

## **Criminal Background Screening FAQs**

- 1. Are WMATA contractors now responsible for conducting and providing WMATA, evidence that a criminal background screening was performed?**

Yes. The contractor shall contract with, or otherwise engage, a reputable third-party vendor to conduct the required criminal background screenings and provide evidence of compliance through regular certification to WMATA.

- 2. How should I select a reputable third-party vendor to conduct the required criminal background screenings?**

You should choose a criminal background screening company that is capable of meeting the standards established by your policies.

- 3. Will WMATA contractors be provided an equitable adjustment for conducting their own criminal background screenings?**

Yes, if appropriate. To seek an equitable adjustment the contractor must submit a claim for the equitable adjustment and the Contracting Officer will review and/or negotiate the claim and, if approved, modify the contract as necessary.

- 4. If WMATA no longer conducts criminal background screenings for its contractors, what substantiation is required to be provided when the contractor employee is onboarded?**

WMATA's contracts have been updated to include a certification, made by the vendor at the time of proposal submission that the vendor will comply with the Criminal Background Screening requirements. After contract award, a Criminal Background Screening certification shall be provided by the vendor along with a list of personnel who require a WMATA OneBadge. Thereafter, the quarterly certification represents the vendor's substantiation that all employees of the contractor who will be working on WMATA's premises, or otherwise have access to WMATA customers, property, or confidential information have successfully passed a background screen.

- 5. Are WMATA contractors required to provide the completed and signed Criminal Background Screening Certification quarterly?**

Yes. At the end of each calendar quarter, the contractor shall complete the certification form and submit it to the contracting officer's technical representative (COTR).

- 6. Must the contractors provide the results of the criminal background screening in order to receive the OneBadge?**

No, however a current certification of compliance must be on file with the COTR.

- 7. Does the Criminal Background Screening Certification (Quarterly) need to be submitted for each contractor working on WMATA's premises, or should one form per quarter be submitted for the contracting firm?**

One Criminal Background Screening Certification form should be submitted by the contractor each calendar quarter. At the end of each calendar quarter, the contractor shall submit the completed certification to the contracting officer's technical representative (COTR).

- 8. Are WMATA contractors expected to conduct a criminal background screening on its employees and subcontractors every quarter or just certify the criminal background screening was conducted and passed via the Criminal Background Screening Certification (Quarterly) form?**

Contractors are not required to run a new criminal background check each quarter on their employees. Rather, contractors are required to submit a certification form every quarter. This certification may be based on a criminal background check that is not more than one year old.

Regarding subcontractors: The prime contractor must pass this background check and quarterly certification requirement down to each of its subcontractors. Subcontractors shall complete the background checks and the certification forms in the same manner as described above, except that the certification is made to the Contractor, not the COTR.

- 9. Is the criminal background screening process retroactive or is this a new process?**

Although WMATA has always conducted criminal background screenings on its employees and contractors, passing the criminal background screening to contractors and the accompanying certification process is new and became effective October 2, 2017.

- 10. Does an existing contractor's badge need to be renewed?**

No, not until it expires, however, no new badges or renewals will be issued after October 2, 2017, unless a vendor certification of compliance with criminal background screening requirement is on file with WMATA.

- 11. What should I do if I do not know how to construct criminal background check screening policies and procedures?**

Contractors may use WMATA's Criminal Background Checks, Policy/Instruction 7.2.3/1 as a guide.

- 12. If a subcontractor works on multiple contracts, for more than one Prime, which Prime is responsible for certifying the subcontractor?**

All prime contractors are responsible for certifying all subcontractors on each project.

- 13. Where staff currently working on WMATA property had previously had a criminal background check performed by WMATA, but their badge needs to be renewed, does the contractor employee need a new background check to be performed by the contractor?**

Yes. See question 10.

- 14. Does the prime have to sign off for subcontractors or does each subcontractor validate their own staff with no involvement from the prime?**

It is the responsibility of the Prime to ensure their subcontractors are in compliance with the criminal background policy. See questions 8 and 10.

- 15. What if I lose my OneBadge?**

WMATA's lost badge policy and process has not changed as of this writing, but is subject to change at WMATA's discretion. Currently, you can replace your lost badge at the ID Office for \$5 after the first loss and \$25 for any subsequent loss.

**16. Who do I contact if my badge does not work?**

If you have a problem with your badge, please notify a OneBadge team member as soon as you can at the ID Office.

