



SUBJECT Criminal Background Check
Effective Immediately

Date: September 28, 2017

FROM: PRMT

TO:

RE: Contract #:

It is WMATA's policy to provide a safe and secure environment for WMATA customers, WMATA employees, and our contractors' employees and to provide for the protection and preservation of WMATA property and confidential information. To promote and advance this policy, WMATA screens candidates for employment with WMATA for their criminal conviction histories, and WMATA requires its contractors to screen contractor personnel for their criminal conviction histories if they work on WMATA's premises or otherwise have access to WMATA's customers, property, or confidential information. For the contractor's information, a copy of WMATA's Criminal Background Checks Policy accompanies this notification.

As a prerequisite to eligibility for a WMATA issued identification and access badge ("One Badge") a contractor shall have the sole responsibility for, and shall assure, adequate criminal background screening on a routine basis of all of its personnel who will be working on WMATA's premises or otherwise have access to WMATA's customers, property, or confidential information. All required criminal background check screening of contractor's personnel shall take into consideration (1) the nature of the services or work being performed 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 the criminal conviction; and (3) the time that has lapsed since the offense, conduct and/or completion of the sentence. 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. The contractor shall contract with, or otherwise engage, 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.

The contractor shall not place any person on or engage any person under the contract with WMATA who will be working on WMATA's premises, or otherwise have access to WMATA customers, property, or confidential information, unless that person passes the contractor's criminal background screening. At the end of each calendar quarter, the contractor shall certify to the contracting officer 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. For the sole purpose of monitoring contractor's compliance, WMATA reserves the right to request additional documents or perform its own criminal background screens of contractor's personnel and will inform the contractor in writing of any such action.

**Washington
Metropolitan Area
Transit Authority**

600 Fifth Street, NW
Washington, D.C. 20001
202/962-1234

*By Metrorail.
Judiciary Square-Red Line
Gallery Place-Chinatown
Red, Green and
Yellow Lines*

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Criminal Background Check Memorandum

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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.

CC: Contract File

Attachment: Background Check Certification

**CRIMINAL BACKGROUND SCREENING CERTIFICATION
(QUARTERLY)**

The Contractor hereby certifies that:



- (1) The Contractor has contracted with or otherwise engaged a reputable third-party vendor to conduct criminal background screenings of all Contractor personnel who would work on WMATA's premises or otherwise have access to WMATA's customers, property, or confidential information in connection with the Contractor's contract with WMATA (the "WMATA contract").
- (2) The Contractor screened for criminal conviction histories all Contractor personnel who have worked on WMATA's premises or otherwise have had access to WMATA's customers, property, or confidential information during the following calendar quarter: _____ to _____
[Specify the calendar quarter to which this Certification applies, i.e., Jan. 1, 2017-March 31, 2017]
(the "Calendar Quarter").
- (3) The Contractor conducted the screenings identified in paragraph (2) above according to standards that complied with the requirements of the WMATA contract taking into consideration (1) the nature of the services or work being performed 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 the criminal conviction; and (3) the time that has lapsed since the offense, conduct and/or completion of the sentence.
- (4) The Contractor determined that all Contractor personnel working on the WMATA contract during the Calendar Quarter passed the Contractor's criminal background screening and were in good standing and otherwise fit to work on the WMATA contract.
- (5) In making the determination discussed in paragraph (4), the Contractor relied on the results of criminal background screenings conducted no earlier than one (1) year prior to the beginning of the Calendar Quarter.
- (6) The Contractor has not obtained or otherwise been made aware of any information about any Contractor personnel working on the WMATA 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 the WMATA contract.

Signature of Contractor's Representative

Name and Title of Contractor's Representative

Name of Contractor

Date

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**POLICY/INSTRUCTION:**
7.2.3/2***Criminal Background Checks*****SUPERSEDES: 7.2.3/1****APPLICABLE TO: ALL EMPLOYEES EXCEPT SWORN
PERSONNEL**

Metro reserves the right to eliminate, change, or modify this policy at any time. Additionally, the language used in this policy should not be construed as creating a contract of employment between Metro and any of its employees or otherwise altering an employee's at-will employment relationship with Metro.

1.00 PURPOSE

This policy/instruction (P/I) establishes the process and procedures by which candidates and employees are screened for criminal history.

