

রেজিস্টার্ড নং ডি এ-১

বাংলাদেশ



গেজেট

অতিরিক্ত সংখ্যা  
কর্তৃপক্ষ কর্তৃক প্রকাশিত

বৃহস্পতিবার, অক্টোবর ১৬, ২০১৪

[ একই নম্বর ও তারিখে জারীকৃত পত্রের স্থলাভিষিক্ত হবে ]

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার  
প্রধানমন্ত্রীর কার্যালয়

প্রজ্ঞাপন

তারিখ, ২৭ আশ্বিন, ১৪২১ বঙ্গাব্দ/১২ অক্টোবর, ২০১৪ খ্রিস্টাব্দ

পত্র সংখ্যা ০৩.০৬৮.০২২.০৮.০০.০০৫.২০১৪-৬৬৭—দেশের অর্থনৈতিক উন্নয়ন ত্বরান্বিত করার লক্ষ্যে সরকার কর্তৃক প্রণীত Policy and Strategy for Public Private Partnership (PPP) 2010 এর সাথে সঙ্গতি রেখে সরকারি-বেসরকারি অংশীদারিত্ব (পিপিপি) প্রস্তাব বাছাই এবং মূল্যায়নের জন্য এতদ্বারা The Procedures for Implementation of PPP Policy and Strategy for Unsolicited Proposals, 2014 জারী করা হইল।

২। ইহা জনস্বার্থে জারী করা হইল এবং অবিলম্বে কার্যকর হইবে।

রাষ্ট্রপতির আদেশক্রমে

নাফিউল হাসান  
পরিচালক।

( ১৯০৫৯ )

মূল্য : টাকা ২০.০০

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## PRELIMINARY

### 1. Short Title and Commencement

These procedures may be called PPP Unsolicited Proposal Procedures 2014, and referred herein as the Procedures. The Procedures shall be effective immediately upon being published in the official Gazette.

### 2. Definitions

In these Procedures, unless there is anything repugnant to the subject or context—

(1) “**Applicable Line Ministry**” means the Ministry of the People’s Republic of Bangladesh which is mandated under the Rules of Business to deal with the subject proposed by the Unsolicited Bidder.

(2) “**Applicant**” means an interested person who submits an Application.

(3) “**Application**” means the application that contains the requirements of the Request for Qualification or Request for Proposal for a Project and which is submitted by the applicants in order to be evaluated under the provisions set out under that RFQ or RFP Document.

(4) “**Approving Authority**” means the authority which is mandated to provide in Principle Approval for PPP Projects.

(5) “**Authorised Officer**” means an officer authorised by the Head of the Contracting Authority (HOCA) or the Applicable Line Ministry to carry on the procurement procedures in the temporary absence of the HOCA or the Approving Authority.

(6) “**Contracting Authority**” means a line Ministry, local or national Government agency, autonomous body, semi-autonomous body or statutory corporation which proposes to enter into a PPP contract or other contractual agreement with the Unsolicited Bidder or other Applicant.

(7) “**Eligible Unsolicited Proposal**” shall have the meaning given in Article 6.

(8) “**Formal Government Request**” means the publication by a Contracting Authority of a pre-qualification notice, registration of interest, an invitation for pre-qualification, Request for Qualification and/or Request for Proposal.

(9) **“Head of the Contracting Authority” or “HOCA”** means the Secretary of a Ministry or a Division, the head of a Government Department or Directorate; or the Chief Executive, by whatever designation called, of a local Government agency, an autonomous or semi-autonomous body or a corporation, or a corporate body established under the Companies Act, which seeks to procure goods or services through a PPP Project.

(10) **“Investor Promotion Meeting”** means a meeting organised by the PPP Office, Line Ministry or Contracting Authority to meet interested persons who may be interested to submit an Application.

(11) **“Mode of Competitive Bidding”** shall have the meaning provided in Article 16.

(12) **“Original Proponent”** is an Unsolicited Bidder who has submitted an Eligible Unsolicited Proposal for a particular proposed PPP project for which a Formal Government Request has been issued.

(13) **“Pre-Bid Meeting”** means a meeting organised by a Line Ministry or Contracting Authority to meet interested private sector parties who have purchased the RFP document to submit a proposal for the Project.

