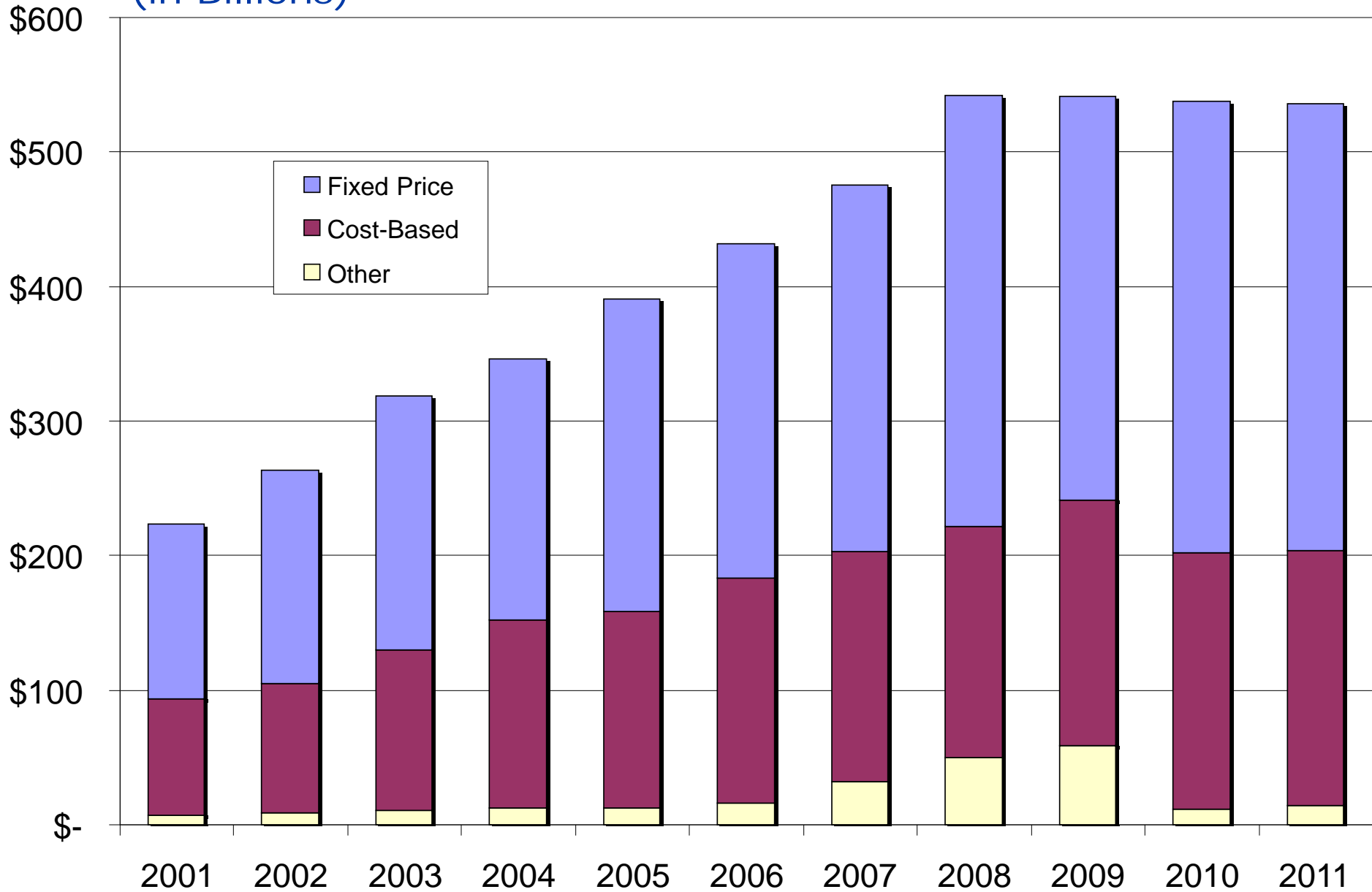


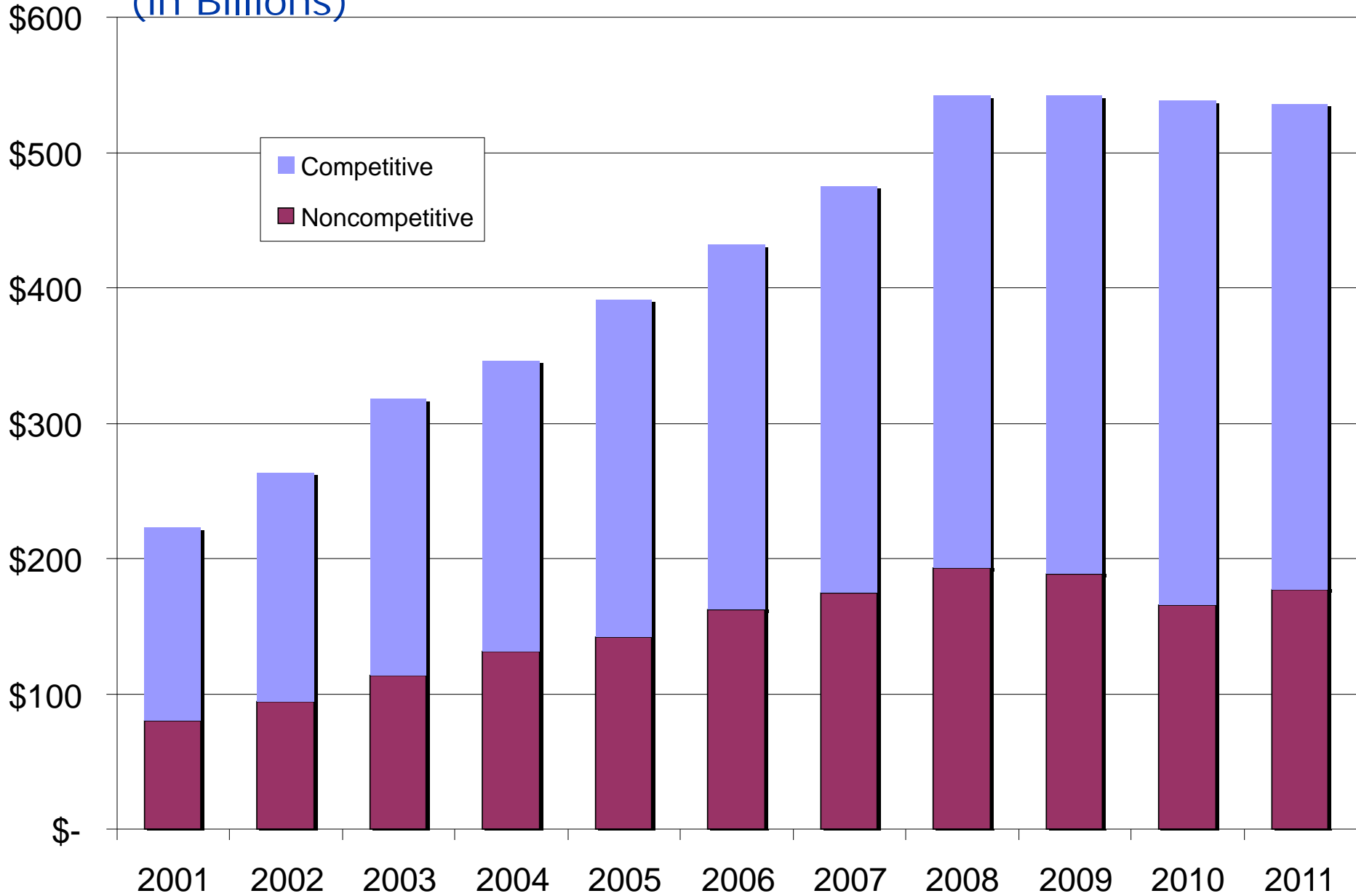
Federal Contract Spending (2001-2011)

(in Billions)



Federal Contract Spending (2001-2011)

(in Billions)



Federal Contracting 101

- How public contracts differ
- Procurement process
- Key statutes and regulations
- Contract administration