- 1.01 Washington Metropolitan Area Transit Authority (Metro) conducts Background Checks in order to promote a safe and secure environment for all Metro employees, Metro customers, and the general public.
- 1.02 Further, Metro conducts Background Checks in a consistent manner; expects candidates and employees to provide truthful information about their criminal records; and uses such information to exclude individuals from employment only to the extent that such exclusion is job-related and consistent with business necessity.
- 1.03 Consistent with Metro's commitment to Equal Employment Opportunity (EEO) and Title VII of the Civil Rights Act, as amended, it is Metro's policy to treat all candidates for employment and employees in a fair and equitable manner.
- 1.04 Any third party authorized to conduct Background Checks on behalf of Metro shall do so in accordance with applicable federal law, and shall review candidates and employees according to job-related information, documenting the job requirements and work setting characteristics associated with the job category for which they are being considered.

2.00 SCOPE

- 2.01 This P/I applies to all candidates and employees, except for sworn positions and sworn employees of the Metro Transit Police Department (MTPD) as specified below.
- 2.02 Candidates for sworn positions and sworn employees of the MTPD are subject to MTPD pre-employment background screening requirements specific to law enforcement standards.
- 2.03 In accordance with Section 5.01 of this P/I, all external candidates covered by this P/I must undergo a Background Check before receiving a final offer of employment.
- 2.04 Current and returning employees may be subject to a Background Check in accordance with Section 5.02 of this P/I.

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- 2.05 This P/I and its Appendices are applicable exclusively to criminal Background Checks and are not designed to address other employment related checks/screenings required under the Recruitment and Hiring policy.

3.00 DEFINITIONS

- 3.01 Background Check - the process of obtaining, verifying, and evaluating an individual's Criminal History Information to determine eligibility for employment, promotion, or transfer to another position based on the duties, work requirements, and work settings of the position.
- 3.02 Screening Group - the Background Check screen(s) applicable to a particular position with Metro based upon the duties, work requirements, and work settings that constitute the defining job-related characteristics of the position.
- 3.03 Criminal Conviction - a criminal prosecution that results in a judgment of guilt, regardless of whether the judgment is the result of:

- (a) entry of a plea of guilty, nolo contendere, no contest or the equivalent; or
- (b) a verdict or finding of guilty in a court of law or military tribunal.

For purposes of this policy, probation before judgment (PBJ) is not a conviction.

- 3.04 Criminal History Information - information contained in federal, state, and local records pertaining to an arrest, indictment, criminal information, misdemeanor complaint, or conviction of a crime.
- 3.05 Investigative Background Check - a Background Check conducted in accordance with Section 5.02(f) of this P/I.
- 3.06 Contingent Offer of Employment - an offer of employment extended after interviews and all other screenings have been successfully completed, except the Background Check and, if applicable, medical exam.
- 3.07 10-Year Disqualifying or 10-Year Disqualification - disqualifying offenses where an individual was convicted during the 10 years preceding the Background Check, for which the individual may not request an individualized assessment.
- 3.08 Presumptively Disqualifying or Presumptive Disqualification - offenses where an individual may request an individualized assessment in accordance with Appendix C to this P/I.

4.00 RESPONSIBILITY

- 4.01 Chief Human Resources Officer (CHRO), or designee, has overall responsibility for the administration, interpretation, application, process and maintenance of this P/I, including providing all needed training. Additionally, the CHRO is responsible for maintaining all

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APPROVED <small>By General Manager & Chief Executive Officer (P/I 7.2.3/2 Approved)</small>	7/10/2017	HR	HR		2 of 8

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Background Check records in a manner that ensures confidentiality and integrity of information. The CHRO is the sole officer authorized to initiate an Investigative Background Report.

- 4.02 Department Heads/Directors are responsible for advising hiring officials, managers, and supervisors of the Background Check requirements and processes, and for cooperating with Human Resources in the application of this P/I.
- 4.03 Managers/Supervisors are responsible for understanding and communicating the requirements of this P/I to their employees.
- 4.04 Employees and Candidates are responsible for being truthful, and cooperating fully and in good faith with the Background Check requirements and process.

