

**DISTRICT OF COLUMBIA**  
**OFFICIAL CODE**

**TITLE 2.**  
**GOVERNMENT ADMINISTRATION.**

**CHAPTER 3B.**  
**OTHER PROCUREMENT MATTERS.**

**2001 Edition**

# DISTRICT OF COLUMBIA OFFICIAL CODE

## CHAPTER 3B. OTHER PROCUREMENT MATTERS.

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### TABLE OF CONTENTS

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#### **Subchapter I. Procurement Related Claims.**

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- § 2-381.01. Definitions.
- § 2-381.02. False claims liability, treble damages, costs, and civil penalties; exceptions.
- § 2-381.03. Corporation counsel investigations and prosecutions; powers of prosecuting authority; civil actions by individuals as qui tam plaintiffs; jurisdiction of courts.
- § 2-381.04. Employer interference with employee disclosures; liability of employer; remedies of employee.
- § 2-381.05. Limitation of actions; burden of proof.
- § 2-381.06. Remedies pursuant to other laws; severability of provisions; liberality of article construction.
- § 2-381.07. Civil investigative demands.
- § 2-381.08. Antifraud fund.[Repealed]
- § 2-381.09. Penalties for false representations.

#### **Subchapter II. Electronic Commerce; Acquisition and Disposition.**

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- § 2-381.21. Electronic transactions.
- § 2-381.22. Electronic procurement.
- § 2-381.23. Electronic auctions.

#### **Subchapter III. Year 2000 District Government Computer Liability Immunity.**

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- § 2-381.31. Immunity for Year 2000 system failures.
- § 2-381.32. Applicability.

#### **Subchapter IV. Miscellaneous.**

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- § 2-381.41. New contracts with costs exceeding existing contracts.
- § 2-381.42. Privatization of Fleet Management Services in the Metropolitan Police Department.
- § 2-381.43. Standards for contracting officer.

# **CHAPTER 3B. OTHER PROCUREMENT MATTERS.**

## **SUBCHAPTER I. PROCUREMENT RELATED CLAIMS.**

### **§ 2-381.01. DEFINITIONS.**

For the purposes of this subchapter, the term:

(1) "Claim" means any request or demand for money, property, or services made to any employee, officer, or agent of the District, or to any contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, the District, or if the District will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

(2) "Fixed obligation" means an amount due the District by contract or by law. The term "fixed obligation" does not include a fine to be imposed by law until the fine has been assessed.

(3)(A) "Knowing" or "knowingly" means that a person, with respect to information, does any of the following:

- (i) Has actual knowledge of the falsity of the information;
- (ii) Acts in deliberate ignorance of the truth or falsity of the information; or
- (iii) Acts in reckless disregard of the truth or falsity of the information.

(B) Proof of specific intent to defraud is not required for an act to be knowing.

(4) "Person" includes any natural person, corporation, firm, association, organization, partnership, business, or trust.

(5) "Proceeds" means civil penalties as well as double or treble damages as provided in § 2-381.02, and criminal fines pursuant to § 2-381.09.

(Feb. 21, 1996, D.C. Law 6-85, § 813, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g); Apr. 20, 1999, D.C. Law 12-264, § 10(a), 46 DCR 2118.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

2001 Ed., § 2-308.13.

1981 Ed., § 1-1188.13.

##### *Emergency Act Amendments*

For temporary addition of Subpart C [ 1981 Ed.], see § 2(g) of the Procurement Reform Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-374, April 24, 1998, 45 DCR 4338).

##### *Legislative History of Laws*

For legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-308.07.

For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 2-301.05.

### **§ 2-381.02. FALSE CLAIMS LIABILITY, TREBLE DAMAGES, COSTS, AND CIVIL PENALTIES; EXCEPTIONS.**

(a) Any person who commits any of the following acts shall be liable to the District for 3 times the amount of damages which the District sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the District for the costs of a civil action brought to recover

penalties or damages, and may be liable to the District for a civil penalty of not less than \$5,000, and not more than \$10,000, for each false claim for which the person:

- (1) Knowingly presents, or causes to be presented, to an officer or employee of the District a false claim for payment or approval;
- (2) Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false claim paid or approved by the District;
- (3) Conspires to defraud the District by getting a false claim allowed or paid by the District;
- (4) Has possession, custody, or control of public property or money used, or to be used, by the District and knowingly delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
- (5) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the District and knowingly makes or delivers a document that falsely represents the property used or to be used;
- (6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property;
- (7) Knowingly makes or uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the District;
- (8) Is a beneficiary of an inadvertent submission of a false claim to the District, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the District; or
- (9) Is the beneficiary of an inadvertent payment or overpayment by the District of monies not due and knowingly fails to repay the inadvertent payment or overpayment to the District.

(b) Notwithstanding subsection (a) of this section, the court may assess not more than two times the amount of damages which the District sustains because of the act of the person, and there shall be no civil penalty, if the court finds all of the following:

- (1) The person committing the violation furnished officials of the District responsible for investigating false claims violations with all information known to that person about the violation within 30 days after the date on which the person first obtained the information;
- (2) The person fully cooperated with any investigation by the District; and
- (3) At the time the person furnished the District with information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

(c) Liability pursuant to this section shall be joint and several for any act committed by 2 or more persons.