(14) **“Project”** means :—

- (i) an infrastructure project; or
- (ii) the delivery of public goods or services not associated with any infrastructure facility.

(15) **“Request For Proposal” or “RFP”** means the request for proposal documents issued by the contracting authority to request information from prospective tenderes participating in the tendering process for a project, and RFP Documents mean the documents containing the detailed information and instruction required to submit a proposal.

(16) **“Request For Qualification” or “RFQ”** means the request for qualification issued by the contracting authority to request prescribed information from prospective tenderes participating in the pre-qualification proceedings for a project, and RFQ Documents mean documents containing the detailed information and instructions required to prove qualification.

(17) **“Unsolicited Bidder”** means the first unsolicited bidder who has submitted an Unsolicited Proposal for a particular proposed PPP project.

(18) “**Unsolicited Proposal**” means a written proposal for the implementation of a PPP project submitted unilaterally by an Unsolicited Bidder on its own initiative and not in response to any Formal Government Request and received by the Applicable Line Ministry, Contracting Authority or Approving Authority.

### **3. Non-Mandatory Nature of Unsolicited Proposals**

(a) The government shall be under no obligation to receive, consider, review or accept Unsolicited Proposals.

(b) The Government may decide not to process for approval an Unsolicited Proposal, but will not be limited from using the asset that is the subject of the Unsolicited Proposals for the delivery of any PPP or conventional Government project.

### **4. Validity Period for Unsolicited Proposals**

An Eligible Unsolicited Proposal will remain valid for a period of 18 months from the date of ‘In Principle’ Approval. A Formal Government Request must be issued within this period for the Unsolicited Bidder to receive the benefit of the status of an Original Proponent. Where a Formal Government Request has not been issued within the 18 month period and the Unsolicited Bidder has not been formally informed by the Line Ministry or the PPP Office that his Unsolicited Proposal has been rejected, then the Unsolicited Bidder must resubmit the Eligible Unsolicited Proposal prior to the expiry of the 18 month period to secure the extension of a further 18 month period within which they can receive the benefit of the status of an Original Proponent if a Formal Government Request for the Project is issued.

### **5. Return of Unsolicited Proposals**

Whether the Government accepts, rejects, processes or declines to process an Unsolicited Proposal, it shall not be under any obligation to return to the Unsolicited Bidder the Unsolicited Proposal that has been submitted.

### **6. Information Requirements to Qualify as an Eligible Unsolicited Proposals**

To qualify as an Eligible Unsolicited Proposal, an Unsolicited Proposal must contain sufficient information to enable the Government to carry out a proper

evaluation of the scope and viability of the proposal and the qualifications of the Unsolicited Bidder. To meet this requirement the Unsolicited Proposal must include the following information :

(i) Letter of Submission :

- A Letter of Submission confirming the submission of an unsolicited proposal.
- A Power of Attorney or a duly certified copy of board resolution authorizing one or more persons on behalf of the Unsolicited Bidder to respond to queries and provide information and otherwise to represent the Unsolicited Bidder in discussions with the Contracting Authority, Line Ministry or the PPP Office as the case may be.

(ii) Description of the Project :

- An outline of the proposed project, its scope and how the implementation of this project will support the Line Ministry or Contracting Authority in meeting their sector development plans.
- A description of the proposed goods or services or other deliverables that would be delivered under the contract or PPP contract entered into on the basis of the Unsolicited Proposal.

(iii) A feasibility study, including but not limited to :

- Technical Proposal – Outline description, conceptual design, layout and characteristics of sufficient detail to clarify the purpose and intention of the project and how it will be developed and operated.
- Financial Proposal—(i) Cost estimate and proposed revenue model. (ii) The outline financing plan indicating the quantum and sources of equity and debt, and the anticipated cost of financing. (iii) The estimated internal rate of return and payback period for the project with key assumptions underpinning these calculations.
- Implementation Plan—An indicative implementation plan, broken out by major milestones and tasks, describing how the proposed project will be built, tested and operated should be submitted.
- Environmental and Social Safeguards—An overview of the environmental and social safeguard issues that may need to be addressed should be submitted.

