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Description of document: **United States Marshals Service (USMS) Prison Operations Division Office of Detention Standards and Compliance Reduction Review Manual 2016**

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Source of document: FOIA/PA Officer
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U.S. Department of Justice

United States Marshals Service

Office of General Counsel

*CG-3, 15th Floor
Washington, DC 20530-0001*

September 30, 2020

Re: Freedom of Information Act Request No. 2020USMS35525
Subject: "A copy of the USMS Detention Facilities Contract Reduction Manual."

Dear Requester:

The United States Marshals Service (USMS) is responding to your Freedom of Information Act (FOIA) request pertaining to the above mentioned subject.

Pursuant to your request, the USMS conducted a search and located 20 pages of responsive documentation. These pages are released to you with portions withheld pursuant to Exemptions (b)(5) and (b)(7)(F) of the FOIA, 5 U.S.C. § 552(b).

FOIA Exemption (b)(5) FOIA (b)(5) protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5) (2006 & Supp. IV 2010). The three primary, most frequently invoked privileges that are incorporated into Exemption 5 are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege.

Finally, FOIA Exemption (b)(7)(F) protects law enforcement information that "could reasonably be expected to endanger the life or physical safety of any individual." 5 U.S.C. § 552(b)(7)(F) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110175, 121 Stat. 2524. Courts have routinely upheld the use of Exemption (b)(7)(F) to protect the identities of law enforcement agents, as well as protect the names and identifying information of non-law enforcement federal employees, local law enforcement personnel, and other third persons in connection with particular law enforcement matters. See Rugiero v. DOJ, 257 F.3d 534, 552 (6th Cir. 2001); Johnston v. DOJ, No. 97-2173, 1998 WL 518529, *1 (8th Cir. Aug. 10, 1998).

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you are not satisfied with the response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

You may also contact Charlotte Luckstone or our FOIA Public Liaison at (703) 740-3943 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

Angela Chappelle Brooks, for

Charlotte Luckstone

Associate General Counsel

FOIA/PA Officer

Office of General Counsel

Prison Operations Division
Office of Detention Standards and
Compliance
Reduction Review Manual



The United States Marshals Service

2016

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Objectives

- Establish and maintain consistency with accountability practices among private contract detention facilities and the United States Marshals Service (USMS);
- Partner with the USMS, when warranted, to resolve contract performance issues with available corrective action processes;
- Ensure the factual basis for taking a price reduction is reasonable and fair;
- Reduction proposals are supported by documentary evidence of the contractor's failure to perform required services; and
- Reduce the vulnerability of appeals for price reductions by ensuring the Government can withstand legal challenge.

Inspection and Acceptance

Each contract administered and awarded by the United States Marshals Service (USMS), Prison Operations Division (POD), Office of Detention Standards and Compliance (ODSC), contains a Section E, Inspection and Acceptance Clause which lists regulatory contract language and optional adverse action steps. Excerpts of the sections that are applicable to the reduction of a contractor's invoice for failure to perform required services are indicated below; however, items in bold specifically relate to the basis for the USM's to initiate the contract reduction process:

52.246-4 INSPECTION OF SERVICES--FIXED-PRICE (AUG 1996):

(a) Definitions. "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform to contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the services performed.

(f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service or (2) terminate the contract for default.

E.2 CONTRACTOR QUALITY CONTROL PLAN

The contractor shall develop, maintain and submit, in accordance with Section L of the Performance Work Statement (PWS), a Quality Control Plan (QCP) delineating the contractor's Quality Control Program/Inspection System to monitor and control their performance of services required in order to meet the requirements of the PWS. The Program/Inspection System shall explain in detail how the contractor shall sustain the quality of providing Comprehensive Detention Services.

E.3 GOVERNMENT QUALITY ASSURANCE SURVEILLANCE PLAN

(a) The Government Quality Assurance Surveillance Plan (QASP) is based on the premise that the contractor, and not USMS, is responsible for management and quality control actions to meet the terms of the contract. The QAP procedures recognize that the contractor is not a perfect manager and that unforeseen and uncontrollable problems do occur. Good management and use of an adequate Quality Control Plan will allow the contractor to operate within acceptable quality levels.

(b) In accordance with FAR 52.246-4, Inspection of Services--Fixed-Price, each phase of the services rendered under this contract is subject to USMS inspection both during the contractor's operations and after completion of the tasks. When the contractor is advised of any unsatisfactory condition(s), the contractor shall submit a written report to the Contracting Officer (CO) addressing corrective/preventive actions taken. The government's QASP is not a substitute for quality control by the contractor.