(d) This section shall not apply to the following:

- (1) Workers' compensation claims filed pursuant to Chapter 15 of Title 32;
- (2) Unemployment compensation claims filed pursuant to Chapter 1 of Title 51; and
- (3) Claims, records, or statements made pursuant to those portions of Title 47 of the District of Columbia Official Code that refer or relate to taxation.

(Feb. 21, 1986, D.C. Law 6-85, § 814, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

2001 Ed., § 2-308.14.

1981 Ed., § 1-1188.14.

##### *Legislative History of Laws*

For legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-308.07.

## **§ 2-381.03. CORPORATION COUNSEL INVESTIGATIONS AND PROSECUTIONS; POWERS OF PROSECUTING AUTHORITY; CIVIL ACTIONS BY INDIVIDUALS AS QUI TAM PLAINTIFFS; JURISDICTION OF COURTS.**

(a) The Corporation Counsel shall investigate, with such assistance from other District agencies as may be required, violations pursuant to § 2-381.02 involving District funds. If the Corporation Counsel finds that a person has violated or is violating the provisions of § 2-381.02, the Corporation Counsel may bring a

civil action against that person in the Superior Court of the District of Columbia.

(b)(1) A person may bring a civil action for a violation of § 2-381.02 for the person and either for the District or in the name of the District. The person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action brought by the qui tam plaintiff may be dismissed only with the written consent of the court, taking into account the best interest of the parties involved and the public disclosure purposes of this subpart. The Corporation Counsel shall be served with the notice of proposed dismissal and shall have the opportunity to be heard.

(2) A complaint filed by a qui tam plaintiff pursuant to this subsection shall be filed in the Superior Court in camera and may remain under seal for up to 180 days, unless the seal is extended by the court. No service shall be made on the defendant until after the complaint is unsealed.

(3) On the same day as the complaint is filed pursuant to paragraph (2) of this subsection, the qui tam plaintiff shall serve the Corporation Counsel by mail, return receipt requested, with a copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses.

(4) Within 180 days after receiving a complaint alleging violations involving District funds, the Corporation Counsel shall do either of the following:

(A) Notify the court that he or she intends to proceed with the action, in which case the seal may be lifted unless, for good cause shown, the court continues the seal; or

(B) Notify the court that he or she declines to take over the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(5) Upon a showing of good cause, the Corporation Counsel may move the court for extensions of the time during which the complaint remains under seal.

(6) When a qui tam plaintiff brings an action pursuant to this subsection, no other person may bring an action pursuant to this section based on the facts underlying the pending action.

(c)(1) No person may bring an action pursuant to subsection (b) of this section against a member of the Council of the District of Columbia ("Council"), a member of the District judiciary, or an elected official in the executive branch of the District, if the action is based on any official act occurring during his or her term of office.

(2)(A) No person may bring an action pursuant to subsection (b) of this section based upon allegations or transactions in a criminal, civil, or administrative proceeding, investigation, or report, or audit conducted by or at the request of the Council, the Auditor, the Inspector General, or other District or federal agency; or upon allegations or transactions disclosed by the news media, unless the person bringing the action is an original source of the information.

(B) For purposes of subparagraph (A) of this paragraph, the term "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based, who voluntarily provided the information to the District before filing an action based on that information, and whose information provided the basis or catalyst for the investigation, report, hearing, audit, or media disclosure which led to the public disclosure as described in subparagraph (A) of this paragraph.

(3) No person may bring an action pursuant to subsection (b) of this section based upon information learned by the person in the course of an internal investigation in preparation for, or in conjunction with, a voluntary disclosure to the District or federal government.

(4) No present or former employee of the District, or any person who is acting on behalf of or relying on information provided by that employee, may bring an action pursuant to subsection (b) of this section if the employee discovered or obtained the information on which the action is based during the course of his or her employment, unless that employee first in good faith exhausted internal procedures for reporting and seeking recovery of such falsely claimed sums through official channels, including notice to the Corporation Counsel, and unless the District failed to act on the information provided within a reasonable time.

(5) No member or employee of the Council of the District of Columbia, the Corporation Counsel's Office, the Office of the Inspector General, the Office of the Auditor, the Office of the Chief Financial Officer, or the Metropolitan Police Department may bring an action pursuant to subsection (b) of this section based upon information discovered during the term of his or her employment.

(6) No person may bring an action pursuant to this section if the person has been convicted of a criminal offense in connection with any false claim that is the subject of the action.

(7) No person may sell or otherwise transfer any cause of action, or interest in any present or future benefit provided, pursuant to this section.

(d)(1) If the District proceeds with the action, it shall have the primary responsibility for prosecuting the action. The qui tam plaintiff shall have the right to continue as a party to the action and to participate in the action to the extent that the qui tam plaintiff is able to demonstrate to the court that such participation would

neither be duplicative of nor interfere with the prosecution of the action by the Corporation Counsel; provided, that the qui tam action was proper pursuant to subsection (c) of this section.