**17. The “WMATA’s Criminal Background Checks Policy accompanies this notification” attachment does not apply to “7.02 Contractors and/or consultants performing work on behalf of Metro.” What does apply? Is WMATA requiring that contractor personnel adopt the same policy? How does this align to laws in the District of Columbia, State of Maryland or Commonwealth of VA? EEO and non-discrimination, etc.?**

Nothing in the referenced P/I is applicable to contractors. Contractors are not required to adopt the same policy. The policy is provided for informational purposes only. WMATA’s policy is in compliance with all of the laws governing criminal background checks that apply to WMATA. Vendors should have received administrative modifications to their contracts to address the vendors’ responsibility to conduct background checks on certain employees. To the extent that WMATA adopts a policy in the future that directly imposes this background check obligation on vendors, a copy will be made available upon request.

**18. Who notifies the ID office that the contractor personnel passed a background check? What about renewing badges? New personnel? After PO awarded?**

In all instances it is the COTR responsibility to provide internal coordination regarding whether proper certification is on file with WMATA. Please see questions 4, 7, and 8.

**19. What are the specific WMATA requirements for consideration of “nature of the services...”, “nature or gravity of the offense or conduct”, and “time that has lapsed since the offense...” This is very general and unclear. Please provide details for requirements.**

WMATA will not provide specific details as each contractor must write their own policy. WMATA does not recommend or endorse any guidance regarding criminal background check policies. That said, the EEOC has published guidance for drafting criminal background check policies.

See: [https://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm)

See also question 17.

**20. “At the time the contract is awarded, the contractor shall provide the contracting officer with a copy of the contractor’s criminal background check screening policies and procedures to demonstrate that they account for these considerations.” What specifically is required in the policy and procedure within the scope of the contract with WMATA?” Are you looking for a contractor policy? What if the contractor policy refers to the client policy requirements? What specifically is required in the policy and procedure within the scope of the contract with WMATA?**

**CLARIFICATION – WMATA is removing this requirement to submit a copy of the contractor’s document from the contract.**

WMATA has provided its policy as an example. The contractor may not simply refer to the client policy, but may choose to incorporate provisions of the WMATA policy into the contractor’s policy. **Please see questions 17 and 19.**

**21. “Reputable third-party vendor to conduct the required criminal background screenings, and provide the vendor with a copy of its criminal background check screening policies and procedures”. Define “reputable”. Does WMATA have an approved or non-approved list?**

**What policy is WMATA requiring the contractor to provide to the 3rd party vendor – the WMATA screening policy?**

WMATA expects the contractor to provide the 3<sup>rd</sup> party vendor with a copy of the contractor's adopted background check policy. **Please see question 25(a).**

- 22. “That person passes the contractor’s criminal background screening.” Provide definition for “pass”.**

What constitutes a “pass” will be determined by the contractor’s background check policy.

- 23. “At the end of each calendar quarter, the contractor shall certify to the contracting officer’s technical representative (COTR) or designee the contractor’s compliance with the criminal background screening requirement and confirm that all persons required to be screened passed the contractor’s criminal background screening before working on the WMATA contract.” What if personnel are already working and have an approved WMATA ID that is set to expire in the future? Who is the Contracting officer and designee? How is this information maintained? Who notifies the ID office?**

Contractors with a current badge need not complete a criminal background check. Contractors with badges that are set to expire in the future will need to complete a background check before a new OneBadge can be issued.

The COTR will receive the certification from the contractor, retain a copy for the file and forward a copy to the Contracting Officer for upload to the official procurement record. COTR will notify the ID office through the (Managed Services process) after proper certification is received.

- 24. “The contractor shall indemnify WMATA and hold WMATA harmless from any and all claims, demands, damages, costs and expenses, including attorneys’ fees and other costs and expenses associated with any claims, demands, etc., and other liabilities and relief arising out of or resulting from the contractor’s criminal background screening obligation and process.” What are the requirements for each different labor category? Provide specific examples and clarifications of requirements of screening obligation and process (see other questions above.)**

WMATA does not require its contractors to use specific screening criteria, but expects contractors to develop their own criteria. As a reference, WMATA has provided a copy of its own policy and screening criteria for its employees. In addition, a link to the EEOC’ guidance regarding criminal background checks can be found at this link: [https://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm)

- 25. Quarterly Screening Certification**

- a. Define “reputable third-party vendor” and provide approved or non-approved list.**  
WMATA will not provide a list of approved or non-approved vendors, contractors must determine their own standards for reputable and certify to WMATA that that standard is met.
- b. What if the contractor personnel have a current WMATA badge based on WMATA’s First Choice background check? Are they to appear on the Quarterly report until expired or after expiration?**

Please see questions 4, 7, 8, and 18.

