decision to proceed with award or to continue contract performance. The requirements are included here for informational purposes.

(b) When the contracting agency receives notice of a protest from GAO prior to award of a contract, it may not award a contract under the protested procurement while the protest is pending unless the head of the procuring activity responsible for award of the contract determines in writing and reports to GAO that urgent and compelling circumstances significantly affecting interests of the United States will not permit waiting for GAO's decision. This finding may be made only if the award is otherwise likely to occur within 30 days.

(c) When the contracting agency has awarded the contract, but receives notice of a protest from GAO within 10 days of the date of contract award, or within 5 days after the debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required, the agency shall immediately direct the contractor to cease contract performance and to suspend related activities that may result in additional obligations being incurred by the government under that contract while the protest is pending. The contracting officer responsible for award of the contract may authorize contract performance notwithstanding the pending protest if he or she determines in writing and reports to GAO that:

(1) Performance of the contract is in the government's best interest, or

(2) Urgent and compelling circumstances significantly affecting interests of the United States will not permit waiting for GAO's decision.

## §21.7 Hearings.

(a) At the request of a party or on its own initiative, GAO may conduct a hearing in connection with a protest. The request shall set forth the reasons why a hearing is needed.

(b) Prior to the hearing, GAO may hold a pre-hearing conference to discuss and resolve matters such as the procedures to be followed, the issues to be considered, and the witnesses who will testify.

(c) Hearings generally will be conducted as soon as practicable after receipt by the parties of the agency report and relevant documents. Although hearings ordinarily will be conducted at GAO in Washington, DC, hearings may, at the discretion of GAO, be conducted at other locations.

(d) All parties participating in the protest shall be invited to attend the hearing. Others may be permitted to attend as observers and may participate as allowed by GAO's hearing official. In order to prevent the improper disclosure of protected information at the hearing, GAO's hearing official may restrict attendance during all or part of the proceeding.

(e) Hearings shall normally be recorded and/or transcribed. If a recording and/or transcript is made, any party may obtain copies at its own expense.

(f) If a witness whose attendance has been requested by GAO fails to attend the hearing or fails to answer a relevant question, GAO may draw an inference unfavorable to the party for whom the witness would have testified.

(g) If a hearing is held, no separate comments on the agency report should be submitted unless specifically requested by GAO. All parties may file consolidated comments on the hearing and the agency report with GAO, with copies furnished to the other parties, within 7 days after the hearing was held or as specified by GAO. By the due date, if the protester has not filed comments or a written statement requesting that the case be decided on the existing record, GAO may dismiss the protest.

(h) In post-hearing comments, the parties should cite to specific testimony during the hearing relevant to the disposition of the protest.

## §21.8 Remedies.

(a) If GAO determines that a solicitation, cancellation of a solicitation, termination of a contract, proposed award, or award does not comply with statute or regulation, it shall recommend that the contracting agency implement any combination of the following remedies:

(1) Refrain from exercising options under the contract;

(2) Terminate the contract;

(3) Recompete the contract;

(4) Issue a new solicitation;

(5) Award a contract consistent with statute and regulation; or

(6) Such other recommendation(s) as GAO determines necessary to promote compliance.

(b) In determining the appropriate recommendation(s), GAO shall, except as specified in paragraph (c) of this section, consider all circumstances surrounding the procurement or proposed procurement including the seriousness of the procurement deficiency, the degree of prejudice to other parties or to the integrity of the competitive procurement system, the good faith of the parties, the extent of performance, the cost to the government, the urgency of the procurement, and the impact of the recommendation(s) on the contracting agency's mission.

(c) If the head of the procuring activity makes the finding referred to in § 21.6(c)(1) that performance of the contract notwithstanding a pending protest is in the government's best interest, GAO shall make its recommendation(s) under paragraph (a) of this section without regard to any cost or disruption from terminating, recompeting, or reawarding the contract.

(d) If GAO determines that a solicitation, proposed award, or award does not comply with statute or regulation, it may recommend that the contracting agency pay the protester the costs of:

(1) Filing and pursuing the protest, including attorneys' fees and consultant and expert witness fees; and

(2) Bid and proposal preparation. (e) If the contracting agency decides to take corrective action in response to a protest, GAO may recommend that the agency pay the protester the costs of filing and pursuing the protest, including attorneys' fees and consultant and expert witness fees. The protester shall file any request that GAO recommend that costs be paid within 14 days after being advised that the contracting agency has decided to take corrective action. The protester shall furnish a copy of its request to the contracting agency, which may file a response within 14 days after receipt of the request, with a copy furnished to the protester.

(f)(1) If GAO recommends that the contracting agency pay the protester the costs of filing and pursuing the protest and/or of bid or proposal preparation, the protester and the agency shall attempt to reach agreement on the amount of costs. The protester shall file its claim for costs, detailing and certifying the time expended and costs incurred, with the contracting agency within 90 days after receipt of GAO's recommendation that the agency pay the protester its costs. Failure to file the claim within that time shall result in forfeiture of the protester's right to recover its costs. GAO may consider an untimely claim for good cause shown.

(2) The contracting agency shall issue a decision on the claim for costs as soon as practicable after the claim is filed. If the protester and the contracting agency cannot reach agreement within a reasonable time, GAO may, upon request of the protester, recommend the amount of costs the agency should pay. In such cases, GAO may also recommend that the contracting agency pay the protester the costs of pursuing the claim for costs before GAO.