(2)(A) The District may dismiss the action for good cause shown.

(B) The District may settle the action with the defendant, notwithstanding the objections of the qui tam plaintiff, if the court determines, after a hearing providing the qui tam plaintiff an opportunity to be heard, that the proposed settlement fairly, adequately, and reasonably protects the interests of the District under all of the circumstances.

(e)(1) If the District elects not to proceed and the qui tam action was proper pursuant to subsection (c) of this section, the qui tam plaintiff shall have the same right to conduct the action as the Corporation Counsel would have had if he or she had chosen to proceed pursuant to subsection (b) of this section. If the District so requests, the District shall be served with copies of all pleadings filed in the action.

(2) Upon timely application, the court shall permit the District to intervene in an action with which it had initially declined to proceed. In the event that the District is permitted to intervene, it shall have the primary responsibility for prosecuting the action as provided in subsection (d)(1) of this section.

(f)(1) If the District proceeds with an action brought by a qui tam plaintiff pursuant to subsection (b) of this section, and the qui tam action was proper pursuant to subsection (c) of this section, the qui tam plaintiff, subject to paragraphs (3) and (4) of this subsection, shall receive at least 10%, but not more than 25%, of the proceeds of the judgment or settlement of the claim, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the litigation, the qui tam plaintiff's attempts to avoid or resist such activity, and all other circumstances surrounding the activity, except, that if the qui tam plaintiff was substantially involved in the fraudulent activity on which the action is based, the court may direct that the plaintiff receive less than 10%.

(2) If the District does not proceed with the action, the court may award the qui tam plaintiff those sums from the proceeds it considers appropriate, which shall be at least 25% but not more than 40%, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, and the scope of, and response to, the employee's attempts to report and gain recovery of such falsely claimed funds through official channels; provided, that if the qui tam plaintiff was substantially involved in the fraudulent activity on which the action is based, the court may award the qui tam plaintiff less than 25%.

(3) The portion of the recovery not distributed pursuant to paragraphs (1) and (2) of this subsection shall be paid to the District treasury.

(4) If the District or the qui tam plaintiff prevails in or settles any action pursuant to subsection (c) of this section, the qui tam plaintiff shall receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable costs and attorneys fees. All expenses, costs, and fees shall be awarded against the defendant and under no circumstances shall they be the responsibility of the District.

(5) If the District does not proceed with the action and the qui tam plaintiff conducts the action, the court may award to the defendant reasonable attorneys fees and expenses necessarily incurred if the defendant prevails in the action and the court finds that the claim of the qui tam plaintiff was frivolous, vexatious, or brought solely for purposes of harassment.

(g) In any action brought pursuant to this section, the court may stay discovery if the Corporation Counsel or the United States Attorney's Office shows that discovery would interfere with an investigation or a prosecution of a criminal matter arising out of the same facts, regardless of whether the Corporation Counsel or the United States Attorney's Office has pursued the criminal or civil investigation or proceedings with reasonable diligence, and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(Feb. 21, 1986, D.C. Law 6-85, § 815, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 10(b), 46 DCR 2118; Mar. 11, 2010, D.C. Law 18-117, § 4, 57 DCR 896; Sept. 14, 2011, D.C. Law 19-21, § 9004(a), 58 DCR 6226.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

2001 Ed., § 2-308.15.

1981 Ed., § 1-1188.15.

##### *Effect of Amendments*

D.C. Law 18-117, in subsec. (f)(1), substituted "but not more than 25%" for "but not more than 20%".

D.C. Law 19-21, in subsec. (f)(1), deleted the second sentence, which read as follows: "When the Corporation Counsel conducts the action, 25% of the proceeds of the judgment or settlement of the claim shall be paid into the Antifraud Fund established by § 2-381.08."

For legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-308.07.

For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 2-301.05.

For Law 18-117, see notes following § 2-223.01.

For history of Law 19-21, see notes under § 2-351.15.

#### **§ 2-381.04. EMPLOYER INTERFERENCE WITH EMPLOYEE DISCLOSURES; LIABILITY OF EMPLOYER; REMEDIES OF EMPLOYEE.**

(a) No employer, including the District of Columbia, shall make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency concerning, or from acting in furtherance of, a false claims action, including investigating, initiating, testifying, or assisting in an action filed or to be filed pursuant to § 2-381.03.

(b) No employer, including the District of Columbia, shall discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency relating to, or in furtherance of, a false claims action, including investigation of, initiation of, or testimony or assistance in, an action filed or to be filed pursuant to § 2-381.03.

(c) Any employer, including the District of Columbia, who violates subsection (b) of this section shall be liable for the relief necessary to make the employee whole, including reinstatement with the same seniority status that the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, compensation for any special damage sustained as a result of the discrimination, and, where appropriate (except in the case of the District), punitive damages. In addition, the defendant shall be required to pay litigation costs and reasonable attorneys fees, necessarily incurred. An employee may bring an action in the Superior Court for the relief provided in this subsection.