- c. It will screen for criminal convictions, taking into consideration (1) the nature of the services or work being performed under the contract with particular regard for the**

individual's access to, and interaction with, WMATA's customers, property, and confidential information; (2) the nature or gravity of the offense or conduct resulting in a criminal conviction; and (3) the time that has lapsed since the conviction and/or completion of the sentence, all contractor personnel who will have access to WMATA's customers, the general public, WMATA's property, or WMATA's information and who work on this Contract during each calendar year within this Contract's period of performance. The Offeror will provide certification that it conducted these screenings to the contracting officer's technical representative (COTR) on a quarterly basis, on a form provided.

**What about those that expire?**

Please see questions 4, 7, 8, and 18

**Is this retroactive or beginning October 2017?** The memorandum is dated September 15, 2017; however, not mailed until September 28, 2017 and there are many open questions.

Please see questions 4, 7, 8, and 18.

- d. **"It will screen for criminal convictions, taking into consideration (1) the nature of the services or work being performed under the contract with particular regard for the individual's access to, and interaction with, WMATA's customers, property, and confidential information; (2) the nature or gravity of the offense or conduct resulting in a criminal conviction; and (3) the time that has lapsed since the conviction and/or completion of the sentence, all contractor personnel who will have access to WMATA's customers, the general public, WMATA's property, or WMATA's information and who work on this Contract during each calendar year within this Contract's period of performance. The Offeror will provide certification that it conducted these screenings to the contracting officer's technical representative (COTR) on a quarterly basis, on a form provided." What are the specific requirements for each labor category/nature of services or work being performed? How does each vendor interpret this uniformly?**

Please see the forms of certification as a clarification to what information is being certified to by the vendor. Please see questions 17, 19, and 20 with regard to vendor implementation.

**What are WMATA requirements?**

WMATA's requirements are defined in its policy. Under the new requirement, contractors must establish their own background check policy and standards.

- e. **"...good standing and otherwise fit to work..." Please define and provide clarification.**

Please see questions 17, 19, and 20 with regard to vendor implementation/responsibility for establishing their own program.

- f. **What are the specific requirements for reliance on results; i.e., there are 0 convictions or charges?**

Please see questions 17, 19, and 20 with regard to vendor implementation/responsibility for establishing their own program.

- g. “The Offeror has not obtained or otherwise been made aware of any information about any contractor personnel working on this Contract that contradicts or otherwise impacts the contractor’s determination that such persons passed the contractor’s criminal background screening and/or are fit to work on this contract.” What is the intent of this sentence and what does it mean?**

If the contractor is relying on a background check completed within the last year, the contractor is affirming that it has not been made aware of any charges or offenses that would contradict the last background check. Example: background check was clear when last checked but employee of contractor notifies contractor of a recent arrest with pending charges or a conviction that had not occurred at the time of the last background check. In the example, the contractor would be aware of information that impacts the contractor’s determination that this employee would still pass the screening and/or is fit to work on the WMATA contract.

- 26. Some of our resources received a notice that their badge expires in 30 days and were provided the PDF attachments labeled “Contractor ID Form” and “Consumer\_Authorization”. Do they complete these forms also? Do they return to the ID office or Contracting Officer? Who is the point of contact?**

The “Contractor ID Form” and “Consumer Authorization Form” are now obsolete. The Criminal Background Screening Certification should be forwarded by the contractor to the contracting officer’s technical representative. Additionally, a OneBadge Request Form must be completed by a WMATA employee for each contractor employee doing work on WMATA premises. If you require your badge to be renewed before it expires, you must contact your WMATA Manager and your employer. When your badge expires, ALL access to ALL Metro properties and your access to the WMATA network (your computer access) will EXPIRE.

- 27. What type of background check should we run? Any specific requirements? It says Criminal History (Should it include anything else except County Criminal and Statewide Criminal? What States/Counties)?**

Please see questions 17, 19, and 20 with regard to vendor implementation/responsibility for establishing their own program.