- (iv) Description of the Unsolicited Bidder, including but not limited to:
- An overview of the Unsolicited Bidder's organisation. The Unsolicited Bidder, if a consortium or joint venture, should describe the broad roles of the potential members in implementing the project, and provide a memorandum of understanding or letter of intent between the potential members of the consortium or joint venture.
  - Details of any contractual non-performance and litigation of the Unsolicited Bidder within the last 5 years should be provided.
- (v) Technical and Financial Capability of the Unsolicited Bidder, including but not limited to:
- Demonstration of the technical capability of the Unsolicited Bidder by providing examples of experience in developing, implementing and operating a similar project.
  - Demonstration of the financial capability of the Unsolicited Bidder to source the funds required for the project.
- (vi) Heads of Commercial Terms:
- The Unsolicited Bidder shall provide the list of the key commercial terms and assumptions it used to develop the proposal; this shall include the key performance indicators for the services being delivered and setting out in outline the obligations of the Contracting Authority and the Unsolicited Bidder in relation to the Project.

## **7. Process for Submission of an Unsolicited Proposal**

- (a) The Unsolicited Bidder should submit the Unsolicited Proposal to the Line Ministry for review and consideration, and provide a copy to the PPP Office. Where the Unsolicited Bidder submits an Unsolicited Proposal to the PPP Office, this will be forwarded to the Line Ministry for their review and consideration.
- (b) The Line Ministry, Contracting Authority and/or the PPP Office may engage in discussions with the Unsolicited Bidder in order to clarify the scope of the Unsolicited Proposal and to provide guidance on the criteria that needs to be met to be considered as an Eligible Unsolicited Proposal.

## **8. Sector Policy Review of Unsolicited Proposal**

(a) The Line Ministry/Contracting Authority will review the Unsolicited Proposal to determine whether the proposed project meets with their sector development plans and is likely to deliver a positive socio-economic benefit.

(b) If the Line Ministry/Contracting Authority concludes that further information is required to complete its determination than it shall inform the Unsolicited Bidder accordingly and request the submission of further information within a specified time.

(c) Where the determination is positive the Line Ministry of Contracting Authority will include this project within the list of potential PPP projects that are earmarked for procurement, and will put forward a formal submission to the PPP Office for processing of this Unsolicited Proposal.

(d) Where the Line Ministry/Contracting Authority determines that the Unsolicited Proposal does not meet the requirements of Article 8(a) above, then it shall inform the Unsolicited Bidder in writing of its conclusion with a copy to the PPP Office.

## **9. Assessment of Eligibility of Unsolicited Proposal**

(a) On receipt of the formal submission from the Line Ministry or Contracting Authority the PPP Office will assess whether or not the Unsolicited Proposal complies with the minimum information requirements set out in Article 6 above. The PPP Office may make use of its own resources or seek professional support from qualified consultants and/or may seek support from appropriate sector line Ministry resources, or the PPP Unit, in conducting its assessment of the Unsolicited Proposal.

(b) If the PPP Office assesses that the requirements of Article 6 have not been met then it may request the submission of further information, or reject the proposal from further consideration and will inform its decision in writing to the Line Ministry or Contracting Authority. Based on PPP Office's response, the Line Ministry or the Contracting Authority may request the Unsolicited Bidder or for further information or may inform the Unsolicited Bidder that the Unsolicited Proposal has been rejected from further consideration.

(c) If the PPP Office determines that the requirements of Article 6 have been met, then it shall subject the Unsolicited Proposal to the 'PPP Screening Process' approved by the CCEA under the PPP Policy to assess whether the project is

suitable to be submitted to the relevant Approving Authority to provide an 'In Principle Approval' for delivery of this project through a PPP arrangement. The PPP Office will inform the outcome of the PPP Screening Process to the Line Ministry or Contracting Authority as applicable.

#### **10. In-Principle Approval**

(a) Following receipt of the PPP Office's concurrence, the Line Ministry shall submit the project to the appropriate Approving Authority for 'in Principle Approval'. In its submission for 'In Principle Approval' it should also seek approval confirming the status of the Unsolicited Bidder as the Original Proponent on the basis of the Eligible Unsolicited Proposal and seek confirmation on the mode of competitive bidding that will be applied to test the competitiveness of the Unsolicited Proposal.