(d) An employee who is discharged, demoted, suspended, harassed, denied promotion, or in any other manner discriminated against in the terms and conditions of employment by his or her employer, including the District of Columbia, because of participation in conduct which directly or indirectly results in submission of a false claim being submitted to the District shall be entitled to the remedies pursuant to subsection (c) of this section, only if the following is true:

(1) The employee voluntarily disclosed all relevant information to a government or law enforcement agency; and

(2) The employee had been harassed, threatened with termination or demotion, or otherwise coerced by the employer or its management into engaging in the activity giving rise to the false claim.

(Feb. 21, 1986, D.C. Law 6-85, § 816, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 10(c), 46DCR 2118.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

2001 Ed., § 2-308.16.

1981 Ed., § 1-1188.16.

##### *Legislative History of Laws*

For legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-308.07.

For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 2-301.05.

#### **§ 2-381.05. LIMITATION OF ACTIONS; BURDEN OF PROOF.**

(a) A civil action brought pursuant to § 2-381.03 may not be filed more than 6 years after the date on which the violation of § 2-381.02 is committed or more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by an official of the Office of Corporation Counsel, but in no event more than 9 years after the date on which the violation is committed, whichever occurs last.

(b) A civil action brought pursuant to § 2-381.03 may not be brought for activity prior to April 12, 1997.

(c) In any action brought pursuant to § 2-381.03, the District or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law, a judgment of guilt in a criminal proceeding charging false statements or fraud, upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action brought pursuant to § 2-308.15 which involves the same transaction as in the criminal proceeding.

(Feb. 21, 1986, D.C. Law 6-85, § 817, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 10(d), 46 DCR 2118.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

2001 Ed., § 2-308.17.

1981 Ed., § 1-1188.17.

##### *Legislative History of Laws*

For legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-308.07.

For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 2-301.05.

### **§ 2-381.06. REMEDIES PURSUANT TO OTHER LAWS; SEVERABILITY OF PROVISIONS; LIBERALITY OF ARTICLE CONSTRUCTION.**

The provisions of this chapter are not exclusive, and the remedies provided for shall be in addition to any other remedies provided for in any other law or available pursuant to common law.

(Feb. 21, 1986, D.C. Law 6-85, § 818, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

2001 Ed., § 2-308.18.

1981 Ed., § 1-1188.18.

##### *Legislative History of Laws*

For legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-308.07.

### **§ 2-381.07. CIVIL INVESTIGATIVE DEMANDS.**

(a)(1) Whenever the Corporation Counsel has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Corporation Counsel may, in order to determine whether to commence a civil proceeding pursuant to this chapter, issue in writing and cause to be served upon such person a civil investigative demand requiring that such person do the following:

- (A) Produce documentary material relevant to the false claims law investigation for inspection and copying;
- (B) Answer in writing written interrogatories with respect to any documentary material or information relevant to the false claims law investigation;
- (C) Provide oral testimony concerning any documentary material or information relevant to the false claims law investigation; or
- (D) Furnish any combination of such material, answers, or testimony.

(2) The Corporation Counsel may delegate to the Principal Deputy Corporation Counsel the authority, in his or her absence, to issue civil investigative demands pursuant to paragraph (1) of this subsection. The Corporation Counsel may not issue a civil investigative demand in order to conduct, or assist in the conducting of, a criminal investigation.

(b)(1) Each civil investigative demand issued pursuant to subsection (a)(1) of this section shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to have been violated.

(2) If such demand is for the production of documentary material, the demand shall do the following:

- (A) Describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;
- (B) Prescribe a return date for each such class that will provide a reasonable period of time within



which the material so demanded may be assembled and made available for inspection and copying; and

(C) Identify the false claims law investigator to whom such material shall be made available.

(3) If such demand is for answers to written interrogatories, the demand shall do the following:

(A) Set forth with specificity the written interrogatories to be answered;

(B) Prescribe dates at which time answers to written interrogatories shall be submitted; and

(C) Identify the false claims law investigator to whom such answers shall be submitted.

(4) If such demand is for the giving of oral testimony, the demand shall do the following:

(A) Prescribe the date, time, and place at which oral testimony shall commence;

(B) Identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;

(C) Specify that such attendance and testimony are necessary to conduct the investigation;

(D) Notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

(E) Describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

(5) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand shall be a date that is not less than 7 days after the date on which the demand is received, unless the Corporation Counsel determines that exceptional circumstances are present that warrant the commencement of such testimony within a shorter period of time.

(6) The Corporation Counsel shall not authorize, pursuant to subsection (a)(1) of this section, issuance of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Corporation Counsel, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

(c) A civil investigative demand may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under:

(1) The standards applicable to subpoenas or subpoenas duces tecum issued by a court of the District of Columbia to aid in a grand jury investigation; or

(2) The standards applicable to discovery requests pursuant to the Superior Court Civil Rules to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

(d)(1) Any civil investigative demand issued pursuant to subsection (a) of this section may be served by a false claims law investigator or his or her agent, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States; provided, that the Superior Court of the District of Columbia could exercise jurisdiction over the recipient of the demand consistent with the due process clause of the Constitution of the United States.

