TERMS OF REFERENCE

LEASE OF OFFICE SPACE FOR THE OFFICE OF THE SOLICITOR GENERAL (OSG)

I. RATIONALE

The OSG is urgently seeking an office space located preferably in a highly urbanized or urbanized neighborhood/community in Makati City to ensure the productivity and safety of its officials and employees, clients, guests, and the general public.

In doing so, the OSG takes into account the past two (2) GIMBA Engineering Services (GIMBA) Project Investigation Reports, the recent slew of earthquakes, the OSG Main Building's incomplete fire suppression system, and the fact that during the latest inspection by the Department of Public Works and Highways (DPWH) and the Makati City Local Government Unit (LGU), they commented that while the OSG Main Building remains currently usable, it has notable structural integrity concerns.

II. POLICY CONSIDERATION

Pursuant to Section 35.9 of the Implementing Rules and Regulations (IRR) of Republic Act (R.A.) No. 12009 or the *New Government Procurement Act*, it is preferred that government agencies lease publicly-owned real property or venue from other government agencies.

If there is an available publicly-owned real property or venue that complies with the requirements of the Procuring Entity, it may enter into a contract of lease with the government agency owner.

In the event that the Procuring Entity would resort to privately-owned real property or venue, the End-User unit shall justify that the same is more efficient and economical to the government.

III. APPROVED BUDGET FOR THE CONTRACT

The Approved Budget for the Contract (ABC) of the aforesaid lease is **Seventy-One Million Three Hundred Sixty-Eight**

Thousand Four Hundred Eighteen (Php71,368,418.00), inclusive of value-added tax (VAT), common use service area, and association dues, advance rental, security deposit, construction bond, vetting fee, and parking rental.

IV. DOCUMENTARY REQUIREMENTS

The prospective lessor shall submit the following documentary requirements on the date and time as may be determined by the OSG Bids and Awards Committee (OSG-BAC):

Item	Particulars
1	Mayor's/Business Permit
2	PhilGEPS Registration Number
3	Latest Income/Business Tax Return
4	Articles of Incorporation
5	Board Resolution/Authority to enter into contract of the Lessor.
6	Omnibus Sworn Statement
7	Latest As-built plans of the leasable space, including electrical, architectural, plumbing, fire protection, sanitary, and other relevant plans
8	Original/Transfer Certificate of Title or in the alternative, a recent Certified True Copy thereof
9	Latest Tax Declaration of Real Estate/Tax Certificate
10	Contract of Lease
11	Declaration of warranties/guaranties: ownership and/or capacity to lease; that premises to be leased is free and clear of any liens/encumbrances and not subject to/involved in any suit; that lessee shall be kept in quiet and peaceful possession of the leased premises during the term of the lease; that in case of change in ownership of the leased premises, the lease shall not be affected; payment of real property taxes and assessments, etc.

V. OFFICE SPACE SPECIFICATIONS

The building/property must have the following technical specifications taking into consideration the rating factors under Section 35.9 of the Implementing Rules and Regulations (IRR) of

Republic Act (R.A.) No. 12009 or the *New Government Procurement Act*, on the Lease of Real Property and standard real estate management practice:

A. LOCATION AND SITE CONDITION

1. **Distance from the OSG main building**. The building/property should be located within a 3.5 kilometer radius, by car, of the OSG main building, which is located at 134 Amorsolo Street, Legaspi Village, Makati City.

2. **Additional Leasable Space Within the Building/Property.** The building/property should have to house the other OSG divisions/services in the future.

3. **Land Classification, Utilization, and Assessment.** The building/property should be located in a highly urbanized area.

4. **Topography and Drainage**. The building/property must be in a flood-free area and at least have adequate ground elevation and appropriate drainage facilities to prevent flooding.

5. **Parking Space**. The building/property must have available and exclusive parking space for the OSG within the same building/property or its area for at least Twenty (20) vehicles. If there are available parking slots, allow the OSG employees to park, preferably at a fixed rate.

6. **Compliance with Batas Pambansa (B.P.) No. 344, otherwise known as the "Accessibility Law" and its IRR**. The building/property must be compliant with the provisions of B.P. No. 344 and its IRR, and must have adequate and appropriate access facilities for Persons with Disabilities (PWDs).

7. **Sidewalk and Waiting Shed.** The property/building should be in an area with a sidewalk and a waiting shed.

B. NEIGHBORHOOD DATA

1. **Prevailing Rental Rate.** The building/property's rental rate must not be more **One Thousand Four Hundred Fifty-Two and 50/100 Pesos (Php1,452.50 /sq.m.)** per square meter, inclusive of VAT, common use service area, and association dues; and **Five Thousand Seven Hundred Seventy-Five (Php5,775.00)** per slot, inclusive of VAT, for the parking space. The building owner shall ensure the full disclosure of all fees, charges, and collections. Any undisclosed fees, charges, and collections are deemed waived by the lessor, and the lessee shall not be liable for the same.[1]

2. **Sanitation and health condition.** The building/property must have at least three (3) appropriate and adequate toilets and lavatories for the exclusive use of OSG employees and guests. The OSG should also be allowed to install additional toilets and lavatories as the need arises and make the necessary works and/or repairs on the existing and additional toilets and lavatories.