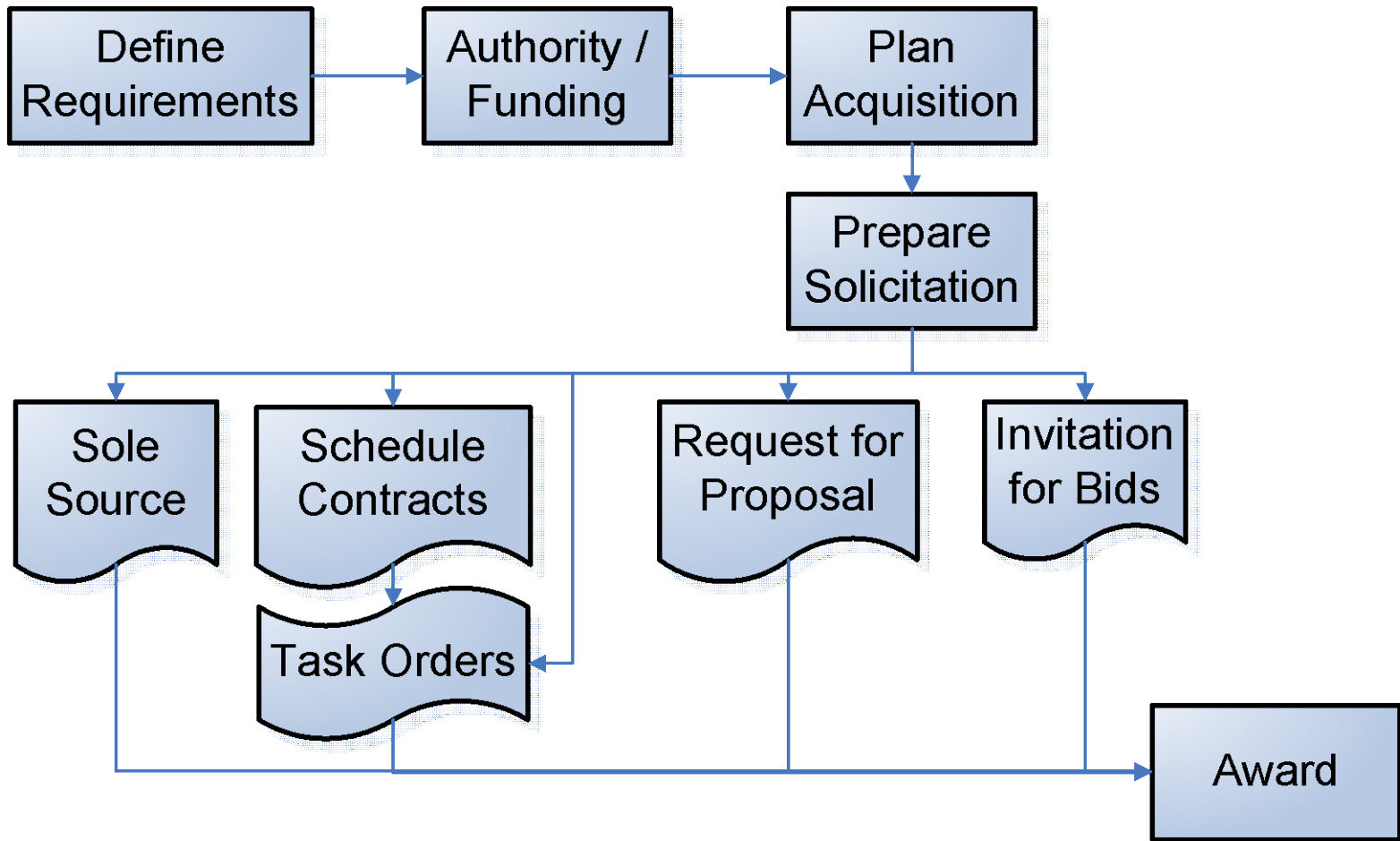
Gov't v. Commercial Contracts

- Limited Authority of Officials
- Governed by Complex Statutes, Regulations, and Contract Clauses
- Special Marketing Rules
- Unique Ethics/Compliance Issues

Obtaining Federal Contracts

- Competition
- Marketing considerations
- Types of contracts
- Protests

Federal Acquisition Process



Contract Award Methods

- Full & Open Competition
 - Sealed Bids
 - Competitive Proposals
 - Multiple Award Contracts