(2) Any such demand or any petition filed pursuant to subsection (a) of this section may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Superior Court Civil Rules prescribe for service in a foreign country; provided, that the Superior Court of the District of Columbia could exercise jurisdiction over the recipient of the demand consistent with the due process clause of the Constitution of the United States.

(e)(1) Service of any civil investigative demand issued pursuant to subsection (a) of this section, or of any petition filed pursuant to subsection (a) of this section, may be made upon a partnership, corporation, association, or other legal entity by the following methods:

(A) Delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(B) Delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(C) Depositing an executed copy of such demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(2) Service of any such demand or petition may be made upon any natural person by the following methods:

(A) Delivering an executed copy of such demand or petition to the person; or

(B) Depositing an executed copy of such demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(f) A verified return by the individual serving any civil investigative demand or any petition filed pursuant to subsection (a) of this section setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(g)(1) The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the following:

(A) In the case of a natural person, by the person to whom the demand is directed; or

(B) In the case of a person other than a natural person, by a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

(2) The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

(3) Any person upon whom any civil investigative demand for the production of documentary material has been served shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct pursuant to subsection (j)(1) of this section. Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

(h)(1) Each interrogatory in a civil investigative demand shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, as follows:

(A) In the case of a natural person, by the person to whom the demand is directed, or

(B) In the case of a person other than a natural person, by the person or persons responsible for answering each interrogatory.

(2) If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(i)(1) The examination of any person, pursuant to a civil investigative demand for oral testimony, shall be conducted before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is taken shall put the witness under oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken by any means authorized by, and in a manner consistent with, the Superior Court Civil Rules, and shall be transcribed.

(2) The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney or other representative of the person giving the testimony, the attorney for the District government, any person who may be agreed upon by the attorney for the District government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(3) The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

(4) When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by an attorney, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance that the witness desires shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of

the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.

(5) The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness. The officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

(6) Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Corporation Counsel may, for good cause, limit such witness to inspection of the official transcript of the witness's testimony.

(7) Any person compelled to appear for oral testimony pursuant to a civil investigative demand may be accompanied, represented, and advised by an attorney. The attorney may advise such person, in confidence, with respect to any question asked of such person. Such person or attorney may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record only when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not, directly or through the person's attorney, otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the Superior Court of the District of Columbia pursuant to subsection (d)(1) of this section for an order compelling such person to answer the question.

(8) Any person appearing for oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and allowances that are paid to witnesses in the Superior Court of the District of Columbia.

(j)(1) The Corporation Counsel shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received pursuant to this section, and shall designate such additional false claims law investigators as the Corporation Counsel determines from time to time to be necessary to serve as deputies to the custodian.

(2)(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony pursuant to this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material pursuant to paragraph (4) of this subsection.

(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or any other officer or employee of the Office of the Corporation Counsel who is authorized for such use by the Corporation Counsel. Such material, answers, and transcripts may be used by any authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony pursuant to this section.

(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or officer or employee of the Office of the Corporation Counsel authorized pursuant to subparagraph (B) of this paragraph. The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts. Nothing in this subparagraph is intended to prevent disclosure to the District of Columbia Council, including any committee of the Council, to the United States Attorney's Office, or to any other agency of the United States for use by such agency in furtherance of its statutory responsibilities. Disclosure of information to any agency other than the Council or the United States Attorney's Office shall be allowed only upon application, made by the Corporation Counsel to the Superior Court of the District of Columbia, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities and after giving the individuals who provided the information an opportunity to be heard on the release of the information.

(D) While in the possession of the custodian and under such reasonable terms and conditions as the Corporation Counsel shall prescribe, the following shall apply:

(i) Documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

(ii) Transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.

(3) Whenever any attorney of the Office of the Corporation Counsel is conducting any official

investigation or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received pursuant to this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such investigation or proceeding as such attorney determines to be required. Upon the completion of any such investigation or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered that have not passed into the control of any court or agency through introduction into the record of any case or proceeding.

(4) If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand, and any case or proceeding before a court arising out of such investigation, or any proceeding before any District government agency involving such material, has been completed, or no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator pursuant to subsection (g)(2) of this section or made for the Office of the Corporation Counsel pursuant to paragraph (2)(B) of this subsection), which has not passed into the control of any court or agency through introduction into the record of such case or proceeding.

(5)(A) In the event of the death, disability, or separation from service in the Office of the Corporation Counsel of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand issued pursuant to this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Corporation Counsel shall promptly do the following:

- (i) Designate another false claims law investigator to serve as custodian of such material, answers, or transcripts; and
- (ii) Transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

(B) Any person who is designated to be a successor pursuant to this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction that occurred before that designation.