3. **Property utilization.** The building/property's highest and best use is for an office building.

4. **Police and fire stations.** The location of the building/property must be accessible to police cars and fire trucks.

5. **Cafeteria, Food Stores, and Restaurants.** The building/property must have a cafeteria or at least provide access to food stores and restaurants

[1] Based on 2023 values only.

within its immediate proximity to cater to OSG employees and guests.

6. **Banking/Postal/Telecom**. The building/property must have adequate telecommunication lines. Banks and financial institutions that offer ATM services and government postal services or private mail and parcel couriers should, likewise, be within its proximity.

7. **Health Service Providers/Hospitals**. The building/property must be within the proximity of health service providers and/or hospitals.

C. REAL PROPERTY

1. **Structural Condition**. The building/property is designed and its condition must be in accordance with the requirements of the National Building Code of the Philippines, as amended.

2. **Functionality**.

   a. **Space Requirements**. The leasable space must be adequate for the OSG's office area requirement, with a minimum total rented space of **Two Thousand Three Hundred (2,300 sq.m.) square meters**. Additional leasable space within the building/property to house the other divisions/services in the future is preferable.

   b. **Office Space Layout**. The leasable space must be free from any obstruction that would hinder the OSG from its proper and efficient use.

   c. **Module**. The leasable space shall be handed over with the following minimum

specifications:

i. Office Area

a. Ready for occupancy
b. Adequate air-conditioning unit/s on each floor; and

c. At least three (3) toilets and lavatories on each floor. The OSG should also be allowed to add toilets and lavatories as the need arises.

a. **Circulation and Accessibility.** The building/property must provide adequate and appropriate areas and facilities for the proper and unobstructed movement of OSG employees and its guests through, around, and within the premises. Additionally, the building/property must have a loading and unloading bay or an adequate area that would allow the proper delivery of goods to the OSG.

b. **Light and Ventilation**. The building/property must have proper lighting and ventilation system, especially the leasable space and common areas within the building.

3. **Facilities**. The building/property must have the following facilities/amenities:

a. **Water supply and toilet**. The building/property must have sufficient water supply within the said building/property for the exclusive use of OSG employees and its guests. The **LESSOR** must provide a separate or sub-distribution revenue meter for the water supply for the OSG.

b. **Lighting and electrical system**. The building/property must have sufficient electrical and lighting fixtures and convenience outlets. There should also be provisions for an electrical system for the air-conditioning units and other office equipment for installation. The **LESSOR** must provide a separate or sub-distribution revenue meter for the electric supply for the OSG. Also, the **LESSOR** should have a readily available backup generator set during power outages or shortages.

c. **Elevators.** The building/property must provide safe and adequate passenger and service elevators for the use of OSG employees and its guests.

d. **Fire escapes and/or emergency exits**. The building/property must have at least two (2) fire escapes and emergency exits per floor for the proper egress of OSG employees and its guests in cases of emergencies.

e. **Firefighting equipment**. The **LESSOR** shall provide an appropriate fire extinguishment system inside the building, taking into account the size or area of the leasable space.

4. **ICT Requirements**

a. **Internet and communication system provisions.** The building/property must have ample and appropriate provisions for the installation of internet and communication systems (e.g. riser,[2] piping,[3] data center, etc.).

b. **Installation and repair of ICT equipment.**

[2] Pipe for water supply.
[3] For Electrical wiring.

The OSG should be allowed to make the necessary alterations to walls, floors, and ceilings for the installation and repair of ICT equipment and shall be given unlimited access to the leasable space forthe installation and repair of ICT equipment.

c. **Proximity of the leased office space to the existing OSG office spaces.** The building/property must be at an appropriate distance from the existing OSG office spaces for costing purposes for the installation of the internet and communication system.

5. **Other Requirements**

a. **Maintenance and waste disposal**. The owner of the building/property must provide sanitary garbage disposal and space within the premises of the building/property where the OSG can dispose of its waste. In relation to this, the owner/building must also be registered with the Makati Central Estate Association, Inc. (MACEA).

b. **Facade, Design, and Attractiveness**. The building/property's overall facade, architectural design, and location must be appropriate for the OSG as the premier law firm of the Government. The **LESSOR** must also provide for provision or space for the OSG's signage. Also, the building/property must be located in a highly urbanized or urbanized neighborhood/community.

c. **Free Rent During Renovation.** The building or property should offer at least three months of free rent during renovation.

d. **Floor Plan.** The property or building is required to provide the floor plan for the leased area, including all common use areas.

