

February 8, 2024



A REPORT BY THE OFFICE OF INSPECTOR GENERAL

OIG 24-07

Evaluation of WMATA's Background Screening Process for Employees of Contractors

Office of Inspector General
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Washington, D.C. 20024

EXECUTIVE SUMMARY

The Office of Inspector General (OIG) conducted a limited-scope evaluation of the Washington Metropolitan Area Transit Authority's (WMATA) background screening process for employees of contractors. As part of the FY 2023 Audit and Special Projects Plan, OIG initiated a review of WMATA's Background Screening Process in its entirety. However, separate OIG investigative work identified potential vulnerabilities related to the background screening process for employees of contractors. As a result, OIG narrowed the scope of its review to focus on employees of contractors with physical or logical access to WMATA property, information, employees, or customers. The evaluation objective was to determine whether WMATA contractors were compliant with their established background screening processes; and whether said processes were sufficient to protect WMATA's interests.

WMATA utilizes over 9,000 employees of contractors in various roles to support business operations. Each individual contractor entity is responsible for conducting background screenings of its employees in accordance with its unique, self-established processes. OIG selected a sample of ten contracts through which employees of contractors have physical access to WMATA property, access to customers with emphasis on those interacting with vulnerable citizens, or logical access to WMATA systems and information. While OIG observations are limited to the selected sample, recommendations made in this report apply to the entire contractor background screening program.

OIG made the following observations:

- Each contractor developed and implemented background screening procedures and engaged a third-party vendor to conduct background screenings.
- Nine of the ten contractors used the services of accredited background screening companies.
- Five of the ten contractors reviewed did not comply with the requirement to submit quarterly background screening certifications.
 - Two of the ten contractors did not submit any certifications. Contract files for these contractors did not contain language (letter, memorandum, modification, or amendment) notifying the vendor of its responsibilities to conduct background screenings or provide quarterly certifications to WMATA.
 - Three of the ten contractors submitted incomplete certifications.
- One of the ten contractors reviewed was unable to provide supporting documentation for background screenings conducted on five of the nine employees selected for review by OIG.

BACKGROUND

WMATA's Background Screening Process

WMATA conducts background screening of its employees in order to promote a safe and secure environment for all Metro employees, customers, and the general public.¹ Prior to 2017, WMATA also conducted background screenings for employees of contractors. In October 2017, WMATA transferred responsibility for background screenings of employees of contractors to the individual contractors. Transferring background screening responsibilities required a shift in oversight responsibilities to the Procurement Department (Procurement) and the respective Contract Officers and Contracting Officer's Technical Representatives (COTRs). Procurement initiated the following:

- Incorporated contract language to reflect the changes in responsibilities and new requirements;
- Updated COTR designation letters to include COTR responsibilities related to the quarterly certification;
- Provided instruction and training to COTRs; and
- Developed and published *Criminal Background Screening FAQs*.

Quarterly Certifications

Contractors are obligated to provide WMATA with evidence that criminal background screenings were performed for all personnel required to be screened. To satisfy this obligation, contractors complete, sign, and submit a *Criminal Background Screening Certification* on a quarterly basis. Contractors certify the following six elements:

- They have contracted with 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.
- The contractor screened for criminal conviction histories of all contractor personnel during the specified quarter.
- The contractor conducted screenings according to standards that complied with the WMATA contract taking into consideration:
 - The nature of services or work performed,
 - The nature or gravity of the offense or conduct,
 - The time that has elapsed since the offense, conduct, or completion of sentence.
- The contractor determined all contractor personnel were in good standing and otherwise fit to work on the WMATA contract.
- In making their determination, the contractor relied on screenings conducted no earlier than one year prior to the beginning of the quarter.
- The contractor is not aware of any information about contractor personnel which 1) impacts the determination that an individual passed their screening, or 2) indicates an employee is otherwise unfit to work on the WMATA contract.

¹ WMATA Policy/Instruction P/I 7.2.3/4, *Criminal Background Checks*.

Best Practices for Background Screening

In May 2023, The American Public Transportation Association (APTA) Security Risk Management Working Group revised its APTA Standards Development Program Recommended Practice related to Conducting Background Screening Investigations.² APTA recommended, in part, that:

- Both contractors and permanent employees should receive the same level of background screening investigations. The transit agency is responsible for contract oversight, conducting an appropriate level of background check on relevant contract employees or building appropriate background check criteria into the bid process, and establishing a method of verifying/auditing background checks.
- Background screening investigations should be based on employee type and responsibility, and include screening criteria based on job function, required level of access, and/or responsibility.
- Contractors selected to provide background screening investigation services should be certified, either by an industry body or insurer; or at least be registered by the state where the agency is based; and should be periodically reviewed for both information quality and sourcing.

Methodology

OIG selected ten contracts with over 1700 active employees of contractors. From the ten contracts, OIG selected 219 employees of contractors for testing. In making the selection, OIG considered logical access; physical access to property; and access to employees and the general public, with a focus on vulnerable populations.

OIG reviewed policies and procedures provided by each individual contractor. Individual background screening results were tested against the respective contractor's established procedures. OIG then tested a sub-sample of 63 employees of contractors by comparing their background screening results to publicly available records.

OBSERVATIONS

Contractor Self-Established Policies and Procedures

Each of the ten contractors established policies and procedures for conducting background screenings. In general, the policies and procedures reviewed by OIG contained similar criteria, including Social Security Number (SSN) trace/verification and local/state/federal criminal screenings. Procedures also included job class-specific screenings such as driver's license record checks, education verifications, and prior employment verifications. All background screening results reviewed by OIG were generally compliant with each contractor's respective policies and procedures.

² APTA SS-SRM-RP-004-11, Rev.1, First Revision: May 10, 2023

Contractor Quarterly Certifications

OIG conducted interviews and reviewed relevant documentation to determine whether contractors submitted quarterly certifications as required. OIG considered a contractor to be compliant if 1) it submitted a quarterly certification, and 2) OIG could verify that each element of the certification was met.

Five of the ten contractors submitted complete quarterly certifications to WMATA. Two contractors did not submit quarterly certifications. Three contractors submitted certifications that OIG determined to be incomplete. OIG based its determination that three vendors submitted incomplete certifications on WMATA's requirement that all persons required to be screened, passed said screening, and that screenings occurred no earlier than one year prior to the beginning of the quarter.

- Contractor one submitted certifications each quarter, but only for new employees who were added to the WMATA contract.
- Contractor two only submitted certifications when new employees were added to the contract.
- Contractor three did not consistently submit certifications.

Contractor Background Screening Sufficiency

Background screening processes for each of the ten contractors shared similar positive attributes.

- All ten contractors had documented background screening governance structures through developed and implemented policies and procedures.
- Screening criteria included SSN trace/verification and local, state, and federal criminal screenings.
- Where appropriate, contractors conducted job class-specific screenings.

That said, WMATA has limited visibility into the background screening processes of its contractors, relying solely on quarterly certifications as proof that the contractors are conducting background screenings. For example, the quarterly certifications do not require the contractor to include a listing of the employees to whom the certification applies. The absence or incompleteness of quarterly certifications inhibits WMATA's ability to ensure employees of contractors have been adequately screened and are fit to work on a WMATA contract.

Third-Party Background Screening Accreditation

OIG identified six third-party vendors conducting background screenings for the ten contractors under review. Five of the six third-party vendors were accredited by the Professional Background Screening Association (PBSA). Accredited firms have been audited by PBSA for compliance with established background screening standards.

Procurement Process Deficiencies

Two contractors did not provide quarterly certifications. OIG determined the two respective contracts pre-dated the 2017 transition of responsibility for background screenings. However, contract files reviewed by OIG did not contain contract modifications or communications notifying contractors of their responsibilities related to the performance of background screenings.

Limited Guidance for Contractors

Background screenings for employees of contractors are performed by the contractor and are based on each individual contractor's background screening policies, procedures, and processes. In publicly posted *Criminal Background Screening FAQs*, WMATA states that all aspects of background screenings for employees of contractors are the sole responsibility of each respective contractor. The FAQ notes:³

- 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.
- WMATA does not require its contractors to use specific screening criteria but expects contractors to develop their own criteria.
- 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 the standards are met.

³ Criminal Background Screening FAQs – Revised October 2021

RECOMMENDATIONS

As a result of this evaluation, OIG recommends the GM/CEO:

1. Ensure that all active contracts include language identifying the contractor's responsibilities and requirements related to contractor background screening and certification.
2. Revise the current certification process to ensure the inclusion of sufficient evidence that supports assertions made by contractors in their quarterly certifications.
3. Ensure that contractors fully understand and are compliant with contractor background screening and certification requirements.
4. Ensure that COTRs fully understand their responsibilities and requirements related to contractor background screening and certification.
5. Perform periodic reviews of the contractor's background screening process to ensure they are compliant with the intent of the requirement and that the contractor's procedures and processes in place are sufficient to protect WMATA's interest.

SUMMARY OF MANAGEMENT'S RESPONSE

WMATA's Executive Vice President (EVP) & Chief Financial Officer (CFO) provided written comments to the report on January 30, 2024 (Appendix A). The EVP/CFO generally agreed with OIG's findings and recommendations. OIG considers management's comments generally responsive to the recommendations, and the actions taken or planned should potentially correct the deficiencies identified in the report. OIG notes that management's response to recommendation one included a review of eight contracts awarded within a five-year period. However, management's review did not include any active contracts that were awarded prior to the 2017 transition of responsibility for background screenings. Contracts in this category are at a greater risk of missing the required contract clause, as exemplified in the two contracts identified during OIG's review. OIG will follow up during the Corrective Action Plan process to ensure action is taken on the recommendations. Additionally, OIG may assess this area in the future to determine whether the program is functioning effectively.

MANAGEMENT'S RESPONSE

Appendix A



Washington
Metropolitan Area
Transit Authority

M E M O R A N D U M

SUBJECT: OIG Evaluation Report: Review
of WMATA's Contracted
Employees Background
Screening Process

DATE: January 26, 2024

FROM: Executive Vice President and
Chief Financial Officer – Yetunde Olumide

Yetunde
Olumide

Digitally signed by
Yetunde Olumide
Date: 2024.01.30
12:32:22 -05'00'

TO: Office of Inspector General – Kevin Muhlendorf

WMATA management has carefully reviewed the Office of Inspector General's (OIG) December 7, 2023, "Evaluation of WMATA's Background Screening Process for Employees of Contractors." This memorandum includes management clarifications and planned corrective actions to address OIG's recommendations. Since initiating the audit, Procurement and Materials has been diligent in assessing and addressing areas of improvement. Procurement and Materials leveraged reports and insights from Audit & Compliance (Internal Audit) and completed a comprehensive review and analysis to ensure a thorough understanding of the concerns raised. As a result of the reviews and through engaging additional stakeholders, such as Human Capital and the Metro Transit Police Department, the development of governance documentation has begun. This document represents planned actions in response to Internal Audit recommendations received prior to OIG's report and is being crafted to establish clear protocols and guidelines to mitigate the identified risks and ensure robust processes within procurement operations. They are designed to address the specific points highlighted in the audit and enhance overall efficiency and compliance across the contractor lifecycle.

- 1) **Ensure that all active contracts include language identifying the contractor's responsibilities and requirements related to contractor background screening and certification.**

Response:

Effective September 2017, the Office of Procurement and Materials requires WMATA contractors to certify quarterly to the Criminal Background Screening Certification and Provisions. At that time, guidance was distributed to all active WMATA contractors via a memorandum dated September 29, 2017, from the Chief Procurement Officer to the Contracting Officer's Technical Representatives (COTR). The guidance informed WMATA contractors that, at the end of each calendar quarter, the contractor shall certify to the COTR its 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 a WMATA contract. The guidance also indicates, 'For the sole purpose of monitoring contractor's compliance, WMATA reserves the right to request additional

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documents or perform its own criminal background screens of contractor's personnel and will inform the contractor in writing of any such action'. (Attachment 1)

Regarding the two (2) deficient contracts referenced in the OIG's report, RC7000 will be modified to include the background screening requirement, and CQ18037 is no longer active. In addition, Audit and Compliance reviewed eight (8) contracts awarded over the past five (5) years provided by Procurement as part of an internal readiness assessment and noted all contracts contained the signed vendor background screening certifications.

Contract Number	Contract Award Date
FQ18033	August 2018
FQ19210-C	September 2019
FQ19106	October 2019
FMCAP200229	December 2020
FDULS211272	August 2021
FSSRP222180	April 2022
FRBIR22210	September 2022
CATCM222268	July 2023

The background screening requirements will be reinforced to WMATA COTRs through the development of the Contractor On/Off Boarding Standard Operating Procedure (SOP).

This contract modification will be executed by March 29, 2024, and the SOP will be finalized by June 12, 2024.

- 2) **Revise the current certification process to ensure the inclusion of sufficient evidence that supports assertions made by contractors in their quarterly certifications.**

Response:

Procurement and Materials will consult with the Legal department on revisions to criminal background screening FAQs to provide clear guidance to contractors regarding the required documentation to be submitted with their certifications.

In addition, as a requirement to be included in the Contactor On/Offboarding SOP, Procurement and Materials will conduct periodic reviews of contractor files to ensure compliance with the intent of the criminal background screening requirements and that the contractor's procedures and processes are sufficient to protect WMATA's interests. Specifically, Procurement and

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Materials will use a risk-based approach in selecting contractor files for review. Risk factors will include the nature and scope of the contract, the number of contractor personnel that have access to WMATA's systems, facilities, or interface with the public. The scope of the reviews will ascertain the presence of the criminal background screening policies and procedures and the use of a "reputable third-party vendor" to conduct the required criminal background screenings as contractually agreed upon. When the 2017 background screening requirement guidance was issued, contractors were instructed to choose a criminal background screening company capable of meeting the standards established by their policies.

The SOP and revisions to the criminal background screening FAQs will be finalized by June 12, 2024

- 3) Ensure that contractors fully understand and are compliant with contractor background screening and certification requirements.**

Response:

WMATA contractors certify, as part of their offer submission, that they will contract or engage a reputable third-party vendor to conduct background screening of all Contractor personnel who will have access to WMATA's customers, property, or information in connection with the contract. This signed certification is included and required on all contracts. As noted in the response to recommendation two (2) above, Procurement and Materials will employ a risk-based approach to conduct periodic reviews of contractor files to ensure compliance with the intent of the criminal background screening requirements and that the contractor's procedures and processes are sufficient to protect WMATA's interest.

In addition, the Audit & Compliance department has planned an audit engagement to determine Third-Party Vendor Compliance with Metro's Vendor Background Check Policy and Related Requirements. This engagement is planned for FY2024 Q4. Procurement & Materials will leverage the results of this audit to further enhance their oversight of the contractor background screening process.

- 4) Ensure that COTRs fully understand their responsibilities and requirements related to contractor background screening and certification.**

Response:

The background screening requirements will be reinforced by the Contractor On/Off Boarding SOP that is in development. In addition, Procurement and

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Materials will work with Metro Transit Police to integrate and present safety and security-related content into the COTR training program.

This action will be complete upon finalization of the SOP by June 12, 2024.

- 5) **Perform periodic reviews of the contractor's background screening process to ensure compliance with the intent of the requirements and that the contractor's procedures and processes are sufficient to protect WMATA's interest.**

Response:

Procurement and Materials agrees with this recommendation and will conduct periodic reviews of contractor files to ensure compliance with the intent of the requirements and that the contractor's procedures and processes are sufficient to protect WMATA's interests. Specifically, Procurement and Materials will review contractor files to ascertain the presence of the criminal background screening policies and procedures.

cc: Senior Executive Team

Vice President and Chief Risk and Audit Officer - Elizabeth Sullivan

Attachment

M E M O R A N D U M



SUBJECT: Criminal Background Screening Checks DATE: September 29, 2017

FROM: PRMT – T. Suzette Moore *[Signature]*

TO: Contracting Officer's Technical Representatives (COTRs)

Pursuant to Metro Policy Instruction 7.2.3/2, 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 your information, a copy of WMATA's Criminal Background Checks Policy accompanies this notification.

In accordance with Policy Instruction 6.10/5, to be eligible 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 contracting officer technical representative (COTR) the contractor's compliance with the criminal background screening requirement and confirm that all persons

Washington
Metropolitan Area
Transit Authority

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.

ATTACHMENTS:

- Attachment 1: Criminal Background Screening Certification (Quarterly)
- Attachment 2: Policy Instruction 7.2.3/2
- Attachment 3: OneBadge Request Form
- Attachment: 4 Contingent Worker PeopleSoft HCM Job Aid

TO REPORT FRAUD, WASTE, OR ABUSE

Please Contact:

Email: hotline@wmataoig.gov

Telephone: 1-888-234-2374

Fax: 1-800-867-0649

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