(b) The mode of competitive bidding may include a Swiss Challenge System, Bonus System or other appropriate methods that may be proposed by the PPP Office and approved by the CCEA.

#### **11. Submission of Unsolicited Proposals on Projects with 'In-Principle' Approval**

(a) Unsolicited Proposal on Projects which have obtained 'In-Principle' Approval may only be processed where the Line Ministry/Contracting Authority and the PPP Office agree that the Unsolicited Proposal is likely to provide a better solution to meeting sector development plans by delivering a range of services significantly enhanced from that which has received the in Principle Approval after taking into consideration the implications of any cost that may have been incurred or any contractual arrangement that may have been entered into by Government on the project.

(b) Where the conditions set out under Article 11(a) are met the Unsolicited Proposal will be subject to the procedure set out in Articles 7-10.

#### **12. Project Development Phase**

(a) Following 'In Principle Approval' the PPP Office together with the Line Ministry or Contracting Authority will carry out necessary actions to address any terms or conditions that may have been imposed on the project by the Approving Authority.



(b) The PPP Office will support the Line Ministry or Contracting Authority in delivering this project including providing assistance in the appointment of consultants where requested by the Line Ministry/ Implementing Authority.

(c) The Line Ministry or Contracting Authority will seek PPP Office's concurrence on the extent to which further preparatory works are required in relation to carrying out due diligence on the Unsolicited Proposal, the need to carry out further detailed feasibility studies, assessment of VGF requirement (where applicable), the development of RFQ and RFP documentation, the PPP contract and other related documents.

(d) The Line Ministry or Contracting Authority and/or the PPP Office or the consultants may engage with the Unsolicited Bidder to seek further clarification or detail on the Unsolicited Proposal that has been submitted.

(e) The Government reserves the right to use the information submitted in the Eligible Unsolicited Proposal, apart from confidential information relating to the proposed pricing and the specific technical solution provided by the Unsolicited Bidder, to develop the procurement documentation including the RFQ, RFP, PPP contract and/or other contractual agreement.

### **13. Outcome of the project Development phase**

(a) Based on the outcome of the further preparatory works carried out during the project development phase, the line ministry of Contracting Authority May decide :

- (i) To proceed with the procurement process on the basis of the Eligible Unsolicited proposal; or
- (ii) Not to proceed with the procurement Process for the Eligible Unsolicited Proposal.

(b) Where the line Ministry or Contracting Authority decides not to proceed with the Procurement process it should notify the ppp Office and seek the approval of the CCEA on the decision taken. Once approval has been provided by the CCEA, the line Ministry or Contracting Authority shall inform the original proponent promptly in writing of the decision not to proceed with the project.

### **14. Resumption of procurement Process for an Unsolicited proposal**

(a) The line Ministry/Contracting Authority retains the right to resume the procurement process on the basis of an Unsolicited proposal, after a decision has been taken not to proceed with procurement process in line with Article 13, without any commitment or obligation, whether financial or otherwise, towards the Original Proponent, subject to the condition set out in Article 14(b).

(b) Where the Procurement process is re-launched within 24 months of the date of approval by the CCEA of the decision not to proceed the line Ministry/Contracting Authority shall invite the original proponent to resume their status as an original proponent of the Unsolicited proposal.

(c) If the Original proponent does not respond to the invitation within the time specified in the invitation they will lose their status and the associated benefits as an Original Proponent.

#### **15. Tender performance Bond**

The RFP may stipulate the need for applications (including the Unsolicited Bidder) to post a tender performance bond alongside its RFP Application.

#### **16. Mode of Competitive Bidding for Eligible Unsolicited proposals**

(a) The mode of competitive bidding may include a swiss Challenge System as set out in Article 17, Bonus system as set out in Article 18 or other appropriate methods that may be proposed by the ppp Office and approved by the CCEA.

(b) The Bonus System shall be used to invite competitive proposals on all Eligible Unsolicited proposals where the project is classified as a Medium or large ppp project under the ppp policy.

(c) The line Ministry or Contracting Authority shall have the discretion on whether the Swiss Challenge system or the Bonus system will be used to invite competitive proposals on Eligible Unsolicited proposals where the Project is classified as a Small ppp project under the ppp policy. This decision must be approved by the approving Authority at the time of providing in principle Approval for processing the project on a ppp basis.

