State of New Jersey
DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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Director

January 21, 2016

Via Electronic Mail [PagodinsTreeCareService@yahoo.com] and USPS Regular Mail

Robert Ryan Pagodin, Owner
Pagodin's Tree Care Service LLC
595 Delaware Ave.
Roebling, NJ 08554

RE: Protest of Notice of Proposal Rejection
Bid Solicitation {RFP} # 16DPP00010 *Forestry Mowing/Mulching Service NJDEP* (T2759)

Dear Mr. Pagodin:

This correspondence is in response to your email dated January 7, 2016, accepted as a timely letter of protest, referencing the subject Bid Solicitation {RFP} (RFP) and regarding the proposal submitted by Pagodin's Tree Care Service LLC (Pagodin) to the Division of Purchase and Property (Division). The record of this procurement notes that Pagodin's proposal was rejected as "not signed by representative of the bidding entity." In your letter, you contend that all submitted documents were properly signed and you request clarification of which document caused the rejection of Pagodin's proposal. You also contend that you had "an incredible amount of difficulty with NJSTART access" and were unable to access the system during the Question and Answer period as "the site was being repaired."

I have reviewed the record of this procurement, including the RFP, Pagodin's proposal, relevant statutes, regulations, and case law. This review has provided me with the information necessary to determine the facts of this matter and to render an informed determination on the merits of Pagodin's protest.

The subject RFP was issued through the Division's NJSTART pilot program to solicit proposals for forestry mowing/mulching services on behalf of the New Jersey Department of Environmental Protection and Cooperative Purchasing Participants. RFP § 1.1 *Purpose and Intent.* Concerning signatures in the proposal, the revised RFP[1] advised bidders of the following:

> **1.3.4 ELECTRONIC SIGNATURES**
>
> Vendors {Bidders} submitting quotes {proposals} through ***NJSTART*** may sign the forms listed in Section 4.4.1 (Forms, Registrations and Certifications Required with Quote

[1] The revised RFP was issued as Part 2 of Bid Amendment {Addendum} #1 on December 22, 2015. The revised RFP deleted the instruction in RFP Section 1.3.4 *Electronic Signatures* that the Offer and Acceptance Page had to be physically signed and permitted electronic signature on this form.

{Proposal}) and Section 4.4.2 (Forms, Registrations and Certifications Required Before Blanket PO {Contract} Award and That Should Be Submitted with the Quote {Proposal}) of this Bid Solicitation {RFP} electronically by typing the name of the authorized signatory in the "Signature" block as an alternative to downloading, physically signing the form, scanning the form, and uploading the form to *NJSTART*.

. . . .

Bid Amendment {Addendum} #1 also provided the following information:

#	RFP Section Reference	Question	Answer
2	Offer and Acceptance Page	Is the electronic signature allowed for the Offer and Acceptance Page	Yes, it is allowable for the Offer and Acceptance Page.

Concerning the requirement to submit a completed and properly signed Offer and Acceptance Page, the RFP stated the following:

4.4.1.1 OFFER AND ACCEPTANCE PAGE

The Vendor {Bidder} shall complete, including signature of an authorized representative of the Vendor {Bidder}, and submit the Offer and Acceptance Page {Signatory Page} accompanying this Bid Solicitation {RFP} (whether submitted through *NJSTART* or as a hard copy). If the Vendor {Bidder} is a limited partnership, the Offer and Acceptance Page {Signatory Page} must be signed by a general partner. All information requested must be submitted. If the Vendor {Bidder} is a joint venture, the Offer and Acceptance Page {Signatory Page} must be signed by a principal of each party to the joint venture. Failure to comply will result in rejection of the quote {proposal

Pursuant to N.J.A.C. 17:12-2.2,[2] a bidder's proposal must "[c]ontain all RFP-required certifications, forms, and attachments, completed and signed as required" or "be subject to automatic rejection." As noted above, bidders were required to submit the forms listed under RFP Section 4.4.1, including the Offer and Acceptance Page, Ownership Disclosure Form, and Disclosure of Investment Activities in Iran Form, with an appropriate form of signature.