GSA Schedule Contracts

- Commercial products and services
- Getting on Schedule
 - Find GSA solicitation
(www.gsa.gov/portal/content/197465)
 - Submit proposal (eOffer)
 - Negotiation
 - Award
- Task Orders

Contract Award Methods (cont'd)

- Other Than Full & Open Competition
 - Set Asides for Small Business – Rule of 2
 - Exceptions to Competition Requirements
 - Only One Responsible Source
 - Unusual and Compelling Urgency

Finding Opportunities

- FedBizOpps: official source for procurement opportunities in excess of \$25,000 (www.fbo.gov)
 - Synopses, solicitations, modifications, contract awards
 - Searchable by agency, office, solicitation number, NAICS code, locations, etc.

Key Laws, Regulations, & Clauses



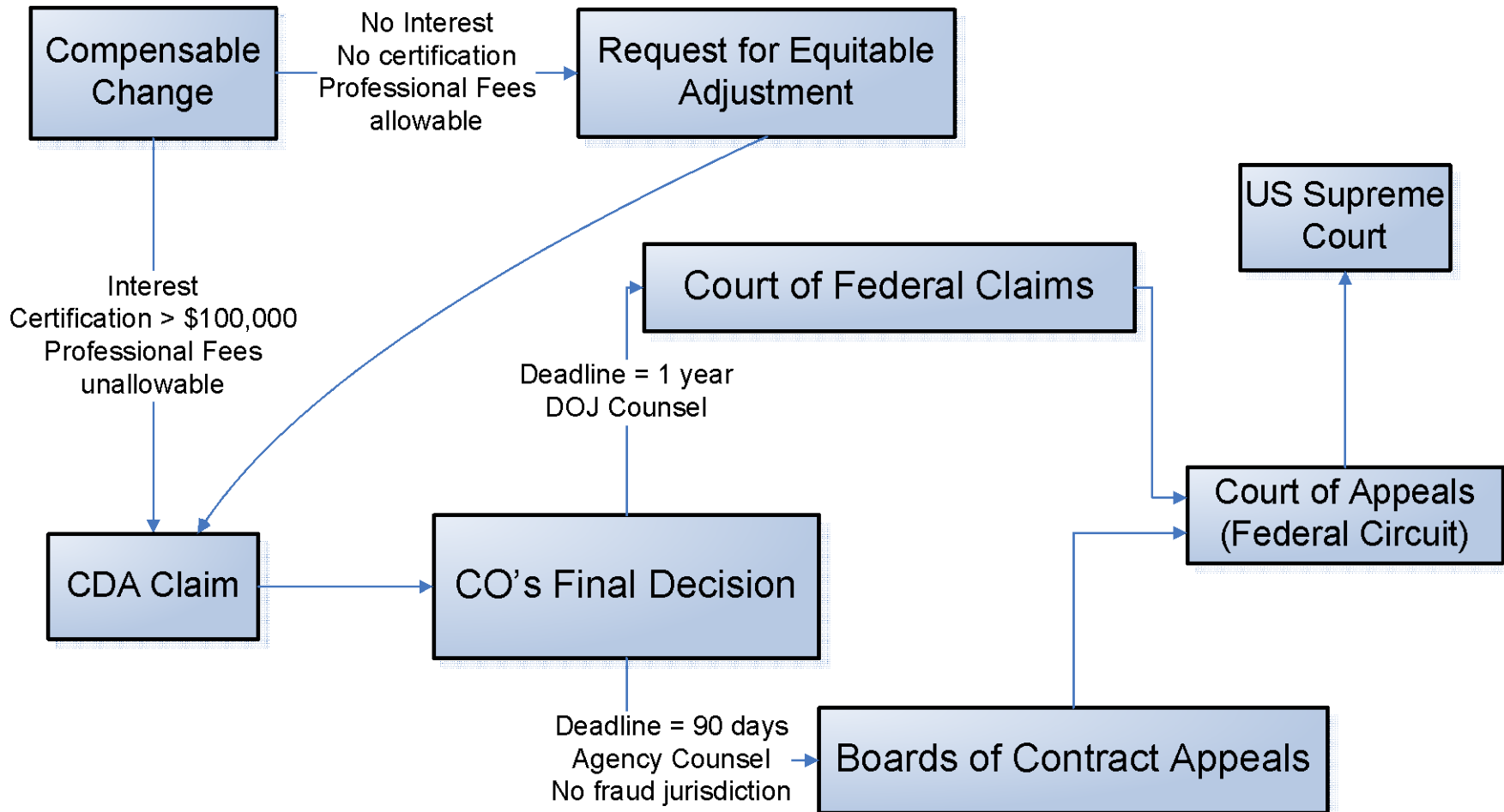
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Federal Acquisition Regulation