#### **17. Application of the swiss Challenge system**

(a) Subject to the provisions set out below, under the swiss Challenge system the Qualification and Tender Evaluation Committee (QTEC) will carry out an evaluation of all the proposals received in line with the provisions set out under the ppp policy and the RFP documents.

(b) Following the evaluation of the proposals submitted in response to the request for proposals by the QTEC, if the proposal submitted by the Original proponent does not obtain the highest evaluated score :

- QTEC shall notify the line Ministry or Contracting Authority, without providing details of the evaluation scores or process, that the Original proponent's proposal has not obtained the highest evaluated score.

- The line Ministry or Contracting Authority shall notify the original proponent that its proposal has not obtained the highest evaluated score and invite in writing the original proponent to submit a revised proposal within 30 days enhancing the technical element and/or the financial element of their proposal.
- Once the revised proposal from the original proponent is received by the line Ministry or the Contracting Authority they will be submitted to the QTEC for evaluation. Following evaluation of the revised proposal the Applicant with the highest evaluated score will be recommended by the QTEC for Selection as the preferred tenderer.
- If the Original Proponent does not submit a revised proposal within the timeframe provided then the QTEC will complete their evaluation on the basis of the proposals already received and the Applicant with the highest evaluated score will be recommended by the QTEC for selection as the preferred tenderer.

#### **18. Application of the Bonus system**

- (a) Subject to the provision set out below, under the Bonus system the QTEC will evaluate all the bids received in line with the provisions set out under the ppp policy and the RFP documents.
- (b) When aggregating the evaluation score for the proposal submitted by the original proponent, the QTEC will include an original proponent Bonus in order to enhance the evaluation score of the original proponent. The Original proponent Bonus will be equivalent to 7% of the evaluation score assessed by the QTEC for the proposal submitted by the original proponent.
- (c) After taking into account the benefit of the Original Proponent Bonus attributed to the Original Proponent, the tenderer with the highest evaluated score will be recommended by the QTEC for selection as the preferred tenderer.

#### **19. Further Details, Clarifications & Revisions**

- (a) The PPP Office may provide further details and clarification from time to time in relation to these Unsolicited Proposal Procedures 2014, as well as developing, modifying and issuing templates and model documentations for the application and processing of unsolicited proposals.
- (b) The Procedures for Implementation of PPP Policy and Strategy for Unsolicited Proposals, 2014 may be revised time to time by the CCEA.

**DRAFT TEMPLATES FOR PROCESSING UNSOLICITED PROPOSALS**

**1 FORM I: LETTER OF SUBMISSION OF AN UNSOLICITED PROPOSAL**

**2 FORM II: POWER OF ATTORNEY TO THE SIGNATORY**

**FORM I: LETTER OF SUBMISSION OF AN UNSOLICITED PROPOSAL**

[on letter head of the Unsolicited Bidder or Lead Member of the consortium (if applicable), including full postal address, telephone no., fax no. and email address]

Date: [insert day, month, year]

To:

[Insert Name and Address of Line Ministry or Contracting Authority]

CC:

[Insert Name and Address of PPP Office (Prime Minister's Office)]

Subject: **Submission of Unsolicited Proposal for [Insert Name of Project] through Public-Private Partnership (PPP) Basis**

Dear Sir,

Being duly authorized to represent and act on behalf of ..... (hereinafter "The Unsolicited Bidder"), and having reviewed and examined the Policy and Strategy for PPP 2010 ("PPP Policy 2010") and the PPP Unsolicited Proposal Procedures 2014 and fully understood all the Policy Provisions, the undersigned hereby submit an Unsolicited Proposal for the [Insert Name of Project] **through Public-Private Partnership (PPP) Basis** and declare that:

1. We acknowledge that the Authority will be relying on the information provided in the Unsolicited Proposal and the documents accompanying such Unsolicited Proposal for considering the eligibility of the Unsolicited Bidder as an Original Proponent of an Eligible Unsolicited Proposal.
2. This statement is made for the express purpose of being considered an Original Proponent of an Eligible Unsolicited Proposal.
3. We shall make available to the Authority any additional information it may find necessary of require to supplement or authenticate the Letter of Submission and the Unsolicited Proposal. The Authority and its authorized representative are hereby authorized to conduct any inquiries or investigations to verify the statements, documents, and information submitted in connection with this Unsolicited Proposal, and to seek clarification, from our bankers and clients regarding any financial and technical aspect.