(k)(1) Whenever any person fails to comply with any civil investigative demand, or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Corporation Counsel may file in the Superior Court of the District of Columbia and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

(2)(A) Any person who receives a civil investigative demand may file in the Superior Court of the District of Columbia and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. Any petition issued pursuant to this subparagraph must be filed:

- (i) Within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier; or
- (ii) Within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief pursuant to subparagraph (A) of this paragraph, and may be based upon any failure of the demand, or any particular portion thereof, to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(3) At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand, such person may file in the Superior Court of the District of Columbia and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

(4) Whenever any petition is filed in the Superior Court of the District of Columbia, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal. Any disobedience of any final order entered pursuant to this section by any court shall be punished as contempt of court.

(5) The Superior Court Civil Rules shall apply to any petition issued pursuant to this subsection, to the

extent that such rules are not inconsistent with the provisions of this section.

(l) Any documentary material, answers to written interrogatories, or oral testimony provided pursuant to any civil investigative demand issued pursuant to subsection (a) of this section shall be exempt from disclosure pursuant to subchapter II of Chapter 5 of this title.

(m) For purposes of this section, the term:

(1) "Custodian" means the custodian, or any deputy custodian, designated by the Corporation Counsel pursuant to subsection (j)(1) of this section.

(2) "Documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery.

(3) "False claims law" means § 2-301.03 and this subchapter.

(4) "False claims law investigation" means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

(5) "False claims law investigator" means any attorney or investigator employed by the Office of the Corporation Counsel who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the District government acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

(6) "Person" means any natural person, partnership, corporation, association, or other legal entity, including any state or political subdivision of a state.

(Feb. 21, 1986, D.C. Act 6-85, § 819, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 10(e), 46 DCR 2118; Apr. 12, 2000, D.C. Law 13-91, § 122, 47 DCR 520.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

2001 Ed., § 2-308.19.

1981 Ed., § 1-1188.19.

##### *Effect of Amendments*

D.C. Law 13-91, in par. (4) of subsec. (j), substituted "subsection (g)(2)" for "subsection (e)(2)" and "paragraph (2)(B) of this subsection," for "paragraph (2)(B) of this subsection,".

##### *Legislative History of Laws*

For legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-308.07.

For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 2-301.05.

For Law 13-91, see notes following § 2-201.01.

## **§ 2-381.08. ANTIFRAUD FUND.[REPEALED]**

(Feb. 21, 1986, D.C. Law 6-85, § 820, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687; Sept. 14, 2011, D.C. Law 19-21, §§ 1062, 9004(b), 58 DCR 6226; Sept. 26, 2012, D.C. Law 19-171, § 98(a), 59 DCR 6190.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

2001 Ed., § 2-308.20.

1981 Ed., § 1-1188.20.

##### *Effect of Amendments*

D.C. Law 19-171 made a technical correction to the enacting clause of D.C. Law 19-21, § 9004(b) that did not change the repeal of this section

##### *Legislative History of Laws*

For legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-308.07.

For history of Law 19-21, see notes under § 2-351.15.

Short title: Section 1061 of D.C. Law 19-21 provided that subtitle F of title I of the act may be cited as "OIG Auditing Reform Amendment Act of 2011".

## **§ 2-381.09. PENALTIES FOR FALSE REPRESENTATIONS.**

Whoever makes or presents to any officer or employee of the District of Columbia government, or to any department or agency thereof, any claim upon or against the District of Columbia, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than one year and assessed a fine of not more than \$100,000 for each violation of this chapter. The Corporation Counsel shall prosecute violations of this section.

(Feb. 21, 1986, D.C. Law 6-85, § 821, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Prior Codifications*

2001 Ed., § 2-308.21.

1981 Ed., § 1-1188.21.

#### *Legislative History of Laws*

For legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-308.07.

## **SUBCHAPTER II. ELECTRONIC COMMERCE; ACQUISITION AND DISPOSITION.**

### **§ 2-381.21. ELECTRONIC TRANSACTIONS.**

(a) Notwithstanding any other provisions of this chapter, the CPO may acquire supplies and services through:

- (1) Electronic solicitation and bid response; or
- (2) Electronic auctions.

(b) In selecting one of the methods authorized by this section, upon proper validation and authorization, a contracting officer may accept electronic signatures for all electronic commerce transactions.

(Feb. 21, 1986, D.C. Law 6-85, § 1201, as added Oct. 22, 2009, D.C. Law 18-64, § 2(f), 56 DCR 6603.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Prior Codifications*

2001 Ed., § 2-312.01.

#### *Legislative History of Laws*

Law 18-64, the "Procurement Practices Amendment Act of 2009", as introduced in Council and assigned Bill No. 18-7, which was referred to the Committee on Government Operations and the Environment. The Bill was adopted on first and second readings on June 30, 2009, and July 14, 2009, respectively. Signed by the Mayor on July 28, 2009, it was assigned Act No. 18-160 and transmitted to both Houses of Congress for its review. D.C. Law 18-64 became effective on October 22, 2009.

### **§ 2-381.22. ELECTRONIC PROCUREMENT.**

(a) The CPO may issue a solicitation by any electronic medium, including the Internet, electronic mail, or disk medium.

(b) The CPO may accept responses to solicitations by any electronic medium, including the Internet, electronic mail, or disk medium.