(c) The Contracting Officer's Representatives (COR) may check the contractor's performance and document any noncompliance, however, only the Contracting Officer may take formal action for unsatisfactory performance.

(d) The USMS may reduce the contractor's invoice or otherwise withhold payment for any individual item of nonconformance observed as specified below in the Contractor's Failure to Provide Services Clause. The Government may apply various inspection and extrapolation techniques (i.e., 100 % surveillance, random sampling, planned sampling, unscheduled inspections, etc.) to determine the quality of services and the total payment due.

E.4 CONTRACTOR'S FAILURE TO PERFORM REQUIRED SERVICES

The rights of the Government and remedies described in this section are in addition to all other rights and remedies set forth in this solicitation. Specifically, the Government reserves its rights under the Inspection of Services and Termination Clauses. Any reductions in the contractor's invoice shall reflect the contract's reduced value resulting from the contractor's failure to perform required services. The contractor shall not be relieved of full performance of the services hereunder and may be terminated for default based upon inadequate performance of services, even if a reduction was previously taken for any inadequate performance.

Basis for Reductions

The Government may reduce a contractor's invoice or otherwise withhold payment for individual item of nonconformance observed as specified in the "Contractor's Failure to Perform Required Services" Clause, which can be found in **Section E. 4**, of each detention service contract (**Refer: Page 6**). The Government may apply various inspection and extrapolation techniques to determine the quality of services and the total payment due. Any reductions in the contractor's invoice will reflect the contract's reduced value resulting from the contractor's failure to perform required services.

A price reduction may be proposed when a performance failure occurs within a Functional Area of the Federal performance-Based Detention Standards and in other areas covered under the terms and conditions of the contract which generally include the following:

- Quality Assurance Reviews;
- After Action Reviews;
- Other type of Reviews conducted;
- Relevant Information received

Factors which may affect USMS's decision to initiate the contract reduction process are:

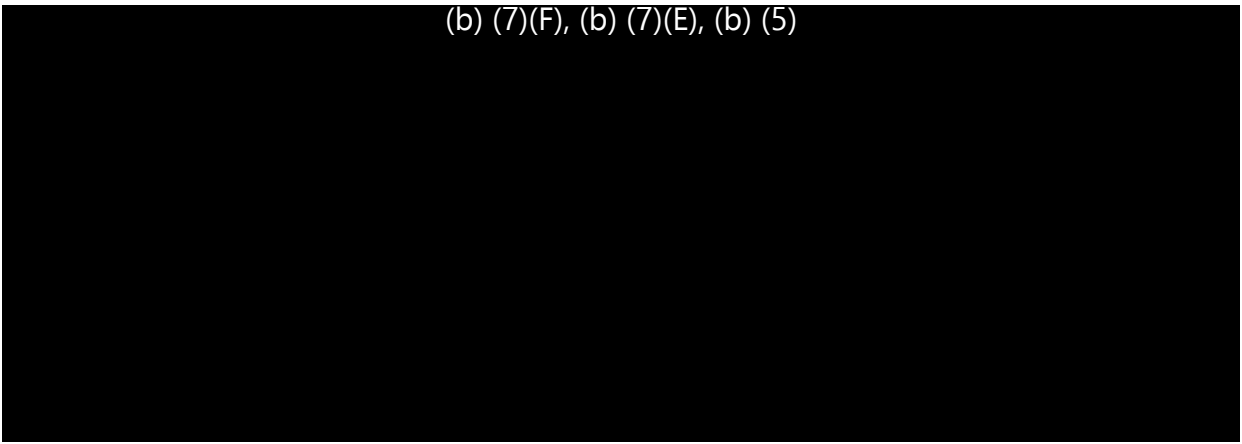
- Mitigating circumstances contributing to each finding;
- Detailed plans of corrective action proposed by the contractor;
- Contractor's Quality Control processes;
- Corrective actions taken by the contractor; and
- Other relevant facts or circumstances
(e.g., harm to the Government, effect on contractor's ability to perform (re-occurring versus a single event, etc.).

