

Criminal Background Screening FAQs

- 1. Are WMATA contractors 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. 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).

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

No, not unless the COTR asks for them. However, a current certification of compliance must be on file with the COTR.

- 5. Does the Criminal Background Screening Certification (Quarterly) need to be submitted for each contractor or subcontractor working on WMATA's premises, or who will have access to WMATA's customers or information or should one form per quarter be submitted for the contracting or subcontracting firm?**

The contractor shall submit one criminal background screening certification form for each calendar quarter listing all contractor employees and agents ("personnel") to which it applies. At the end of each calendar quarter, the contractor shall submit the completed certification to the COTR.

- 6. What type of documentation are contractors required to submit with the Criminal Background Screening Certification (Quarterly)?**

Contractors are required to submit the completed Background Screening Certification (Quarterly) form every quarter that lists all active contractor employees and other personnel working on WMATA contracts. Therefore, the listing must include current personnel who have been previously listed as well as new personnel. This certification may be based on a criminal background check that is not more than one year old. Completed Background Screening Certification forms indicate the name of the employee or other personnel to whom the certification applies as well as the WMATA Contractor ID No., and whether each listed person is new.

Please note that periodic audits will be conducted to ensure that contractors are compliant with the Criminal Background Screening Certification (Quarterly).

- 7. 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 personnel passed it by submitting the Criminal Background Screening Certification (Quarterly) form?**

Contractors are not required to run a new criminal background check each quarter on their personnel. 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 for contractors, except that the certification is made to the contractor, not the COTR.

8. **What should I do if I do not know how to draft criminal background check screening policies and procedures?**

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

9. **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.

10. **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.

11. **What if I lose my OneBadge?**

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

12. **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 WMATA ID Office.

13. **Who notifies the ID office that the contractor personnel passed a background check?**

In all instances, it is the COTR's responsibility to provide internal coordination regarding whether proper certification is on file with WMATA.

14. **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 its own policy. WMATA does not recommend or endorse any guidance regarding criminal background check policies. The Equal Employment Opportunity Commission (EEOC) has published guidance for drafting criminal background check policies.

See: https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm

15. **WMATA requires a "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". What does WMATA consider to be a "reputable" third-party vendor?**

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

WMATA expects the contractor to provide the 3rd party vendor with a copy of the contractor's adopted background check policy.

- 16. The Contractor must provide "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.

- 17. "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." Provide specific examples and clarification of requirements for screening obligations and processes (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 U.S. EEOC's guidance regarding criminal background checks can be viewed through the following link: www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

18. Quarterly Screening Certification

- a. Does WMATA maintain an approved or non-approved list of reputable third-party vendors?**

WMATA will not provide a list of approved or non-approved vendors. Contractors must determine their own standards for reputable third-party vendors and certify to WMATA that its standard is met.

- b. "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 elapsed since the conviction and/or completion of the sentence, for all contractor personnel who will have access to WMATA's customers, the general public, WMATA's property, or WMATA's information and who works 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 COTR on a quarterly basis, on a form provided." What are the specific requirements for the nature of services or work being performed? How does each vendor interpret this uniformly?**

The Criminal Background Screening Certification (Quarterly) requires contractors to certify the following:

- 1) It will contract with or engage a reputable third-party vendor to conduct criminal background screenings of all Contractor personnel who will have access to WMATA's customers, WMATA's property, or WMATA's information in connection with this Contract. This requirement also applies to Contractors who engage with the general public on WMATA's behalf.
- 2) It will screen for criminal convictions of 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, 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. 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.

- 3) The Contractor shall submit to the COTR a list of all employees and agents who will require Contractor access badges not less than 7 days prior to the date on which access will be required.
- 4) Offeror will determine that all Contractor personnel working on this Contract during the calendar year passed the Contractor's criminal background screening and will be in good standing and otherwise fit to work on this Contract.
- 5) 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.
- 6) The Contractor will flow this requirement down to all of its subcontractors who will have access to WMATA's customers, the general public, WMATA's property, or WMATA's information within this Contract's period of performance.

- c. **"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 an employee or agent notifies the 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 or agent would still pass the screening and/or is fit to work on the WMATA contract.

19. **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 until the end of the quarter?**

One (1) Criminal Background Screening Certification form must 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 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.

20. **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.

21. 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?

Contractors determine their Background Screening Policy. However, it is anticipated that the general indemnification provided in the base contract would provide WMATA protection from any subcontractor failure to meet this requirement.

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

Unbadged vendors are treated as visitors. Special Police Officers verify the delivery person's ID and then they are escorted to complete the delivery.