(Feb. 21, 1986, D.C. Law 6-85, § 1202, as added Oct. 22, 2009, D.C. Law 18-64, § 2(f), 56 DCR 6603.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Prior Codifications*

2001 Ed., § 2-312.02.

*Legislative History of Laws*

For Law 18-64, see notes following § 2-312.01.

### **§ 2-381.23. ELECTRONIC AUCTIONS.**

- (a) The CPO may procure commercial products or commercial services through Reverse Auctions.
- (b) The CPO may place any requirement for a commercial product or commercial service on an established online Reverse Auction exchange that would allow any bidder to competitively bid down the price of that commercial product or commercial service over a stated period of time established by the CPO.
- (c) The CPO may establish an online auction exchange for the purposes of executing Reverse Auction transactions on behalf of the District.
- (d) The CPO may establish an online standard auction exchange for the purpose of executing standard auction transactions on behalf of the District government.

(Feb. 21, 1986, D.C. Law 6-85, § 1203, as added Oct. 22, 2009, D.C. Law 18-64, § 2(f), 56 DCR 6603.)

*HISTORICAL AND STATUTORY NOTES*

*Prior Codifications*

2001 Ed., § 2-312.03.

*Legislative History of Laws*

For Law 18-64, see notes following § 2-312.01.

## **SUBCHAPTER III. YEAR 2000 DISTRICT GOVERNMENT COMPUTER LIABILITY IMMUNITY.**

### **§ 2-381.31. IMMUNITY FOR YEAR 2000 SYSTEM FAILURES.**

- (a) No cause of action at law or in equity, nor any administrative action shall be maintained against the District government or its officers or employees, arising from a Year 2000 system failure.
- (b) No cause of action at law or in equity, nor any administrative action shall be maintained against a District government vendor, arising from a Year 2000 system failure caused primarily by the vendor's use of computer hardware, software, or equipment that is not Year 2000 compliant and which is owned or provided by the District government, unless the action is maintained by the District government.
- (c) All District government contracts executed after April 20, 1999 shall include a warranty of Year 2000 compliance for any goods or services provided pursuant to the contract, and shall state that the vendor is liable for any damages if the goods and services are not Year 2000 compliant.
- (d) For the purposes of this subchapter:
  - (1) The term "Year 2000 compliance or compliant" means the capability of a computer software program, database, network, information system, computer device, or any equipment using microchips, to interpret, produce, generate, calculate, or to correctly account for a date in the year 2000 or in subsequent years.
  - (2) The term "Year 2000 system failure" means the failure of a computer software program, database, network, information system, computer device, or any equipment using microchips, to interpret, produce, generate, calculate, or to correctly account for a date in the year 2000 or in subsequent years.

(Apr. 20, 1999, D.C. Law 12-244, § 2, 46 DCR 1080; Sept. 26, 2012, D.C. Law 19-171, § 205, 59 DCR 6190.)

*HISTORICAL AND STATUTORY NOTES*

*Prior Codifications*

2001 Ed., § 2-323.01.

1981 Ed., § 1-1188.51.

*Effect of Amendments*

D.C. Law 19-171, in subsec. (a), substituted "No cause" for "Notwithstanding § 2-308.01, no cause".

Law 12-244, the "Year 2000 Government Computer Immunity Act of 1998," was introduced in Council and assigned Bill No. 12-732, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 24, 1998, it was assigned Act No. 12-581 and transmitted to both Houses of Congress for its review. D.C. Law 12-244 became effective on April 20, 1999.

For history of Law 19-171, see notes under § 2-218.13.

### **§ 2-381.32. APPLICABILITY.**

This subchapter shall apply to claims arising between April 20, 1999 and December 31, 2005, and to contracts executed and in effect between April 20, 1999 and December 31, 2005.

(Apr. 20, 1999, D.C. Law 12-244, § 3, 46 DCR 1080.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

2001 Ed., § 2-323.02.

1981 Ed., § 1-1188.52.

##### *Legislative History of Laws*

For legislative history of D.C. Law 12-244, see Historical and Statutory Notes following § 2-323.01.

## **SUBCHAPTER IV. MISCELLANEOUS.**

### **§ 2-381.41. NEW CONTRACTS WITH COSTS EXCEEDING EXISTING CONTRACTS.**

The Mayor shall not enter into any new contract for goods or services the cost of which exceeds the cost of an existing contract for the same goods or services, when the current contractor is willing to continue to provide the goods or services at the price of the existing contract, as long as the contractor is providing satisfactory service; nor shall the Mayor extend any existing contract for any amount over the price agreed to in the existing contract. Nothing contained in this section shall prohibit the Mayor from putting a contract out for bid for a lower price.

(Sept. 26, 1995, D.C. Law 11-52, § 816, 42 DCR 3684.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

2001 Ed., § 2-325.01.

1981 Ed., § 1-1181.6a.

##### *Temporary Amendments of Section*

For temporary (225 day) amendment of section, see § 4 of the Budget Implementation Temporary Act of 1995 (D.C. Law 11-18, May 27, 1995, law notification 42 DCR 2845).

