



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Persistent and Determinant Technologies LLC

**File:** B-408342

**Date:** August 22, 2013

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Charles M. Vinson, for the protester.  
Nicole Decker, Esq., Defense Logistics Agency, for the agency.  
Matthew T. Crosby, Esq., Pedro E. Briones, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that “brand name or equal” requirement in solicitation for printers is overly restrictive is denied where record shows that brand name or equal product is needed to ensure rapid printing capability for agency worldwide distribution system.

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### DECISION

Persistent and Determinant Technologies LLC (PDT) of Liberty, North Carolina, protests the terms of request for proposals (RFP) No. SP3300-12-R-0043, issued by the Defense Logistics Agency (DLA) for printers. Specifically, PDT contends that the agency’s requirement for Kyocera “or equal” printers that use PRESCRIBE software unduly restricts competition.

We deny the protest.

The RFP seeks brand name Kyocera printers or equal (as well as components such as toner and maintenance kits) that conform to a list of salient characteristics, including, as relevant here, that the devices be able to print barcodes using Kyocera’s “PRESCRIBE” printer software language.<sup>1</sup> RFP at 3; Statement of Work (SOW) at 3; RFP amend. 1, attach. 2, Salient Characteristics, at 2, 10, 18, 26, 35, 44, 52, 61; amend. 3, at 4. The solicitation advises that DLA only uses

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<sup>1</sup> The solicitation was issued on April 22, 2013, as a set-aside for small business concerns and provides for award of a fixed-price requirements contract for a base year and 2 option years. RFP at 1, 3, 125; Agency Report (AR) at 3.

PRESCRIBE software to transmit barcode print data across the agency's electronic distribution system and that offers for devices that require translation software, device-specific printer drivers, or any external devices in order to print barcodes, will not be considered. SOW at 3; see, e.g., Salient Characteristics at 2. The RFP states that offerors and manufacturers may adapt or reengineer their printers to process data written in PRESCRIBE language, but they must submit sample devices for further testing in that regard. SOW at 3; see, e.g., Salient Characteristics at 2; see RFP, attach. 6, Product Sample Test Plan & Score Sheet.

PDT contends that the agency's requirement for Kyocera "or equal" printers that use PRESCRIBE software unduly restricts competition because, according to the protester, there are no equivalent printers on the market and PRESCRIBE is proprietary software that is only available on Kyocera brand printers.<sup>2</sup> Protest at 1-2. The protester requests, as relief, that DLA be required to remove any Kyocera software from, and reprogram, its electronic distribution system to accept any commercial printer and industry standard print software, which, in the protester's view, would be more cost effective and reliable. Id.; Comments at 2-3.

Contracting agencies have broad discretion in identifying their needs and determining what characteristics will satisfy those needs. Bombardier, Inc., Canadair, Challenger Div., B-243977, B-244560, Aug. 30, 1991, 91-2 CPD ¶ 224 at 3. The fact that specifications are based upon a particular product is not improper in and of itself; nor will an assertion that a specification was "written around" design features of a particular product provide a valid basis for protest if the record establishes that the specification is reasonably related to the agency's minimum needs. Hewlett-Packard Co., B-239800, Sept. 28, 1990, 90-2 CPD ¶ 258 at 6. When a protester challenges a salient characteristic included in a brand name or equal solicitation as unduly restrictive of competition, we will review the record to determine whether the restrictions imposed are reasonably related to the contracting agency's minimum needs. Herley Indus., Inc., B-246326, Feb. 28, 1992, 92-1 CPD ¶ 243 at 2.

DLA maintains that its requirement for brand name Kyocera printers or equal that use PRESCRIBE software is necessary to meet the agency's needs. AR at 1. The agency explains that PRESCRIBE permits DLA and its 26 worldwide distribution centers to print critical barcodes in near real-time directly to any of the 13,000 printers throughout the distribution system. AR, Tab 1, Declaration of Computer Specialist & Program Manager, at 1-2. DLA maintains that it has evaluated various other options, but concluded that configuring its electronic distribution system to

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<sup>2</sup> Alternatively, the protester argues that DLA is conducting an improper, de facto sole source procurement and that the agency failed to prepare a Justification and Approval (J&A) for Other Than Full and Open Competition. Protest at 2; Comments at 2.

accommodate each potential vendor's printing software would not be efficient and could cost over \$67,000 per printer manufacturer. AR at 6, 11. The agency disputes that PRESCRIBE software is only available on Kyocera brand printers, and it asserts that market research shows that at least two manufacturers other than Kyocera can provide printers which are capable of using PRESCRIBE. Id. at 10-11.

In our view, the agency has reasonably concluded that brand name Kyocera printers or equal that use PRESCRIBE software are necessary to meet the agency's needs. In this respect, DLA presented persuasive arguments that it requires printers that are compatible with the agency's uniform, worldwide electronic distribution system and that PRESCRIBE permits the agency to distribute critical supplies quickly, efficiently, and without additional costs to the agency.<sup>3</sup> The protester does not rebut DLA's technical arguments, does not rebut PRESCRIBE's ability to efficiently meet DLA's distribution needs, and does not rebut DLA's estimates for reconfiguring its electronic distribution system to accommodate each vendor's printing software. See generally Comments. Rather, PDT's response to the agency's various arguments is that such information should be used to prepare a J&A. Id. at 1. Moreover, PDT fails to address the agency's claim that other than Kyocera printers can use PRESCRIBE (and the protester fails to show how the RFP restricts PDT from submitting a proposal for same). Thus, we disagree that DLA is conducting a sole-source procurement or must prepare a J&A.

The protest is denied.<sup>4</sup>

Susan A. Poling  
General Counsel

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<sup>3</sup> According to the agency, its barcode system is critical to receiving, inventorying, and shipping millions of items daily, and tens of millions of barcodes are printed annually in that regard. AR at 3; Tab 1, Declaration of Computer Specialist & Program Manager, at 1.

<sup>4</sup> PDT raises additional arguments in its comments on the agency report, including that the RFP does not fully disclose the total estimated quantity and dollar value of the required printers. Comments at 2-4. These arguments, raised for the first time in the protester's comments to the agency's report, are untimely as they should have been raised prior to the closing time for receipt of proposals and were not. 4 C.F.R. § 21.2(a)(1); National Customer Eng'g, B-251166, Feb. 9, 1993, 93-1 CPD ¶ 118 at 3; see also JAVIS Automation & Eng'g, Inc., B-290434, B-290434.2, Aug. 5, 2002, 2002 CPD ¶ 140 at 7 n.11 (piecemeal presentation of protest grounds, raised for the first time in comments, are untimely).