4. This Letter of Submission will also serve as authorization to any individual or authorized representative of any institution referred to in the supporting information, to provide such information deemed necessary and requested by the Authority to verify statements and information provided in this submission, or with regard to the resources, experience, and competence of the Unsolicited Bidder.
5. We acknowledge the right of the Authority to reject our Letter of Submission and Unsolicited proposal without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. We acknowledge the right of the Authority at any time to stop processing this Unsolicited Proposal without incurring any liability to the Unsolicited Bidder.
7. We undertake that during the period of consideration by the Authority of our Unsolicited Proposal, we will inform the Authority immediately if there are any changes in facts or circumstances relating to any aspect of our submission.
8. We agree and undertake to abide by all the terms and conditions of the PPP policy 2010 and the PPP Unsolicited Proposal procedure procedures 2014.
9. [ insert either 'we are not a Government owned entity' or 'we are a Government entity' ]
10. The Authority and its authorized representatives may contact the following persons for further information or clarification.

**General Inquiries**

Contact 1: \_\_\_\_\_ Tel No. : \_\_\_\_\_

Contact 2: \_\_\_\_\_ Tel No. : \_\_\_\_\_

**Technical Inquiries**

Contact 1: \_\_\_\_\_ Tel No. : \_\_\_\_\_

Contact 2: \_\_\_\_\_ Tel No. : \_\_\_\_\_

**Financial Inquiries**

Contact 1: \_\_\_\_\_ Tel No. : \_\_\_\_\_

Contact 2: \_\_\_\_\_ Tel No. : \_\_\_\_\_

11. We declare that we :
- a. have not applied for liquidation or not been ordered to liquidate by any court or other authority;
  - b. are not legally restrained to execute a contract;
  - c. have not previously entered into a contract with the Authority and later terminated the contract prior to the expiry of the contract due to the event of default on our part;
  - d. have not been involved in more than two litigation in the previous 3 years with any public sector authority in Bangladesh;
  - e. do not have a history of non-performance of work in the previous 5 years;
  - f. have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive document, undesirable practice or restrictive practice in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise;
  - g. have never been declared or found guilty of violating the anti-monopoly/competitive laws of any jurisdiction by any competent court at any time during the last five years;
  - h. have taken steps to ensure that no persons acting for us on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, or collusive practice;
  - i. have not been charge-sheeted by any agency of the Government, where the charge-sheet has not been disposed of in our favour, nor convicted by a Court of Law in regard to matters relating to security and integrity of the country.
12. The undersigned declare that all information provided in the Submission is true, complete and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such submission are true copies of their respective originals.

Signed: \_\_\_\_\_ name : \_\_\_\_\_

For and on behalf of : \_\_\_\_\_

(name of Unsolicited Bidder or Lead Member of a Consortium)

Signed: \_\_\_\_\_ name : \_\_\_\_\_

For and on behalf of : \_\_\_\_\_

(Member(s) of a Consortium)

FORM II: POWER OF ATTORNEY TO THE SIGNATORY<sup>1</sup>*TO WHOM IT MAY CONCERN*

Mr. -----(name of the person(s)), residing at -----(address), acting as ----- (designation and name of the organization), and whose signature is authorized below, shall be the person on behalf of ----- (name of Unsolicited Bidder) to provide information and respond to inquiries etc. as may be required by the [insert Name of Line Ministry or Contracting Authority/the PPP Office or any other government authority in connection with the “[**Insert name of project**] through **Public-Private Partnership (PPP) Basis**” and is also hereby authorized to sign and file relevant documents in response to the above.

(Authorized to signature to be given here)

Name:

Designation:

Organization:

Seal of the Organization:

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<sup>1</sup> Power of Attorney to be provided on a non-judicial stamp of Taka 500/ or as required under the laws of Bangladesh currently in force.