For temporary (225 day) amendment of section, see §§ 2 through 5 of the Oak Hill Youth Center Educational Contracting Temporary Act of 1996 (D.C. Law 11- 193, April 9, 1997, law notification 44 DCR 2388).

##### *Legislative History of Laws*

Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

### **§ 2-381.42. PRIVATIZATION OF FLEET MANAGEMENT SERVICES IN THE METROPOLITAN POLICE DEPARTMENT.**

(a) Notwithstanding any provision of § 2-352.05, the Mayor, in accordance with the provisions of this subchapter, is authorized to contract for the provision of services for the fleet management services for the



Metropolitan Police Department.

(b) Prior to the award of the fleet management services contract referred to in subsection (a) of this section, the Mayor shall make a written determination and findings which will address the following factors:

- (1) Over the duration of the contract, including any options, the District will either realize a projected cost savings or receive the services of an improved quality or quantity at the same or lower cost;
- (2) There may be increased economic development in the District in terms of entrepreneurial opportunities for District businesses or employment opportunities for District residents;
- (3) There may be strengthening of any existing District businesses or the creation of any new businesses in the District, or relocation of any businesses from outside to inside the District;
- (4) The District can describe with reasonable precision its minimum acceptable performance standards;
- (5) That cost, efficiency of operation, and quality and quantity can be measured with reasonable accuracy; and
- (6) That contracting-out of the program will not adversely affect the delivery of services to District residents.

(c) The Mayor shall base the conclusion required by subsection (b)(1) of this section on a written cost/benefit analysis prepared by the Metropolitan Police Department. At a minimum, this analysis shall include one of the following comparisons:

- (1) Over the duration of the contract, including options, the projected current total cost to the District government of performing the services in-house versus the projected total cost to the District government after the contracting-out, if quality and quantity of service remain substantially the same; or
- (2) Over the duration of the contract, including options, the projected quality and quantity versus projected quality and quantity of service after the contracting-out, if total cost to the District government of services performed in-house remains substantially the same.

(d) The Mayor may issue rules which set forth standards for making the written cost/benefit analysis described in subsection (c) of this section, including rules that address the following:

- (1) Cost factors to be considered in evaluating the total cost to the District government of operating the program if the service continues to be provided by the government, such as the cost of equipment, facilities, maintenance, personnel, and utilities;
- (2) The cost factors to be considered in evaluating the total cost to the District government of contracting-out the program, such as the additional cost of improving any capital assets to be transferred to a contractor, the additional cost of any one-time severance of District employees, the additional cost of contract administration, the value of any improvement to District government programs resulting from privatizing the program, any income to the District government from the lease or sale of District government assets resulting from contracting-out the program, and any tax revenue to the District based on income earned by a contractor who performs the fleet management operations; and
- (3) Methods to be used to identify and measure the quality and quantity of services so that accurate cost comparisons can be made between District government and private sector performance.

(e) A contract for privatizing the fleet management services referred to in subsection (a) of this section shall include a provision requiring that at least 51% of all new hires to perform the contract are bona fide District residents unless the Mayor certifies that qualified District residents are unavailable to fill the new positions.

(f) If not already required by a collective bargaining agreement, the Mayor shall make reasonable efforts to consult with union representatives concerning affected District government employees.

(g) Nothing in this section may be construed to create a private right enforceable by any person.

(Sept. 26, 1995, D.C. Law 11-52, § 701, 42 DCR 3684; Sept. 26, 2012, D.C. Law 19-171, § 206, 59 DCR 6190.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

2001 Ed., § 2-325.02.

1981 Ed., § 1-1191.3.

##### *Effect of Amendments*

D.C. Law 19-171, in subsec. (a), substituted "§ 2-352.05" for "§2-301.05".

##### *Legislative History of Laws*

Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

For history of Law 19-171, see notes under § 2-218.13.

### **§ 2-381.43. STANDARDS FOR CONTRACTING OFFICER.**

(a) Any contracting manager or contracting officer who performs the cost/benefit analysis required by § 2-301.05b(a)(1) shall meet certain training standards and be certified to ensure a level of management skills and experience in doing cost/benefit analyses.

(b) Within 60 days of August 14, 1995, the Mayor shall issue, as a part of the District Government Procurement Regulations, rules for all District government employees who participate in the preparation of any cost/benefit analysis for any proposal to contract out services previously provided by District employees. The rules shall include the provisions contained in subsection (a) of this section.

(Feb. 21, 1986, D.C. Law 6-85, § 1102a, as added Mar. 5, 1996, D.C. Law 11-98, § 501(c), 43 DCR 5; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

2001 Ed., § 2-325.03.

1981 Ed., § 1-1191.4.

##### *Temporary Amendments of Section*

For temporary (225 day) amendment of section, see § 701(c) of the Budget Support Temporary Act of 1995 (D.C. Law 11-78, January 26, 1996, law notification 43 DCR 650).

##### *Legislative History of Laws*

For legislative history of D.C. Law 11-98, see Historical and Statutory Notes following § 2-301.05c.