- **Federal Acquisition Regulation (FAR)**
- **Agency FAR Supplements**
 - DFARS
 - GSARS, etc.
- **Agencies exempted From FAR**
 - United States Postal Service
 - Federal Aviation Administration

Contract Disputes Process



Request for Equitable Adjustment

- Informal request
- Facilitates negotiations
- Professional & consulting costs allowable under FAR 31.205-33
- Does not start “interest clock”
- Final decision not required

Buy American / Trade Agreements

Buy American Act (41 USC 10a-10d)	ARRA Section 1605	FTA Buy America 49 USC 5253(j)
Construction, alteration, or repair of public building or works, growing out of appropriations	Construction, alteration repair <i>or maintenance</i> of public building or work using <i>ARRA funds</i>	Highway and mass transit projects funded by FTA
Articles, materials, or supplies must be mined, produced, or manufactured in USA	All <u>iron</u> , <u>steel</u> , and <u>manufactured</u> goods must be produced in USA	Steel, iron, and manufactured goods must be produced in USA
Content must be " <u>substantially all</u> " from articles made in US	No content requirement	No content requirement (except for rolling stock)
Waiver if domestic goods "unreasonably" increase cost	Waiver if domestic goods increase cost of <u>project</u> by <u>25%</u>	Waiver if domestic goods increase cost of project by 25%
Trade agreements – no mention in statute but they apply	Apply consistent with trade agreements	Trade Agreements do not apply to mass transit and highway

New Reporting Requirements

- FAR 52.204-10—
 - First-tier subcontract awards over \$25,000 reported at www.fsrs.gov
 - Names and compensation of “five most highly compensated executives” reported at www.ccr.gov
 - Data will be made public

Compensation Reporting

- Executive compensation must be disclosed only if:
 - 80% of gross annual revenue from federal contracts
 - \$25 million in gross annual revenue from federal contracts
 - Not already public through securities or tax disclosures

FAPIIS—Federal Awardee Performance Integrity Information System

- Debarment and suspension information
- Past Performance information from other government databases
- Non-responsibility determinations by agency contracting officials
- Terminations for Default
- Self reported information on:
 - Criminal convictions
 - Adverse administrative actions
 - Civil judgments and admissions of liability

FAPIS—New Contractor Reporting Requirements

- FAR 52-209-7 (Jan. 2011) requires contractors to self-report:
 - Conviction in a criminal proceeding
 - Fine or penalty over \$5,000 in a civil proceeding
 - Administrative proceeding
 - \$5,000 fine or penalty
 - Reimbursement, restitution, or damages > \$100,000
 - Settlement of a proceeding that involves an acknowledgement of fault by the contractor

FAPIIS—Public Availability

- FAR 52-209-9 (Jan. 2012):
 - After April 15, 2011, all information posted in FAPIIS, except past performance reviews, will be publicly available
 - Contractor notified of new posting
 - 7 days – contractor objects to public release
 - 14 days – government removes material from FAPIIS
 - Disputes handled “under FOIA procedures”

Mandatory Disclosure

- FAR 9.407:
 - Threatens suspension and debarment for knowing failure to disclose "credible evidence"
 - Applies to all contracts and subcontracts, even without the new FAR disclosure clause
 - Applies to existing contracts and to those closed less than three years

Fraud Enforcement & Recovery Act

- Expressly expands FCA to cover subcontractors:
 - Original language—"knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval"
 - New language—"knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval"

What is "OFCCP"?

- **OFCCP = Office of Federal Contract Compliance Programs**
- **OFCCP reports directly to Secretary of Labor**
 - Six Regional Offices
 - Many District and Area Offices
- **Purpose:**

"To enforce, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal government."

