protester, GAO will assume the protester received the agency report by the due date specified in the acknowledgment of protest furnished by GAO. Upon a showing that the specific circumstances of a protest require a period longer than 14 days for the submission of comments, GAO will set a new date for the submission of comments. Extensions will be granted sparingly.

(k) GAO may permit or request the submission of additional statements by the parties and by other parties not participating in the protest as may be necessary for the fair resolution of the protest.

§ 21.4 Protective orders.

- (a) At the request of a party or on its own initiative, GAO may issue a protective order controlling the treatment of protected information. Such information may include proprietary, confidential, or sourceselection-sensitive material, as well as other information the release of which could result in a competitive advantage to one or more firms. The protective order shall establish procedures for application for access to protected information, identification and safeguarding of that information, and submission of redacted copies of documents omitting protected information. Because a protective order serves to facilitate the pursuit of a protest by a protester through counsel, it is, in the first instance, the responsibility of protester's counsel to request that a protective order be issued and to submit timely applications for admission under that order.
- (b) If no protective order has been issued, the agency may withhold from the parties those portions of its report which would ordinarily be subject to a protective order. GAO will review in camera all information not released to the parties.
- (c) After a protective order has been issued, counsel or consultants retained by counsel appearing on behalf of a party may apply for admission under the order by submitting an application to GAO, with copies furnished simultaneously to all parties. The application shall establish that the applicant is not involved in competitive decision-making for any firm that could gain a competitive advantage from access to the protected information and that there will be no significant risk of inadvertent disclosure of protected information. Objections to an applicant's admission shall be raised within 2 days after receipt of the application, although GAO may

consider objections raised after that time.

(d) Any violation of the terms of a protective order may result in the imposition of sanctions as GAO deems appropriate, including referral to appropriate bar associations or other disciplinary bodies and restricting the individual's practice before GAO.

§ 21.5 Protest issues not for consideration.

GAO shall summarily dismiss a protest or specific protest allegations that do not state a valid basis for protest, are untimely (unless considered pursuant to § 21.2(c)), or are not properly before GAO. A protest or specific protest allegations may be dismissed anytime sufficient information is obtained by GAO warranting dismissal. Where an entire protest is dismissed, no agency report shall be filed; where specific protest allegations are dismissed, an agency report shall be filed on the remaining allegations. Among the protest bases which shall be dismissed are the following:

- (a) Contract administration. The administration of an existing contract is within the discretion of the contracting agency. Disputes between a contractor and the agency are resolved pursuant to the disputes clause of the contract and the Contract Disputes Act of 1978. 41 U.S.C. 601–613.
- (b) Small Business Administration issues.
- (1) Small Business Size Standards and Standard Industrial Classification. Challenges of established size standards or the size status of particular firms, and challenges of the selected standard industrial classification may be reviewed solely by the Small Business Administration. 15 U.S.C. 637(b)(6).
- (2) Small Business Certificate of Competency Program. Any referral made to the Small Business
 Administration pursuant to sec. 8(b)(7) of the Small Business Act, or any issuance of, or refusal to issue, a certificate of competency under that section will not be reviewed by GAO absent a showing of possible bad faith on the part of government officials or a failure to consider vital information bearing on the firm's responsibility. 15 U.S.C. 637(b)(7).
- (3) Procurements under sec. 8(a) of the Small Business Act. Under that section, since contracts are entered into with the Small Business Administration at the contracting officer's discretion and on such terms as are agreed upon by the procuring agency and the Small Business Administration, the decision to place or not to place a procurement

under the 8(a) program is not subject to review absent a showing of possible bad faith on the part of government officials or that regulations may have been violated. 15 U.S.C. 637(a).

- (c) Affirmative determination of responsibility by the contracting officer. Because the determination that a bidder or offeror is capable of performing a contract is based in large measure on subjective judgments which generally are not readily susceptible of reasoned review, an affirmative determination of responsibility will not be reviewed absent a showing of possible bad faith on the part of government officials or that definitive responsibility criteria in the solicitation were not met.
- (d) Procurement protested to the General Services Administration Board of Contract Appeals. Interested parties may protest a procurement or proposed procurement of automated data processing equipment and services to the General Services Administration Board of Contract Appeals. After a protest to the Board, the same procurement generally may not be the subject of a protest to GAO. 40 U.S.C. 759(f).
- (e) Protests not filed either in GAO or the contracting agency within the time limits set forth in § 21.2.
- (f) Protests which lack a detailed statement of the legal or factual grounds of protest as required by § 21.1(c)(4), or which fail to clearly state legally sufficient grounds of protest as required by § 21.1(e).
- (g) Procurements by agencies other than Federal agencies as defined by sec. 3 of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 472. Protests of procurements or proposed procurements by agencies such as the U.S. Postal Service, the Federal Deposit Insurance Corporation, and nonappropriated fund activities are beyond GAO's bid protest jurisdiction as established in 31 U.S.C. 3551–3556.
- (h) Subcontract protests. GAO will not consider a protest of the award or proposed award of a subcontract except where the agency awarding the prime contract has requested in writing that subcontract protests be decided pursuant to § 21.13.

§ 21.6 Withholding of award and suspension of contract performance.

(a) The following requirements regarding the withholding of award and the suspension of contract performance when a protest is filed with GAO are set forth in 31 U.S.C. 3553 (c) and (d). There is an additional requirement contained in 48 CFR 33.104(d) that the contracting officer give written notice to the protester and other parties of any