- 28. When the check is done, who specifically should we notify? Should we attach the background check results? Should we send a screening certificate on this occasion or wait till the end of the quarter?**

One (1) Criminal Background Screening Certification form should be submitted by the contracting firm for each contract under which they perform WMATA work, each calendar quarter. At the end of each calendar quarter, the contractor shall complete a certification and submit it to the contracting officer’s technical representative (COTR) indicating the contractor’s compliance with the criminal background screening requirement and confirm that all persons required to be screened passed the contractor’s criminal background screening before working on the WMATA contract. A copy of the background check is not required unless it is a MetroAccess contractor.

- 29. WMATA ran checks for the current incumbents already (less than one year ago), should we wait until their possible PO renewal or badge expiration to run checks on our side, or WMATA expects us to run checks to all EastBanc Tech personal right now regardless?**

Please see questions 4, 7, 8, and 18.

- 30. What search criteria should contractors use for background checks?**

Please see questions 17, 19, and 20 with regard to vendor implementation/responsibility for establishing their own program.

- 31. What is the rationale for quarterly attestation from our contractors versus annually or when a contract is awarded or renewed? Many contractors only run background checks when they hire staff, it is not normal and customary to run annual background checks on all employees.**

Certifications are required quarterly to ensure that any new information, known by the contractor, but discovered after the background check date, is incorporated in the contractor's certification. Please see question 25(g) for an example.

- 32. A key question is does the Federal government require quarterly background check submissions and total annual background checks for all of its contracts to include all employees of the contractor to also include subcontractors?**

WMATA will not speak to the requirements of the Federal government.

- 33. Why can't we just require a copy of their background check policy and impose indemnification by them to us if they don't follow the policy within our requirements?**

Please see questions 17, 19, and 20 with regard to vendor implementation/responsibility for establishing their own program. Yes, it is anticipated that the general indemnification provided in the base contract would provide WMATA protection from any contractor failure to meet this requirement.

- 34. In the 9/29/17 cover memo, last paragraph, it states that either the contract manager or the COTR will have the responsibility to collect/monitor these attestation forms. We need more clarity on whose actual responsibility this is. It can't be left open and being that this is an administrative restriction being imposed by PRMT it would be unfair to place this administrative burden on COTR's.**

A detailed WMATA Policy Instruction is being drafted. At this time, it is anticipated that the COTR will receive the certification from the contractor, retain a copy for the file and forward a copy to the Contracting Officer for upload to the official procurement record. COTR will notify the ID office through the (Managed Services process) after proper certification is received.

- 35. We already have badge applications backing up due to the attestation requirement. Policy was approved 07/10/17, memo was sent 09/29/17, are we expected to implement policy on day one with no grace period notice to contactors to prepare for this imposed change?**

Most contractors with active contracts were notified of this policy change during August and September of this year. This new process is required and effective immediately.

- 36. Why couldn't the attestation be included in the RFP?**

Modified contract language is being drafted to address this issue. At this time it is anticipated that all future solicitations will include this requirement.

- 37. We need to perform criminal background check for last 10 years on the selected consultant. This is a statement not a question. To the extent that this is a question, "does a contractor need to review 10 years of data in the context of its criminal background screening"?**

Please see questions 17, 19, and 20 with regard to vendor implementation/responsibility for establishing their own program.

- 38. We understand that in the last 10 years, if the consultant receives 2 or more points, then the consultant is not eligible for the work at WMATA.**

Please see questions 17, 19, and 20 with regard to vendor implementation/responsibility for establishing their own program.

- 39. 1 point for every misdemeanor and 2 points for every felony?**

Please see questions 17, 19, and 20 with regard to vendor implementation/responsibility for establishing their own program.

- 40. If the consultant secures less than 2 points, he/she will be considered to be eligible to work at WMATA for the contract position.**

Please see questions 17, 19, and 20 with regard to vendor implementation/responsibility for establishing their own program.

- 41. What type of background check should we run? Any specific requirements? Should it include anything else except County Criminal and Statewide Criminal? What States/Counties?**

Please see questions 17, 19, and 20 with regard to vendor implementation/responsibility for establishing their own program.

- 42. When is an ID required for delivery people (UPS, Fedex, Staples, Deer Park) and is an escort required?**

Staff is drafting a P/I to address this question.