The Laws OFCCP Enforces— Equal Employment Opportunity and Affirmative Action

- Executive Order (EO) 11246
- Section 503 of the Rehabilitation Act of 1973 (Section 503)
- Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA)

The Laws OFCCP Enforces—

EO 11246

- Race, color, religion, sex and national origin
- All contractors
 - supply and service
 - construction
 - federally assisted construction
- Nondiscrimination and affirmative action obligations
- Different affirmative action obligations for:
 - construction contractors
 - federally assisted construction contractors
- Coverage:
 - \$10,000

The Laws OFCCP Enforces—

Section 503

- Disability
- Supply and service contractors and construction contractors
 - not applicable to federally assisted construction contractors
- Nondiscrimination, reasonable accommodation, and affirmative action obligations
- Coverage:
 - \$10,000

The Laws OFCCP Enforces—

VEVRAA

- Protected veterans:
 - disabled veterans
 - Armed Forces service medal veterans
 - recently separated veterans
 - other protected veterans who served during a war or in a campaign or expedition for which a campaign badge is authorized
- Supply and service contractors and construction contractors
 - Not applicable to federally assisted construction contractors
- Nondiscrimination and affirmative action
- Coverage:
 - after December 1, 2003: \$100,000+

What is Affirmative Action?

Affirmative action = good faith efforts

- Affirmative action is **not**:
 - Preferential treatment
 - Favoring less qualified
 - Quotas

Affirmative Action Obligations— The AAP and The Laws

- EO 11246
 - basic affirmative action: all contractors
 - written affirmative action plan (AAP)
 - supply and service only
- Section 503
 - contractors:
 - supply and service
 - construction
 - written AAP
- VEVRAA
 - contractors:
 - supply and service
 - construction
 - written AAP

EO 11246 and Construction/Federally Assisted Construction Contractors

- No AAP
- 16 specific “good faith” steps, including:
 - anti-harassment and EEO policies
 - specific recruitment efforts
 - training opportunities
 - evaluating minorities and women for promotion

Miscellaneous Obligations

- EEO-1 Report
 - \$50,000 and 50 employees
 - sex, race and ethnicity of applicants and employees
 - Self-identification
 - September 30 of each year
- VETS 100A Report (after 12/1/03)
 - \$100,000
 - efforts to hire and employ protected veterans

Miscellaneous Obligations, cont'd

- Encumber subcontracts
- Job solicitations
 - EOE/AA
 - Employment service office – VEVRAA
- Posters – EO 11246, Section 503, VEVRAA
 - Nondiscrimination and affirmative action
 - Access to Section 503/VEVRAA AAPs
- Executive Order (EO) 13496
 - Union rights poster
 - Prime contractor: Simplified Acquisition Threshold
 - Subcontractor: \$10,000
- Recordkeeping
 - one/two years

Time for Compliance

- Immediate
 - all obligations except AAP
- 120 days from effective date of contract
 - AAPs

OFCCP Audits

- OFCCP Goal = audit every 2-3 years
 - Thousands of audits conducted every year
 - Basic inquiries
 - do you maintain what is required?
 - do you implement what is required?
 - what are the results you have obtained?
- Analysis
 - hiring
 - promotion
 - termination
 - compensation
- Audit Process
 - desk audit
 - 30-day time-frame to respond
 - know what the data show
 - historically, many closed at this stage after minimal data disclosed
 - now, OFCCP attempting to obtain significant data at desk audit stage
 - on-site investigation
 - additional information
 - walk through facility
 - interviews
 - detailed analysis

What Happens if OFCCP Discovers Problems?

- No ability to levy monetary penalties
- Conciliation agreement (can negotiate!) or litigation
 - Employment actions, e.g., hiring/promotion
 - Back pay
- Suspension/termination of contract
- Debarment

Current OFCCP Activity

- Audit focus:
 - Compensation (“2 or 2” test for disparities)
 - Outreach for disabled and veterans
 - Subminorities
 - Company-wide remedies
- Proposed Veterans Regulations (issued April 2011)
 - target for final: Spring 2012
- Proposed Disabilities Regulations (issued Dec. 2011)