A review of Pagodin's proposal reveals it submitted the following (redacted) information on the Offer and Acceptance Page:

TO THE STATE OF NEW JERSEY:
The Undersigned hereby offers and agrees to furnish the goods, products, or services in compliance with all terms of this Contract (Master Blanket Purchase Order) as defined in Section 2.1.1 of the Solicitation (Bid Solicitation).

Company Name	Pagodin's Tree Care Service LLC	E-Mail Address	PAGODINSTREECARESERVICE@YAHOO.COM
Address	595 Delaware Ave	Phone Number	609-499-9459
City, State, ZIP	Roebling NJ 08554	Fax Number	609-499-9441
FEIN	[redacted]	Authorized Signature	V6835
Printed Name	Pagodin's Tree Care Service LLC	Title	Owner

[2] The Division's administrative rules governing its procurement programs are set forth in N.J.A.C. 17:12. These rules can be accessed at http://www.state.nj.us/treasury/purchase/AdminCode.shtml.

As is evident, Pagodin attempted to sign the Offer and Acceptance Page by typing "V6835." V00006835 is listed in Pagodin's public NJSTART profile as the company's Vendor ID number. Hence, Pagodin attempted to "sign" the Offer and Acceptance Page by listing its Vendor ID number, rather than submitting a standard or electronic signature as guided by RFP Sections 1.3.4 and 4.4.1.1. As explained in RFP Section 1.3.4, forms may be signed "electronically by typing the name of the authorized signatory in the 'Signature' block as an alternative to downloading, physically signing the form, scanning the form, and uploading the form to ***NJSTART***."[3]

However, in order for Pagodin's proposal to be considered for an award, the use of a Vendor ID number in the signature block on the Offer and Acceptance Page would have to be deemed a minor irregularity. Minor irregularities can be waived by the Director pursuant to the authority vested in N.J.A.C. 17:12-2.7(d) and RFP Section 1.4.10, *Quote {Proposal} Acceptances and Rejections.* New Jersey courts have developed a two-prong test to consider "whether a specific noncompliance constitutes a substantial and hence non-waivable irregularity." Twp. of River Vale v. R. J. Constr. Co., 127 N.J. Super. 207, 216 (Law Div. 1974). The two-prong test requires a determination of

> first, whether the effect of a waiver would be to deprive the municipality of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.
>
> [Meadowbrook Carting Co., Inc. v. Borough of Island Heights, 138 N.J. 307, 315 (1994) (internal quotations omitted) (affirming the two-prong test established in River Vale, supra, 127 N.J. Super. at 216).]

I have considered Pagodin's position through the lens of the River Vale criteria and concur with Pagodin that its submitted version of the Offer and Acceptance Page does not rise to the level of a material deviation. I note that, consistent with Pagodin's position, the typing of a Vendor ID number into the signature block is evidence of Pagodin's intent to sign the Offer and Acceptance Page and be bound by the RFP terms and requirements. As a result, I find that a clarification would be appropriate to remedy the ambiguity in Pagodin's Offer and Acceptance Page: Pagodin is directed to submit to the Procurement Bureau the Offer and Acceptance Page utilizing the signature method outlined above. No other fields may be altered.

In response to Pagodin's assertion that it had "an incredible amount of difficulty with NJSTART access" and was unable to access the system during the Question and Answer period as "the site was being repaired," the record indicates that NJSTART was properly functioning during this procurement. While Pagodin did contact the NJSTART Vendor Support Unit through email and telephone several times between December 7 and 14, 2015, these correspondences addressed issues relating to navigating the system in general. Considering Pagodin's difficulty in utilizing NJSTART, I encourage the review of the QRG's that outline the proposal submission process, available at: http://www.state.nj.us/treasury/purchase/njstart/vendor.shtml

In light of the findings set forth above, I am overturning the decision of the Proposal Review Unit to reject Pagodin's proposal for the above-referenced RFP. This is my final agency decision.

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[3] I note that Pagodin properly submitted an Ownership Disclosure Form and Disclosure of Investment Activities in Iran Form by physically signing, scanning, and uploading the forms into NJSTART.

Thank you for your interest in doing business with the State of New Jersey and for participating in the Division's NJSTART Pilot Bidding Opportunity.

Sincerely,

Maurice Griffin
Chief Hearing Officer

MG:DF

c: G. Olivera
J. Signoretta
D. Delaney
A. Nelson