Annex A: Proposed Amendments in the Draft Revenue Regulations

1. All persons, natural or juridical, local or foreign, desiring to enter into or participate in any contract with the government, shall as a precondition, submit, along with their proposal and/or bid, a copy of their latest income tax and business tax returns, to be now be filed and paid through BIR's Electronic Filing Payment System (eFPS). Only the tax returns filed through eFPS will be accepted as required submission under Section 1 of EO No. 398.

2. “Tax Clearance” is defined in the proposed RR as the clearance issued by the Accounts Receivable Monitoring Division (ARMD) of the BIR which attests that the taxpayer has no delinquent account and has satisfied all the other criteria set forth in the proposed RR.

3. Validation of the tax returns must be checked for authenticity by verifying from the list of Tax Clearances issued/published in the BIR website (www.bir.gov.ph). On the other hand, validation of the attachments to the tax returns must be done by checking with the concerned office under the Large Taxpayers Service of the Revenue District Office where the bidder is registered, whichever is applicable.

4. Application for the issuance of Tax Clearance shall be manually filed with ARMD until such time that an online application will be available for prospective bidders.

5. The validity period of a Tax Clearance is six (6) months from date of issuance and shall be issued under the criteria that the applicant must have/be:
   a. No unpaid annual registration fee;
   b. No open valid “stop-filer” cases;
   c. A regular user of BIR’s eFPS for two (2) consecutive months prior to application for Tax Clearance, in case of new applicants;
   d. A regular user of BIR’s eFPS from time of enrollment up to the time of application for Tax Clearance, in case of those who were previously issued Tax Clearance for bidding purposes;
   e. No pending criminal charge with the Department of Justice (DOJ) or any competent court; and
   f. No delinquent account and/or judicially protested tax assessments with a decision favorable to the BIR:
      i. Delinquent account refers to outstanding tax liabilities arising from self-assessed taxes or a result of an audit or third-party information through an issuance of an assessment notice that was not administratively protested and/or elevated to the Court of Tax Appeals (CTA) on time. The timeliness of the protest and/or the elevation of the case

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1 Section 2.1.2 of the proposed RR.
2 Section 4.2 of the proposed RR.
3 Formerly the Collection Enforcement Division.
4 Section 5.4 of the proposed RR.
5 Section 4.3 of the proposed RR.
6 Section 4.4.1 of the proposed RR.
must be certified by the handling office and said certification shall form part of the documentary requirements in the filing of an application for Tax Clearance.

ii. Applicants with tax assessments that were judicially protested on time but was already covered by a previous court decision favorable to the BIR, and are subject of appeals or motions for reconsideration timely filed, shall be issued Tax Clearance **provided that an escrow deposit shall be made in an authorized agent bank (AAB) equivalent to the tax liabilities being protested**. No escrow deposit shall be required in pending cases with the higher court which were covered with decision favorable to the taxpayer.

iii. Applicants with delinquent accounts but the tax liabilities involved were subject of an application for abatement or compromise pursuant to Section 204 of the National Internal Revenue Code (NIRC) shall be issued a Tax Clearance **provided that the applicant shall make an escrow deposit in an AAB in the amount of tax liabilities, including the applicable delinquency penalties net of the amount already paid in the application for abatement or compromise**.7

6. The Tax Clearance shall indicate, among others, information regarding the taxpayer’s latest audited financial statements submitted to the BIR to aid the Procuring Government Agency (PGA) in the computation of the bidder’s Net Financial Contracting Capacity (NFCC).8 In case of Tax Clearance issued to applicants with deficiency tax assessment that was timely protested an/or elevated to the court, information on the details of the tax liabilities shall be considered by the PGA in the computation of the Net Financial Contracting Capacity (NFCC).9

7. The names of prospective bidders who shall be found to have submitted spurious Tax Clearance/s shall be forwarded to the Prosecution Division of the BIR for the filing of criminal charges. Also, the PGA shall impose the appropriate administrative penalty in accordance with Section 69 of RA No. 9184. No Tax Clearance shall be issued to such prospective bidder until such time that the criminal case filed is resolved or the administrative sanctions imposed by the concerned PGA has been lifted, whichever is applicable.10

8. The PGA must verify the authenticity of the Tax Clearance through the BIR Website, which will have periodic updates of the list of taxpayers/participating firms with BIR-issued Tax Clearances.11

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7 Section 4.4.2 of the proposed RR.
8 Section 4.4.3 of the proposed RR.
9 Ibid.
10 Section 4.4.4 of the proposed RR.
11 Section 4.5 of the proposed RR.