

# GAO Rules in Favor of Wiley Rein Client in Two U.S. Marine Corps Contract Cases

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Washington, DC—The U.S. Government Accountability Office (GAO) ruled in favor of Wiley Rein LLP client Patricio Enterprises, Inc., in two prominent cases involving contracts for services with the U.S. Marine Corps.

GAO issued both decisions on May 26, but only recently released them to the public. In the latest decision, the GAO said the Marine Corps should terminate the \$21 million task order awarded to Knowledge Capital Associates (KCA) and disqualify KCA from the competition due to misrepresentations KCA made in its proposal about the availability of personnel it proposed to perform the task order. The task order at issue would provide logistics support to the Marine Corps' program manager for infantry weapons systems.

Patricio and KCA had been credited by the Marine Corps with similar strengths for their proposed staffing. However, the GAO found that while KCA indicated it had "signed contingent offers in place" for prospective employees—some of whom were Patricio employees—there was no evidence that these prospective employees had accepted offers or were even aware of them.

Although KCA and the Marine Corps argued the contractor had every intention of hiring the employees it claimed it would, the GAO found that such intent did not negate KCA's misrepresentations regarding the availability of proposed personnel. Because the Marine Corps had relied on these misrepresentations in its evaluation of KCA's proposal and had a material effect on the award decision, the GAO recommended termination of the award and exclusion of KCA from the competition for a new award.

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In a prior decision issued by the GAO on June 3, the Marine Corps was found to have conducted flawed past performance evaluations of Patricio and the awardee in awarding a task order—valued at almost \$14 million—for financial management support services for the agency’s infantry weapons system program. The GAO sustained Patricio’s bid protest after the award was given to a competitor that offered a lower price.

In upholding Virginia-based Patricio’s protest of the Marine Corps’ prior award decision, the GAO said the agency used a “mechanical formula” when evaluating the companies’ past performance and unreasonably penalized Patricio for including additional references. The Marine Corps had given Patricio, the incumbent contractor, an “outstanding” rating on management and staffing capability—defined as the most important factor by the GAO—and found that Patricio “appropriately recognized the more technically challenging task areas.” The awardee, on the other hand, was given a “marginal” rating for management and staffing and was found to have weaknesses in its transition plan and support team, among other areas.

Given all these factors, the GAO found that a proper past performance evaluation could have led to a different award decision. The GAO recommended the agency re-evaluate the proposals and make a new award decision, pointing out that it could not predict what ratings the companies would have received had the past performance evaluations been conducted in a “reasonable manner.”

In both bid protest cases, Patricio is represented by Government Contracts Practice partners Paul F. Khoury and Tracye Winfrey Howard and associate Moshe B. Broder.

Both decisions were covered by *Law360* and *Bloomberg BNA’s Federal Contracts Report*.