procedures for filing and handling the information.

(h) A protest may be dismissed for failure to comply with any of the requirements of this section. However, a protest shall not be dismissed for failure to comply with paragraph (d) of this section where the contracting officer has actual knowledge of the basis of protest, or the agency, in the preparation of its report, was not prejudiced by the protester's noncompliance.

§ 21.2 Time for filing.

- (a)(1) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing time for receipt of proposals following the incorporation.
- (2) In cases other than those covered in paragraph (a)(1) of this section, protests shall be filed not later than 14 days after the basis of protest is known or should have been known, whichever is earlier.
- (3) If a timely agency-level protest was previously filed, any subsequent protest to GAO filed within 14 days of actual or constructive knowledge of initial adverse agency action will be considered, provided the agency-level protest was filed in accordance with paragraphs (a)(1) and (a)(2) of this section, unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control. In cases where an alleged impropriety in a solicitation is timely protested to a contracting agency, any subsequent protest to GAO will be considered timely if filed within the 14day period provided by this paragraph, even if filed after bid opening or the closing time for receipt of proposals.
- (b) Protests untimely on their face may be dismissed. A protester shall include in its protest all information establishing the timeliness of the protest; a protester will not be permitted to introduce for the first time in a request for reconsideration information necessary to establish that the protest was timely.
- (c) GAO, for good cause shown, or where it determines that a protest raises issues significant to the procurement system, may consider an untimely protest.

§ 21.3 Notice of protest, submission of agency report, and time for filing of comments on report.

- (a) GAO shall notify the contracting agency by telephone within 1 day after the filing of a protest, and shall promptly send a written confirmation to the contracting agency and an acknowledgment to the protester. The contracting agency shall immediately give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or offerors who appear to have a reasonable prospect of receiving an award. The contracting agency shall furnish copies of the protest submissions to those parties, except where disclosure of the information is prohibited by law, with instructions to communicate further directly with GAO. All parties shall furnish copies of any communications to the contracting agency and to other participating parties.
- (b) A contracting agency which believes that the protest or specific protest allegations should be dismissed before submission of an agency report should file a request for dismissal as soon as practicable.
- (c) If any party to the protest so requests, the contracting agency shall prepare a protest file and provide a copy to GAO within 20 days after the agency's receipt of the request. The contracting agency shall simultaneously furnish a copy of the protest file to the protester and any intervenors. The protest file shall include an index and a copy of all relevant documents including, as appropriate: the protest; the bid or proposal submitted by the protester; the bid or proposal of the firm which is being considered for award, or whose bid or proposal is being protested; all evaluation documents; the solicitation, including the specifications or portions relevant to the protest; the abstract of bids or offers or relevant portions; and any other relevant documents. The contracting agency shall provide any additional documents requested in the protest or explain why it is not required to produce the documents. The contracting agency may request that the protester produce relevant documents that are not in the agency's possession.
- (d) Information exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552, may be omitted in the copy of the protest file provided to the parties, unless counsel for a party has been admitted to a protective order issued in the protest, in which case the file shall be provided to counsel in accordance with the protective order.

- (e) The contracting agency shall file a report on the protest with GAO within 35 days after the telephone notice of the protest from GAO. The report shall include all relevant documents as set forth in paragraph (c) of this section, except to the extent already produced in the protest file, as well as the contracting officer's statement of the relevant facts and a memorandum of law.
- (f) Subject to any protective order issued in the protest, the contracting agency shall simultaneously furnish a copy of the report to the protester and any intervenors. The copy of the report filed with GAO shall list the parties who have been furnished copies of the report and shall identify any documents, or portions of documents, withheld from any party and the reason for the withholding. Where a protester does not have counsel admitted to a protective order and documents are withheld from the protester in accordance with this part, the agency shall provide documents adequate to inform the protester of the basis of the agency's position.

(g) The contracting agency may request an extension of time for the submission of the protest file or agency report. Extensions will be granted sparingly.

(h) The protester may request additional documents when their existence or relevance first becomes evident. Except when authorized by GAO, any request for additional documents must be filed with GAO and the contracting agency not later than 2 days after their existence or relevance is known or should have been known, whichever is earlier. The contracting agency shall provide the requested documents and an index to GAO and the other parties within 5 days or explain why it is not required to produce the documents.

(i) Upon the request of a party, GAO will decide whether the contracting agency must provide any withheld documents and whether this should be done under a protective order. When withheld documents are provided, the protester's comments on the agency report shall be filed within 10 days after its receipt of the documents, unless otherwise specified by GAO.

(j) Comments on the agency report shall be filed with GAO within 14 days after receipt of the report, with a copy provided to the contracting agency and other participating parties. The protest shall be dismissed unless the protester files comments or a written statement requesting that the case be decided on the existing record, or requests an extension of time within the 14-day period. Unless otherwise advised by the