5.00 POLICIES AND PROCEDURES**5.01 Background Checks for External Candidates**

- (a) It is WMATA's policy not to consider or request Criminal History Information until after a Contingent Offer of Employment has been made. Except as provided in this P/I, no Metro employee may inquire about an external candidate's Criminal Information prior to the candidate receiving a Contingent Offer of Employment.
- (b) HR will notify external candidates in writing that a Background Check will be conducted and obtain the candidate's written consent to perform it. HR must provide the written notification and obtain written consent on an approved authorization form in advance of the Background Check.
- (c) HR will consider an external candidate's failure to authorize the required Background Check as a voluntary withdrawal from employment consideration.
- (d) If an external candidate voluntarily provides information about their Criminal History Information before a Contingent Offer of Employment has been made, the candidate should be advised that their Criminal History Information may not automatically disqualify them from consideration for employment with Metro. Any external candidate questions about Metro's background screenings should be referred to the Manager, Employee Relations.
- (e) In addition to an authorization form, HR will provide a Criminal Disclosure Form to any external candidate who has received a Contingent Offer of Employment. The Criminal Disclosure Form directs the candidate to provide HR with information about that candidate's criminal history, including pending charges.
- (f) The external candidate's Criminal Disclosure Form will be evaluated by HR to determine eligibility for employment in accordance with Appendices A & B to this policy.

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- (g) Any significant discrepancy or misrepresentation found as a result of differences between the Background Check and the information received that cannot be successfully resolved will serve as a basis to disqualify the candidate from employment eligibility.

5.02 Background Checks for Current Employees

- (a) WMATA will conduct Background Checks on current employees consistent with the requirements under the Fair Credit Reporting Act (FCRA). Where required by the FCRA, HR will obtain the employee's written consent on an approved authorization form before conducting a Background Check. For all new hires after the effective date of this P/I, this written consent will be obtained at the time of hire. New hires will be required to complete a one-time authorization allowing WMATA to conduct future Background Checks as outlined below.
- (b) **Change in Position - Background Checks** may be conducted for employees who are being transferred, promoted or demoted into a position with heightened Background Check requirements based upon job-related work requirements and work settings. Screening will be based on the criteria and timelines in Appendix B.
- (c) **Return to Duty Checks - Employees** who have been away from work for 90 calendar days or more will be subject to a return-to-duty Background Check for the period of time the employee is absent from the job. Employees subject to the 90-day return-to-duty Background Check will be allowed to return to work pending the results of the check. A returning employee's Criminal History will not be considered unless:
- (1) The Background Check reveals that the employee has been arrested, charged, indicted or convicted during the period of absence prior to returning to work;
 - (2) The Background Check reveals Criminal History Information that was not revealed by a previous Background Check or disclosed by the employee; or
 - (3) The CHRO determines that there are exceptional circumstances justifying consideration of the employee's Criminal History Information and issues a written determination detailing those circumstances.
- (d) **Random Checks - Beginning on or about July 1, 2018, all employees will be subject to random Background Checks regardless of position or work status. An employee's Criminal History Information will not be considered unless:**
- (1) The Background Check reveals that the employee has been arrested, charged, indicted or convicted, during the 365 day period prior to the date that the Background Check is conducted;
 - (2) The Background Check reveals Criminal History Information that was not revealed by a previous Background Check or disclosed by the employee; or

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- (3) The CHRO determines that there are exceptional circumstances justifying consideration of the employee's Criminal History Information and issues a written determination detailing those circumstances.
- (e) **Reinstated Employee Checks** - Background Checks will be conducted for employees who are reinstated following a period of absence. A reinstated employee's Criminal History Information will not be considered unless:
- (1) The Background Check reveals that the employee has been arrested, charged, indicted or convicted, during the period of absence prior to reinstatement;
 - (2) The Background Check reveals Criminal History Information that was not revealed by a previous Background Check or disclosed by the employee; or
 - (3) The CHRO determines that there are exceptional circumstances justifying consideration of the employee's Criminal History Information and issues a written determination detailing those circumstances.
- (f) **Investigative Background Checks** may be conducted in connection with:
- (1) an investigation into suspected misconduct relating to employment;
 - (2) compliance with Federal laws and regulations;
 - (3) compliance with pre-existing written Metro policies or procedures.
- (g) Consistent with the Uniformed Services Employment and Reemployment Rights Act (USERRA), HR will not delay the prompt reemployment of employees returning from military service while awaiting the results of a Background Check.

5.03 Information Excluded from Background Checks

- (a) In conducting a Background Check, HR will not request or consider Criminal History Information relating to arrests, indictments, or complaints that have been resolved without a conviction.
- (b) HR will not consider Criminal History Information relating to:
- (1) a conviction that has been judicially dismissed, expunged, or ordered sealed; or
 - (2) juvenile case records, as that term is defined in D.C. Code § 16-2331.

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PERSONNEL****5.04 Consideration of Arrests, Warrants, and Pending Charges**

- (a) If a Background Check reveals that criminal charges are pending against an external candidate, HR will apply the standards in Appendix A to determine whether a final conviction on these charges would be 10-Year or Presumptively Disqualifying.
- (1) If a conviction would not be 10-Year or Presumptively Disqualifying, Metro will not consider the pending charges further in evaluating the applicant's suitability for employment. The applicant will continue through the hiring process.
- (2) If a conviction would be 10-Year or Presumptively Disqualifying, Metro will send the applicant a preliminary notice of disqualification and place the application on hold for a period of 90 calendar days, but will not suspend the hiring process. If the applicant provides Metro with notice that the charges have been resolved within the 90 calendar day period, Metro will further consider the applicant for employment in accordance with this P/I, if the position is still open and/or available. Applicants with pending charges not resolved in 90 calendar days will be removed from the hiring process and must re-apply for any future employment opportunity.
- (b) Employees who are arrested, charged with, or convicted of a crime while employed by Metro are responsible for notifying their immediate supervisors or managers in accordance with Metro P/I 7.8.6, *Disclosure and Disposition of Arrests and Convictions*. Employees who fail to do so will be subject to disciplinary action, up to and including termination.
- (c) If a Background Check reveals that a warrant has been issued for the arrest of an external candidate or employee, Metro will notify the individual of this information, provide the individual with a copy of the Background Check report, and inform the individual that the warrant must be executed, revoked, or otherwise resolved within 10 business days. This period may be extended in writing at the discretion of the Chief Human Resources Officer or designee. Failure to satisfy this requirement within the time period proscribed will result in revocation of the candidate's Contingent Offer of Employment or termination of the employee's employment, and will disqualify the individual from future employment with Metro until such time as the warrant is resolved.

5.05 Confidentiality

- (a) Metro takes the protection of applicant and employee information seriously and will take reasonable measures to protect unauthorized access to applicant or employee information collected pursuant to this policy. To the extent permitted by law, Metro will restrict access to such information to Metro employees who need to know as a function of their positions within Metro.
- (b) All information obtained as a result of a Background Check will be used solely for employment purposes.

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- (a) If a Background Check reveals adverse Criminal History Information, this information will be evaluated in accordance with Appendices A and B to this P/I. If it is determined that this information would make the applicant or employee disqualified for employment, the applicant or employee will be sent a pre-adverse information notification.
- (b) Before making any final determination based on adverse information discovered through a Background Check, the individual will:
 - (1) have an opportunity to review and dispute the accuracy of the Criminal History Information after receiving the pre-adverse information notification; and
 - (2) for Presumptive Disqualifications only, have an opportunity to request an individualized assessment in accordance with Appendix C to this P/I. Individualized assessments do not apply to 10-Year Disqualification criminal offenses.
- (c) Individualized assessments conducted pursuant to Section 5.06(b) of this P/I are adjudicated on a case-by-case basis in accordance with Appendix C. Accordingly, as a general rule, an adverse adjudication pursuant to this P/I will not necessarily preclude the applicant or employee from future employment with Metro.

6.00 ENFORCEMENT

Failure to comply with the requirements of this P/I may result in discipline, up to and including involuntary separation.

7.00 EXCEPTIONS

- 7.01 Sworn employees of the Metro Transit Police Department (MTPD).
- 7.02 Contractors and/or consultants performing work on behalf of Metro.

8.00 RELATED POLICIES, REGULATIONS & RESOLUTIONS

- 8.01 P/I 7.1.1 – Equal Employment Opportunity Including Affirmative Action and Alternative Dispute Resolution
- 8.02 P/I 7.2.2 – Recruitment and Hiring
- 8.03 P/I 7.8.6/1 – Disclosure and Disposition of Arrests and Convictions
- 8.04 D.C. Code § 16-2331 Juvenile Case Records; Confidentiality; Inspection and Disclosure
- 8.05 USERRA – Uniformed Services Employment and Reemployment Rights Act

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- 9.01 Appendix A – Screening Procedures
- 9.02 Appendix B – Screening Grid
- 9.03 Appendix C – Procedures for Individualized Assessments of Presumptive Disqualification

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