D. FREE SERVICES AND FACILITIES

1. **Janitorial and Security**. The **LESSOR** should provide janitorial and security services for its common-use service areas and allow the OSG to provide its own additional janitorial and security service providers with respect to the leasable spaces.

2. **Air-conditioning**. The building/property must have an adequate air-conditioning system for all leasable spaces and common use service areas.

3. **Repair and Maintenance**. The **LESSOR** shall ensureor allow the maintenance and immediate repair of the leasable spaces and common use service areas.

VI. DURATION OF THE CONTRACT

The Lease Term shall be for a period of one (1) year commencing from the end of the fit-out period, with an option to renew upon agreement by the parties. The Lessor shall give the OSG a three-month fit-out period, rent-free, to make such renovations and alterations on the leased premises (leasable space).

VII. ALTERATIONS AND RENOVATIONS

As stated in Section VI, the **LESSOR** shall allow the OSG to make renovations and alterations, both minor and major, in the leasable space and to employ and give access to its own contractors, for three (3) months. Any alterations, physical additions, or improvements to the leased premises made by the OSG shall remain its property. Upon the termination of the Lease Term, the OSG shall be entitled to remove any such alteration, addition, or improvement, provided that the same shall not result in any structural damage to the leased premises.

VIII. NAMING AND SIGNAGE

The OSG shall be allowed to erect or put up appropriate signages. The OSG acknowledges that all signage locations and plans are subject to the final approval of the **LESSOR** whose approval should be issued within a reasonable period and not unreasonably withheld.

IX. PAYMENT

The rent due shall be billed starting at the end of the first month, after the fit-out period, and at the end of the month thereafter. The OSG will pay it within the first fifteen (15) days of the succeeding month.

The OSG shall deduct 5% Final VAT and 5% Expanded Withholding Tax (EWT) from the monthly billing. BIR Form No. 2307 (Certificate of Creditable Tax Withheld at Source) will be released upon the issuance of the Official Receipt (OR). The documentary stamp tax (DST) shall be for the OSG's account.

X. ADVANCE PAYMENT

The OSG shall pay an advance rent equivalent to a maximum of four (4) months' rent, subject to applicable taxes.

XI. SECURITY DEPOSIT

The OSG shall maintain a Security Deposit in the amount equivalent to a maximum of two (2) months of office and parking space rent exclusive of VAT to answer for any damage to the leasable space on account of the fault or negligence of the OSG or to any unpaid obligation which the OSG may incur during the Lease Term. The Security Deposit shall be made together with the Advance Payment and the billing for the first month of space rent. Lessor shall notify the OSG thirty (30) days before any deduction is made against the Security Deposit, during which period the OSG may contest the propriety of the intended deduction.

The Security Deposit or any remaining balance thereof shall be returned to the OSG at the expiration of the Lease Term.

XII. CONSTRUCTION BOND

The Construction Bond due to the **LESSOR** shall be equivalent to one month's current rent payable two (2) weeks prior to commencement of construction.

The Construction Bond shall be refunded within forty-five (45) days from the submission of the following:

1. Certificate of Completion of Fit-out Construction and Permit to Operate from Property Manager;
2. As-built plans; and
3. Official receipt of the Construction Bond payment.

XIII. ESCALATION CLAUSE

The rent shall be fixed within the contract period. In case of renewal, price escalation may be considered at a rate mutually agreed by both parties.

XIV. CONTRACT COMMENCEMENT AND TERMINATION

The contract of lease shall commence on the date specified in the Notice to Proceed and shall be subject to the provisions of the Guidelines on Termination of Contracts under Section 71 of the IRR of R.A. No. 12009.

At the expiration of the Lease Term or renewal thereof, or in the event of pre-termination, any material damage caused by abuse or neglect by OSG as determined by a competent authority, or unpaid utility/ies, may be reimbursed by OSG, subject to government accounting and auditing rules and regulations.

XV. ARBITRATION AND VENUE OF ACTION

All disputes arising from the interpretation or implementation of a contract shall be submitted to arbitration in the Philippines in accordance with the provisions of R.A. No. 9285, otherwise known

as the "Alternative Dispute Resolution Act of 2004," and its IRR.

However, in case the lease contract is with a government agency, all disputes or controversies arising thereto shall be adjudicated or settled in accordance with Presidential Decree No. 242.

XV. MODE OF PROCUREMENT

The procurement shall be through negotiated procurement, particularly Lease of Real Property, under Section 35.9 of the IRR of R.A. No. 12009.

XVII. RESERVATION CLAUSE

The OSG reserves the right to reject any and all bids, declare a failure of negotiation, or not award the contract at any time in accordance with R.A. No. 12009, withoutthereby incurring any liability to the affected bidder or bidders.

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