Reduction Action Steps

When a contractor has failed to perform required detention services, the COR shall do the following:

- (b) (7)(F), (b) (7)(E), (b) (5)
-
-
-
-
-
-
-
-

(b) (7)(F), (b) (7)(E), (b) (5)



-
-
-

Price Reduction Proposal Package

The COR shall ordinarily compile the following documents as part of the Price Reduction Proposal Package for the CO and RRB's review:

- (b) (7)(F), (b) (7)(E)
-
-
-
-
-
-
-
-
-
-


Reduction in Contract Price Proposal Memorandum Example

MEMORANDUM FOR Contracting Officer
United States Marshals Service Procurement Division

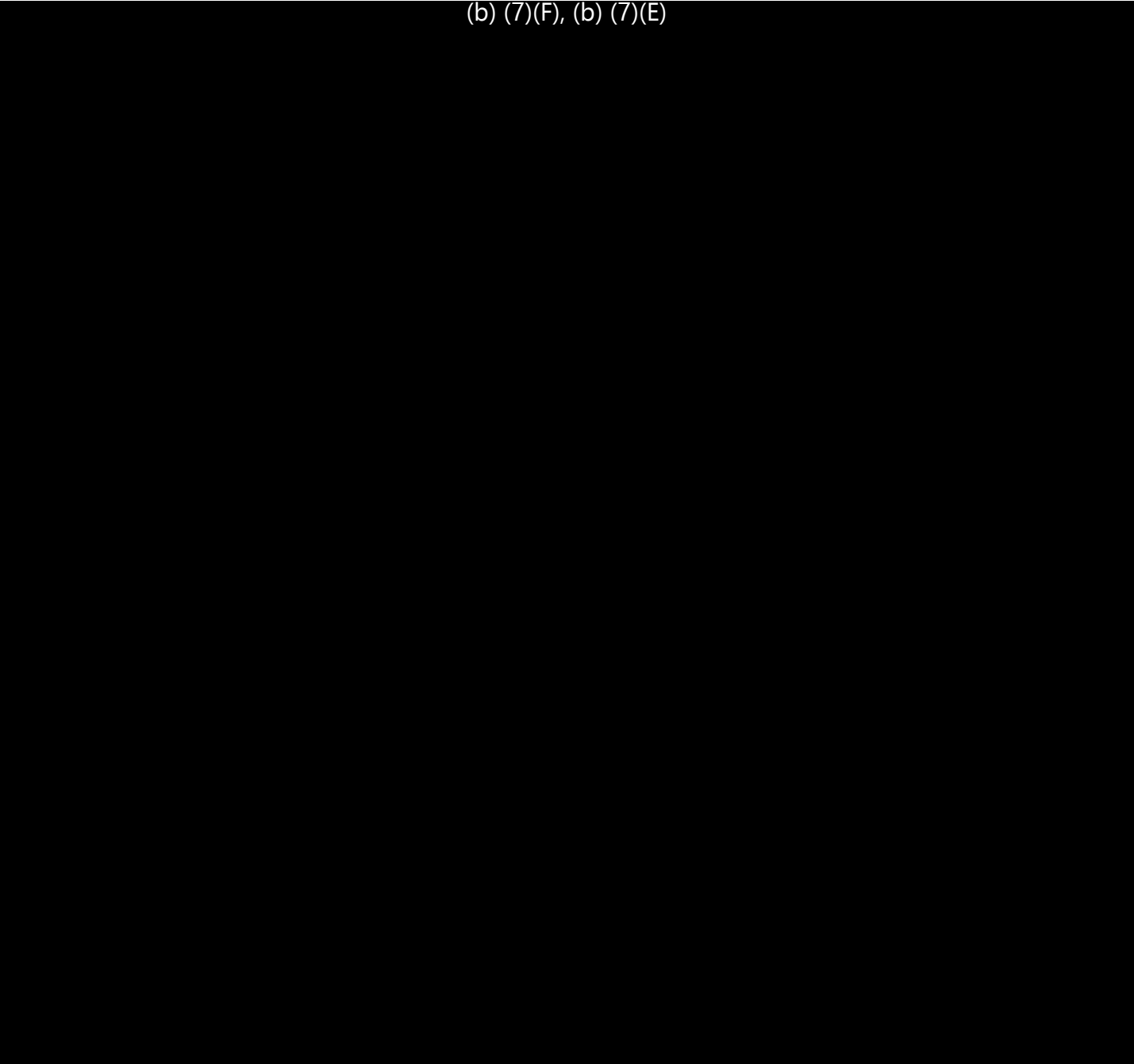
FROM: Name
Contracting Officer Technical Representative

SUBJECT: Reduction in Contract Price Proposal

(b) (7)(F), (b) (7)(E)



(b) (7)(F), (b) (7)(E)



Reduction Calculations

The Contracting Officer Representative (COR) provides the following explanation of the calculation method utilized for the recommended reduction in contract price to [Contractor's Name] monthly invoice. The reduction percentages for each cited Functional Area were factored into the verified losses in service sustained by the Government.

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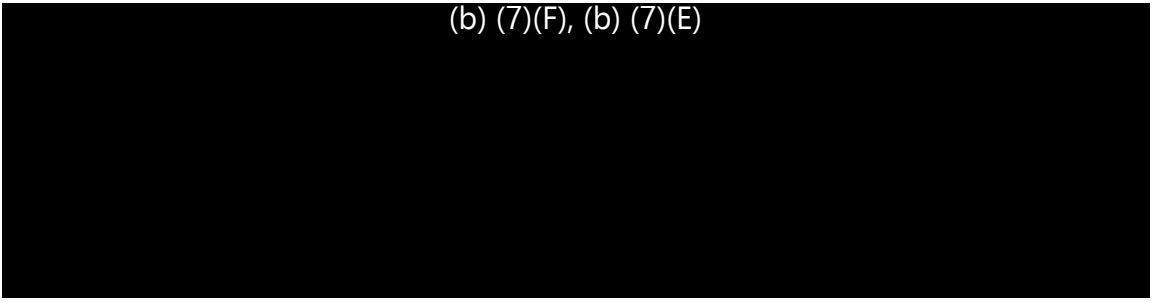
Definition and Calculations of Performance Areas

Functional Areas are those areas that address the general requirements necessary to ensure detainees are housed in a safe, secure, and humane environment. Functional Area findings are evaluated to determine the level of impact the failed requirements have on the operation of a correctional facility. Failure to comply with Functional Areas is considered a deficiency in the operation of a correctional facility. Consequently, Functional Area findings indicate internal controls are weak and immediate corrective action and stronger management oversight is warranted.

- (b) (7)(F), (b) (7)(E)
-
-


(b) (7)(F), (b) (7)(E)

(b) (7)(F), (b) (7)(E)

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The recommended reduction in contract price amount was rounded down to ensure a conservative approach was made by the Government. The recommendation made by the COR is reasonable and commensurate with the contractor's failure to perform required services for the Government and the level of danger placed on the facility staff, law enforcement authorities and the general public.

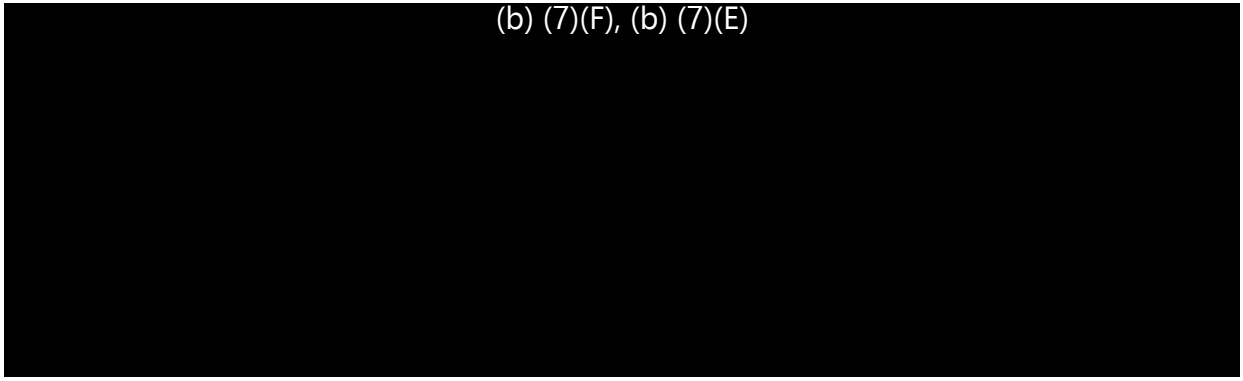
(b) (7)(F), (b) (7)(E)

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Price Reduction Proposal Example

Functional Area: Administration and Management

(b) (7)(F), (b) (7)(E)



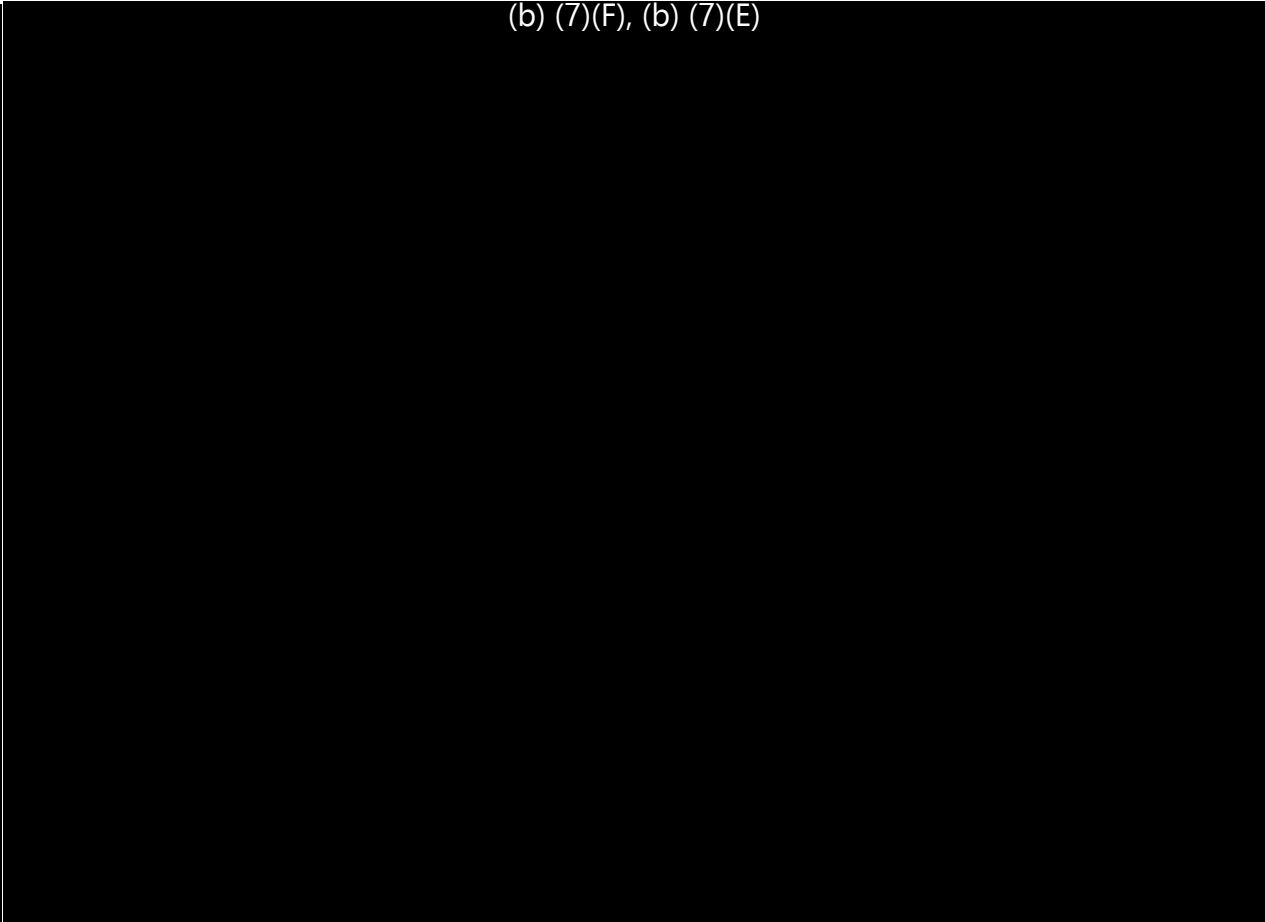
Basis for Reduction(s)

(b) (7)(F), (b) (7)(E)



Functional Area: Security and Control

(b) (7)(F), (b) (7)(E)



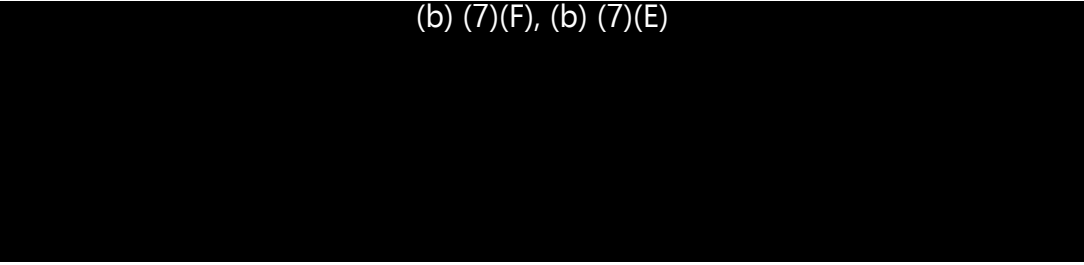
Basis for Reduction(s)

The basis for reductions are [Contractor's Name] failed to follow facility policy [No., name]; Facility Incident Reporting policy [No.] The contractor failed to perform services for the Government as outlined in the existing contract and the FPBDS.

(b) (7)(F), (b) (7)(E)



(b) (7)(F), (b) (7)(E)

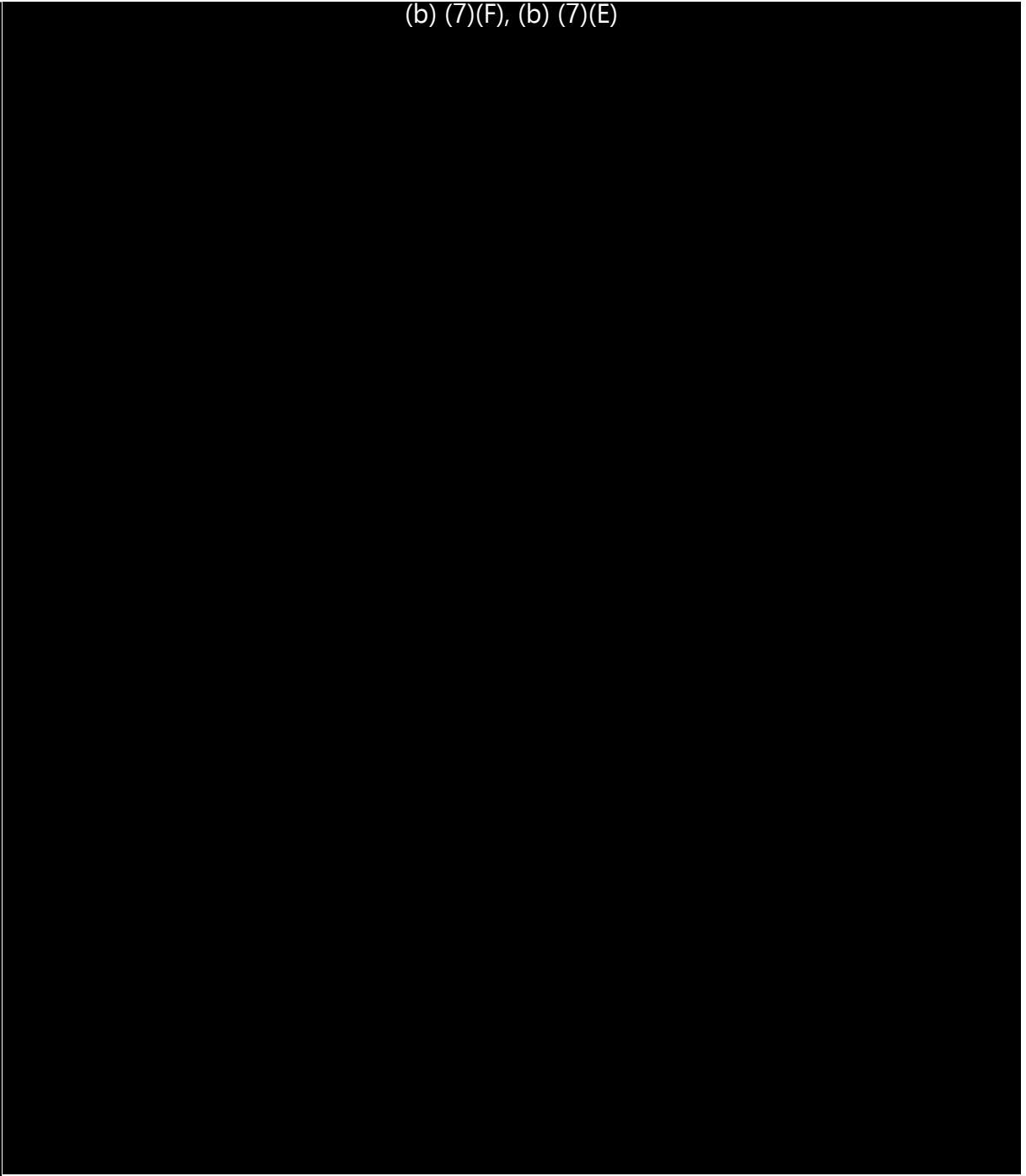




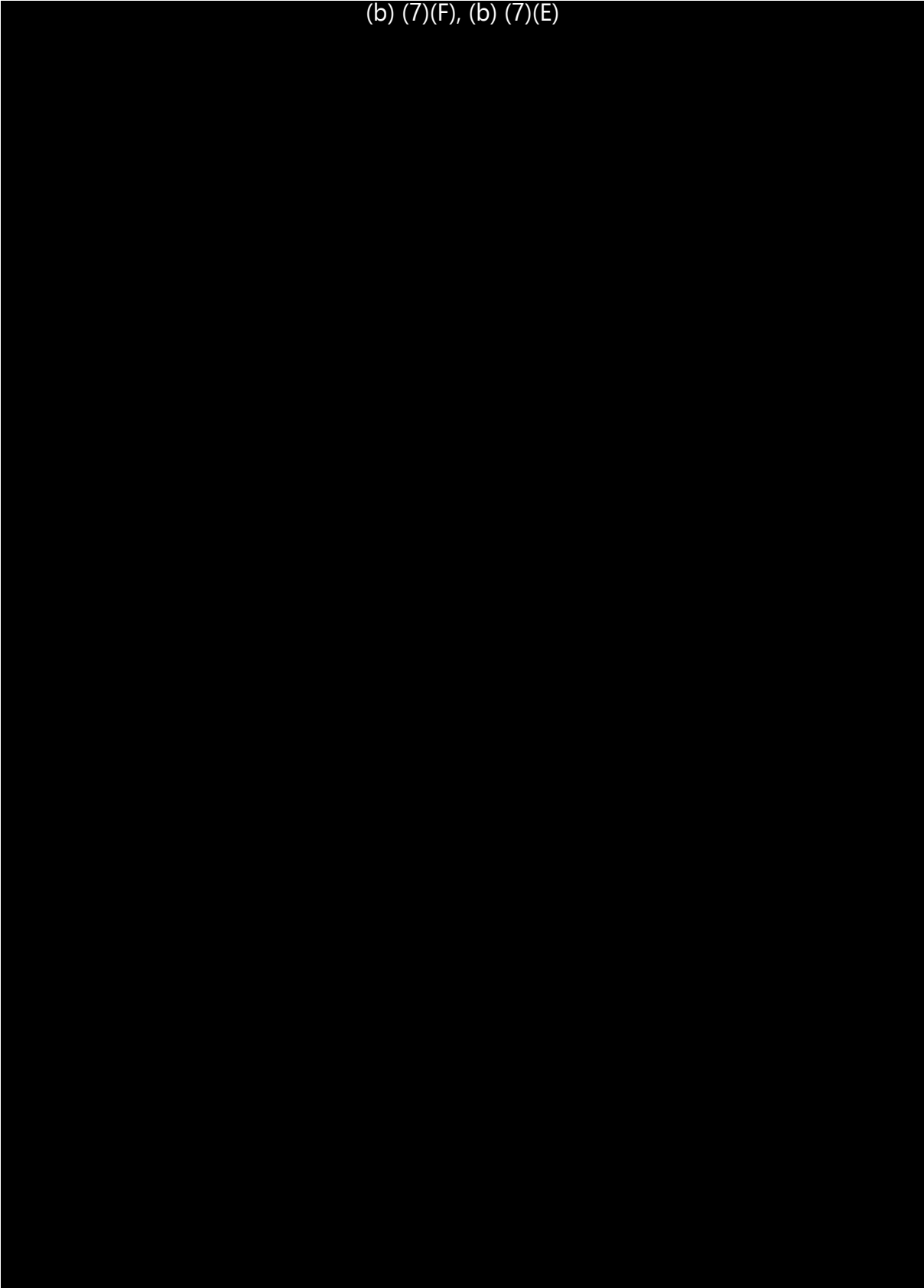
[Name of Contract]

Performance Requirement Summary (Attachment)

(b) (7)(F), (b) (7)(E)



(b) (7)(F), (b) (7)(E)



(b) (7)(F), (b) (7)(E)

