CONTRACTORS**

1. Ref Para 1.21 of Manual on Contracts 2007 (Reprint-2012) (called MES Manual hereinafter) which stipulates the following amongst others regarding change in constitution:-

"Due inquiry shall be conducted about the bonafides of newly inducted partners to avoid any proxy enlistment/transfer of enlistment".

2. There is no clear guidelines to decide whether the case is falling under proxy enlistment/ transfer of enlistment. Thus various Enlisting/Registering Authorities are applying varying parameters to comply with the above provisions leading to bureaucratizing of the process.

3. The purpose of change in constitution is aimed at change in status of Firm/Company, for which adequate liberty should be given to the Firms. During change in constitution, the primary objective should be to ensure that the incoming partner shall be capable to reasonably contribute to execution as well as administration of work. The change in constitution is not to be related to the provision for execution of work through power of attorney in Chapter on e-tendering of MES Manual on Contracts.

4. Accordingly Para 1.21 of MES Manual is amended as under:-

#### **"1.21 Change in Constitution of Enlisted Contractors.**

1.21.1 Reconstitution of enlisted Contractors/ Firms should be approved by the registering authorities after proper scrutiny and verification that newly constituted firm meets the enlistment criteria and is considered capable of executing the works. The registering authority shall ensure that the incoming partner shall be capable to reasonably contribute to execution as well as administration of work.

In addition, the following shall be ensured to avoid any proxy enlistment/ transfer of enlistment:-

(a) The share of incoming Partner(s) should not be more than 49%.

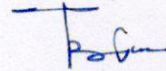
(b) The name and correspondence address of the Firm should not be allowed to be changed (except in case of unavoidable reasons like selling of properties, Govt notification for closing/shifting of premises, damage to properties due to fire, flood, earthquake etc.)

- (c) The immovable property endorsed by proprietor/existing partner(s) for the purpose of enlistment should not be allowed to be replaced with the immovable property of new partner(s) till a period of 5 (five) years from the date of approval of latest reconstitution.
- (d) The existing Proprietor/ Partner(s) should not be allowed to exit the firm before expiry of a period of 5 (five) years from the date of approval of latest reconstitution, except in case of death.

Alternatively, if the reconstituted firm executes work(s) of requisite value and/or achieves requisite turnover (after the active association of new partner(s)) as per criteria of enlistment in that class, then the retirement of earlier partner(s) may be permitted after a minimum period of 2 (two) years from the date of approval of latest reconstitution.

1.21.2 The contractors who have been/are being freshly enlisted, shall not be allowed for reconstitution for 5 (five) years from date of fresh enlistment except Limited Companies and in case of death of any partner.”

5. This will be termed as Amendment No 43 of MES Manual.



(Bhagirathi Pani)  
Dir (Contracts)  
for Engineer-in-Chief