case-by-case basis," rather than granting these requests "sparingly," the language which is used in our current regulation. (For consistency, we also have revised the language in § 21.3(h) to provide for granting a protester's requests for extensions of time for submission of comments "on a case-by-case basis," rather than granting these requests "sparingly," the language which is used in our current regulation.)

Section 21.5—Protest Issues Not for Consideration

Several commenters questioned our language change in § 21.5(b)(2) which provides that we will review the refusal by the Small Business Administration to issue a certificate of competency because of "a failure to consider vital information bearing on the firm's responsibility." We added this language to reflect our current case law. See COSTAR, B–240980, Dec. 20, 1990, 90–2 CPD ¶ 509; American Industrial Contractors, Inc., B–236410.2, Dec. 15, 1989, 89–2 CPD ¶ 557.

Section 21.6—Withholding of Award and Suspension of Contract Performance

The information provided in § 21.6 is significantly modified. This section in the proposed rule repeated in substance the requirements for the withholding of award and the suspension of contract performance which are contained in 48 CFR part 33. These requirements are to be carried out by the agencies, not our Office, and therefore we refer readers to the relevant statutory and regulatory provisions addressing these requirements.

Section 21.7—Hearings

With regard to paragraphs (g) and (h) of § 21.7, several commenters requested clarification of the requirement for agencies to file consolidated posthearing comments on the hearing and agency report, and clarification of the requirement to reference relevant hearing testimony and admissions. We have adopted the language recommended by the commenters.

Section 21.8—Remedies

Several commenters suggested that we address how we will implement the fee limitation provisions contained in sec. 1403 of FASA. We have added language to § 21.8(f)(2) referencing the statutory language of FASA. The agencies will adjudicate, in the first instance, claims for costs consistent with the statutory fee limitation provisions. If a protester and agency cannot reach agreement on a claim for costs within a reasonable time, we may, upon request of the

protester, recommend the amount of costs the agency should pay in accordance with the statutory fee limitation provisions.

Regarding the limitation on attorneys' fees, issues involving, for example, a request for higher fees based on the cost of living or a special factor are more appropriately resolved on a case-by-case basis. We expect to provide necessary guidance to parties through our decisions. Concerning the consultant and expert witness fee limitation, FASA limits the payment of these fees to "the highest rate of compensation * * * paid by the Federal Government." While there is some difference of opinion among the commenters on whether Congress intended to cap fees at the highest rate fixed by the Classification Act Schedules 15, see 5 U.S.C. 3109, we believe that the proposed FAR implementation, which limits consultant and expert witness fees to the highest rate fixed by 5 U.S.C. 3109, is appropriate and consistent with the statutory language. We are unaware of any legislative history which suggests that this implementation is contrary to congressional intent.

Section 21.10—Express Option, Accelerated Schedule, and Summary Decision

Section 21.10 has been clarified to confirm that GAO may resolve any protest using a flexible, accelerated schedule. In addition, for any protest, GAO may issue a summary decision. We anticipate that a request for a summary decision will be made as soon as practicable after the protest is filed, thus permitting GAO to expedite the decision-making process in order to minimize the disruption to the procurement process.

Section 21.12—Distribution of Decisions

As stated in §21.12, we have established an electronic distribution system to facilitate expedited access to decisions. The telephone number for obtaining information regarding access to this electronic distribution system is 202-512-5282. In addition, the telephone number for GAO's case status line is 202-512-5436. We encourage parties requiring copies of decisions or case status information to use these telephone numbers. We are also changing the format of bid protest decisions. In order to provide a more uniform format and to facilitate distribution through electronic systems, the decisions themselves will not have an original signature, but the typed designation "Comptroller General of the United States."

Section 21.13—Nonstatutory Protests

One commenter expressed concern with the language of § 21.13 regarding an agency's agreement to have its protests decided by GAO. While we believe that a language change is not required, we point out that the language in this section is intended to permit agencies to agree, in advance, that our Office decide a class of cases or a particular case. Once a protest is filed, however, we do not anticipate that an agency will revoke an agreement to have the pending protest decided by our Office, and, in fact, in the past no agency has revoked such an agreement.

List of Subjects in 4 CFR Part 21

Administrative practice and procedure, Bid protest regulations, Government contracts.

For the reasons set out in the preamble, title 4, chapter I, subchapter B, of the Code of Federal Regulations is amended as follows:

1. Part 21 is revised to read as follows:

PART 21—BID PROTEST REGULATIONS

Sec.

21.0 Definitions.

21.1 Filing a protest.

21.2 Time for filing.

- 21.3 Notice of protest, submission of agency report, and time for filing of comments on report.
- 21.4 Protective orders.
- 21.5 Protest issues not for consideration.
- 21.6 Withholding of award and suspension of contract performance.
- 21.7 Hearings.
- 21.8 Remedies.
- 21.9 Time for decision by GAO.
- 21.10 Express option, accelerated schedule, and summary decision.
- 21.11 Effect of judicial proceedings.
- 21.12 Distribution of decisions.
- 21.13 Nonstatutory protests.
- 21.14 Request for reconsideration.

Authority: 31 U.S.C. 3551–3556.

§ 21.0 Definitions.

- (a) *Interested party* means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.
- (b) *Intervenor* means an awardee if the award has been made or, if no award has been made, all bidders or offerors who appear to have a substantial prospect of receiving an award if the protest is denied.
- (c) Federal agency means any executive department or independent establishment in the executive branch, including any wholly owned government corporation, and any establishment in the legislative or judicial branch, except the Senate, the