

**REQUEST FOR QUALIFICATIONS NO. CC-22-03(R)
FOR
LEGAL SERVICES (WISNER TRUST)**

ISSUED FEBRUARY 8, 2022

REISSUED MARCH 11, 2022

In accordance with Motion M-22-83, dated February 3, 2022 and Council Rule 42¹, the Council of the City of New Orleans (“Council”) is seeking a qualified professional to provide to provide legal advice and recommendations and, if necessary, to prosecute appropriate legal proceedings regarding the legal status of the Wisner Trust, the ownership of the former trust corpus, and the Council’s rights and responsibilities relative to oversight of the Wisner property.

Background

In August 1914, philanthropist Edward Wisner donated approximately 50,000 acres of land to the City of New Orleans in trust for certain charitable purposes – a parcel of property that now generates millions in income every year.

In early 2020, almost six years after the legal expiration of the trust by operation of law and by court order, Mayor Latoya Cantrell and third parties purported to enter into an agreement styled as a “Ratification, Extension, Modification and Amendment of the August 4, 1914 Edward Wisner Donation” (the “Ratification Agreement”). A copy of the Ratification Agreement is attached hereto as Attachment 1.

The Ratification Agreement (i) purports to be effective retroactively as of August 3, 2014; (ii) purports to effectuate a continuation of the original trust, which ended in 2014, rather than the creation of an entirely new trust; (iii) purports to eliminate the 100-year trust term in favor of a perpetual one; (iv) purports to grant the status of income/principal beneficiary to the Tulane University, the Salvation Army, LSU, and the Wisner heirs; and (v) purports to replace the Edward Wisner Donation Advisory Committee mandated by City Code with a privately managed board shielded from oversight by the public and the Council.

The Ratification Agreement has never been approved by the Council or by any City agency, despite the fact that Section 4-1803(4) of the Home Rule Charter states that the City shall not “[m]odify any trust except upon approval of the Council and, when necessary, a court of proper jurisdiction.”

In 2021, certain lawyers filed suit in Civil District Court seeking, *inter alia*, a declaration that the Ratification Agreement was invalid. *See Herman, Herman & Katz, et al. v. Edward Wisner*

¹ <https://council.nola.gov/rules/#rule42>

Donation, C.D.C. No. 2021-3420, