

**CITY OF NEWTON
PURCHASING DEPARTMENT**

CONTRACT FOR THE HUMAN RESOURCES DEPARTMENT

C-3966

**International Association of Chiefs of Police (IACP)
Attn: Carl Maupin
44 Canal Center Plaza Suite 200
Alexandria, VA 233124
703-647-6848**

**Contract Period: Fully Executed – December 31, 2020
Contract Value: \$51,000.00**

**REQUEST FOR PROPOSALS:
POLICE CHIEF EXECUTIVE RECRUITMENT
AND
EVALUATION PROCESS**

RFP #21-02

**July 2020
Ruthanne Fuller, Mayor**

City of Newton



Ruthanne Fuller
Mayor

Purchasing Department
Nicholas Read ☎ *Chief Procurement Officer*
1000 Commonwealth Avenue
Newton Centre, MA 02459-1449
purchasing@newtonma.gov

Telephone
(617) 796-1220
Fax:
(617) 796-1227
TDD/TTY
(617) 796-1089

September 29, 2020

International Association of Chiefs of Police (IACP)

Attn: Carl Maupin
44 Canal Center Plaza Suite 200
Alexandria, Virginia 22314
maupin@theIACP.org

Re: Contract #C-3966 Police Chief Executive Recruitment and Evaluation Process (RFP#21-02)

Dear Mr. Maupin:

Below you will find one (1) copy of **Contract No. C-3966** pursuant to your bid submitted to the City of Newton for the above.

The Purchasing Department for the City of Newton is now emailing contracts and executing them digitally wherever possible. If you do not wish to process your contracts in this manner, please contact us immediately and the City will send you a paper contract. Otherwise, either (i) execute the contract with an electronic signature, if you have the ability to do so, and return it to the Purchasing Department by e-mail; or (ii) **sign and date and return the hard copy to** the Purchasing Department. Whichever option you choose, the City's execution of the contract will be exclusively by e-signature, and you will receive a final digital version of the fully executed contract by email. In addition, all the following documents must be received in paper or digital form before the City will execute the contract:

- Certification of Authority.** Corporate officer or authorized person to sign and affix corporate seal. Attach any related corporate vote by your Board of Directors.
- Certificate of Property Damage, Liability and Workmen's Compensation Insurance** naming the "City of Newton as additional insured". No contract shall be processed without this statement. An original should be sent directly to the Purchasing Department. Certificate must include a written guarantee that the City will receive at least 10 days' notice before the CANCELLATION date of any policy of insurance covered by the contract.

ALL DOCUMENTS MUST BE RETURNED BY: OCTOBER 9, 2020

The Contract is not effective until contract (bond if required) has been approved by the Mayor and his signature to that effect has been affixed to said contract.

Sincerely,

Nicholas Read
Chief Procurement Officer

CITY-CONSULTANT AGREEMENT

**CONSULTANT SERVICES FOR
POLICE CHIEF SELECTION PROCESS AND ASSESSMENT CENTER**

This Agreement (“Agreement”) is made this day of September 23, 2020 by and between the City of Newton (the “City”), Newton City Hall, 1000 Commonwealth Avenue, Newton Centre, MA 02459, acting by and through its, but without personal liability to him and

International Association of Chiefs of Police (IACP)
Attn: Carl Maupin
44 Canal Center Plaza Suite 200
Alexandria, Virginia 233124

hereinafter referred to as the “Consultant.”

WHEREAS, the City seeks the services of a qualified consultant to provide recruitment services to select and hire a new Newton Police Department (NPD) Chief (the “Project”); and

WHEREAS, the Consultant has proposed to provide such services and has represented that it is qualified to do so.

NOW, THEREFORE, the Parties hereto mutually agree as follows:

1. CONTRACT DOCUMENTS

The Contract Documents consist of the following documents, which are either attached to this Agreement or are incorporated herein by reference:

- a. This CITY-CONSULTANT Agreement;
- b. The City's Request for Proposal #21-02 (RFP) issued by the Purchasing Department;
- c. The RFP for Consultant Services For Police Chief Selection Process And Assessment Center including Specifications, and if included or referenced therein, any Standard Terms and Conditions, Special Conditions, or Descriptive Materials (collectively referred to herein as the “Project Manual”);
- d. Addenda Number(s) 1;
- e. The Proposal Response of the Consultant submitted for this Project and accompanying documents and certifications;
- f. Certificate(s) of Insurance and surety bond(s), if any, submitted by the Consultant in connection with this Project;
- g. Duly authorized and executed Amendments, Change Orders or Work Orders issued by the City after execution of this CITY-CONSULTANT Agreement.

This CITY-CONSULTANT Agreement, together with the other documents enumerated in this Article, constitute the entire Agreement between the City and the Consultant. The Consultant represents that its proposal was made without condition, qualification or reservation of any kind, except upon the written acknowledgement and consent of the City.

- 2. PRIORITY OF DOCUMENTS.** In the event of inconsistency between the terms of this CITY -CONSULTANT Agreement and the Project Manual, the terms of this Agreement shall prevail.

3. APPLICABLE STATUTES. All applicable federal, state and local laws and regulations are incorporated herein by reference and the Consultant agrees to comply with same.

4. SCOPE OF SERVICES

The Consultant shall perform the professional services as described in the Project Manual. All such professional services shall be carried out in a manner and quality that meets or exceeds the standards of Consultant's profession, as well as to the satisfaction of the City.

5. SCHEDULE

The Consultant must be ready to commence project work within fourteen (14) calendar days of the contract award. Work shall be performed in accordance with the following schedule:

September 2020: Chief Police position posted.

October 2020: Initial assessment of candidates by consultant and recommendation of candidates to selection committee.

November 2020: Selection committee interviews with recommendations to the mayor of up to seven candidates, and interviews by Mayor's managerial team.

December 2020: Final interviews, background checks and selection.

Any deviation from this schedule must be clearly stated in the consultant's response to the proposal, and any delay to complete milestones as noted above should be negotiated between the parties.

6. PAYMENT AND PAYMENT PROCEDURES

The City shall pay the Consultant the sum of **Fifty One Thousand and no/100s Dollars (\$51,000)** for performance of the services to be provided pursuant to this Agreement.

Payment of the above sum shall constitute full and complete compensation for the services hereunder. There shall be no additional compensation or reimbursement for out-of-pocket or other expenses, including without limitation employee benefits, incurred by the Consultant in connection with the performance of the services under this Agreement unless mutually agreed to in writing by the Parties. Payments shall be made within thirty (30) days of the City's approval of invoices submitted by the Consultant. In the event that the City terminates this Agreement prior to the completion of all work to be performed under this Agreement, the Consultant shall only be entitled to compensation in accordance with the provisions of Section 6 or Section 7 below, whichever is applicable.

7. TERM OF AGREEMENT

The term of this Agreement shall run from the date of execution to the completion of the services required.

8. TERMINATION FOR CAUSE

If, for any cause, the Consultant fails to fulfill in a timely manner its obligations under this Agreement, or if the Consultant violates any of the covenants, agreements, or stipulations of this Agreement, the City shall have the right to terminate this Agreement by giving written notice to the Consultant of such termination and specifying the effective date of such termination. Such notice shall be given not less than five (5) days prior to the effective date of termination. In the event of termination, the Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed to date of termination. Such compensation shall be pro rata and shall be based on the percentage of services actually performed, less payments already made for such services.

9. TERMINATION FOR CONVENIENCE

The City may terminate this Agreement at any time by giving written notice to the Consultant of such termination. Such notice shall be given not less than five (5) days prior to the effective date of termination. If the Agreement is terminated for the convenience of the City, the Consultant shall be entitled to payment for services completed. Such compensation shall be pro rata and shall be based on the percentage of services actually performed, less payments already made for such services.

10. INDEMNIFICATION

The Consultant shall indemnify, hold harmless and defend the City and its officers, employees, servants, and agents from and against all actions, causes of actions, claims, demands, damages, costs, loss of services, expenses and compensation, including attorney's fees and interest, arising out of the performance of the services rendered pursuant to this Agreement, provided that any such action, cause of action, claim, demand, damages, cost, loss of service, expense, compensation (1) in any way grows out of bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, which (2) is caused in whole or in part by any negligent act or omission of the Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

11. RELATIONSHIP OF THE PARTIES

The Consultant shall be an independent Consultant to the City. Neither Party shall be deemed to be the legal representative of the other. Each Party agrees to assume complete responsibility for its own employees with regard to federal or state employer's liability, worker's compensation, social security, unemployment insurance, and Occupational Safety and Health Administration requirements, as applicable, and other federal, state or local laws.

12. NONDISCRIMINATION

The Consultant agrees and warrants that in the performance of this Agreement it will not discriminate against any person or group of persons on the grounds of sex, race, color, religion, national origin, disability, age, gender identity, or sexual orientation in any manner prohibited by the laws of the Commonwealth of Massachusetts or the United States.

13. CONFLICT OF INTEREST: The Consultant shall comply with the provisions of Chapter 268 of the Massachusetts General Laws relating to Conflict of Interest as it applies to municipal employees, including but not limited to filing with the City a §23(b)(3) Disclosure Form in the case where a reasonable person could conclude that a municipal employee could unduly enjoy the Consultant's favor or improperly influence the Consultant in the performance of the Scope of Services set forth herein, or that the Consultant is likely to act or fail to act as a result of kinship or the rank, position or undue influence of some party or person. A 23(b)(3) Disclosure Form is set forth in **Exhibit D**.

14. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and insure to the benefit of the Parties to this Agreement and their respective successors and assigns. The City recognizes the Consultant is a sole Consultant performing the services required under this Agreement. Sub-contracting or assignment of any of the work required under this Agreement is expressly prohibited without the prior written consent of the City.

15. CERTIFICATIONS BY CONSULTANT

By executing this Agreement, the Consultant certifies, under penalties of perjury:

- a. That the Consultant's bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.
- b. That the Consultant has neither presently, nor during the period of this Agreement, will have any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement, nor shall any person having any such interest be employed by the Consultant to perform the work called for in this Agreement.

16. INSURANCE

The Consultant shall purchase and maintain commercial general liability and other insurance appropriate for the work and which will provide protection from claims itemized below which may arise out of or result from the Consultant's performance and furnishing of the work and the Consultant's other obligations under the Contract Documents, whether the work and other obligations will be performed or furnished by the Consultant, any subConsultant or supplier. The amounts of the commercial general liability insurance policy shall be as follows:

Worker's Compensation	
	Per M.G.L.C. 149, §§34 & 152
Commercial General Liability	
Personal Injury	\$500,000 per occurrence
	\$1,000,000 aggregate
Property Damage	\$500,000 per occurrence
	\$1,000,000 aggregate
Vehicle Liability	
Personal Injury	\$500,000 per occurrence
	\$1,000,000 aggregate
Property Damage	\$500,000 per occurrence
	\$1,000,000 aggregate

The Consultant shall also provide insurance coverage for

- a. Claims for bodily injury and property damage resulting from liability arising out of pollution related exposures such as asbestos abatement, lead paint abatement, tank removal, removal of contaminated soil, etc. The City shall be named as an additional insured and the amount of coverage shall be \$1,000,000 per occurrence and \$2,000,000 aggregate.
- b. Claims under worker's compensation, disability benefits, and other applicable similar employee benefits acts; claims for damages because of bodily injury, occupational sickness or disease, or death of the Consultant's employees.
- c. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Consultant's employees; claims for damages insured by personal injury liability coverage sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by the Consultant, or (b) by any other person for any other reason; claims for damages because of injury to or destruction of tangible property wherever located, including loss of use resulting from any such injury or destruction.
- d. Claims arising out of operation of laws for damages because of bodily injury or death of any person or for damage to property.
- e. Claims for damages because of bodily injury or death of any person, or property damage arising out of ownership, maintenance, operation, use or loading and unloading of any owned, hired or non-owned motor vehicle used in the Work, including employee non-ownership use. The combined single limit shall be \$1,000,000 and shall include a CA9948 Pollution Endorsement and shall name the City as an additional insured.

The Consultant's liability insurance shall include contractual liability coverage sufficient to cover to the Consultant's indemnification obligations under the Contract Documents. The Consultant agrees to pay on behalf of the City, and to provide and pay a defense for all claims covered by the Consultant's obligations under the indemnification provisions.

The Consultant's liability insurance shall be endorsed to include the City as an additional insured, and the architect/engineer, the City's and architect/engineer's consultants, any of their subsidiaries or affiliates, and each of their respective directors, officers, shareholders, agents or employees as additional insureds. The insurance afforded to the City and those other parties shall be primary insurance, and neither the coverage nor the amount of insurance provided under the Consultant's policies shall be reduced or prorated by the existence of any other insurance applicable to any loss the City or those other parties may have sustained.

The Consultant's liability insurance shall remain in effect until the end of any correction period and at all times after that when the Consultant may be correcting, or removing and replacing *defective* work. Products and completed operations insurance shall be maintained for two (2) years after final payment. Evidence of insurance shall be furnished to the City upon request and no less frequently than yearly.

These requirements shall not be construed to limit the liability of the Consultant or its insurers. The City does not represent that the specified coverages or limits of insurance are sufficient to protect the Consultant's interests or liabilities.

If the City or the Consultant suffers injury or damage to person or property because of error, omission or act of the other, any of the other's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observation of that injury or damage. This provision is not and shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or statute of repose.

17. COMPLIANCE WITH LAWS & GOVERNING LAW

The Consultant shall comply with all applicable laws, ordinances, or codes of the State or local government, in performing any of the work call for under this Agreement. The Parties hereby agree that this Agreement has been executed and delivered in the Commonwealth of Massachusetts and shall be construed, enforced and governed by the laws thereof.

18. SEVERABILITY

If any of the provisions of this Agreement are declared to be invalid, such provisions shall be severed from this Agreement and the other provisions hereof shall remain in full force and effect.

19. ENTIRE AGREEMENT

This Agreement represents the entire Agreement between the Parties and, except as otherwise provided, this Agreement may not be amended, modified or terminated, except by a written instrument signed by each Party to this Agreement.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed under seal the day and year first above written.

CONSULTANT
International Association of Chiefs of Police (IACP)

CITY OF NEWTON

By _____

By _____

Chief Procurement Officer

Print Name _____

Date _____

Title _____

Date _____

Affix Corporate Seal Here

By _____

Director of Human Resources

Date _____

Certified that City funds are available in the following account:

Approved as to Legal Form and Character

By _____

Associate City Solicitor

Date _____

I further certify that the Mayor, or her designee, is authorized to execute contracts and approve change orders.

CONTRACT APPROVED

By _____

Comptroller of Accounts

By _____

Mayor or her designee

Date _____

Date _____

CERTIFICATE OF AUTHORITY - CORPORATE

4. I hereby certify that I am the Clerk/Secretary of _____
(insert full name of Corporation)

2. corporation, and that _____
(insert the name of officer who signed the **contract and bonds.**)

3. is the duly elected _____
(insert the title of the officer in line 2)

4. of said corporation, and that on _____
(insert a date that is **ON OR BEFORE** the date the officer signed the **contract and bonds.**)

at a duly authorized meeting of the Board of Directors of said corporation, at which all the directors were present or waived notice, it was voted that

5. _____ the _____
(insert **name** from line 2) (insert **title** from line 3)

of this corporation be and hereby is authorized to execute contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name and on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that the above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

6. ATTEST: _____ *AFFIX CORPORATE SEAL HERE*
(Signature of **Clerk or Secretary**)*

7. Name: _____
(Please print or type name in line 6)*

8. Date: _____
(insert a date that is **ON OR AFTER** the date the officer signed the **contract and bonds.**)

* The name and signature inserted in lines 6 & 7 **must** be that of the **Clerk or Secretary** of the corporation.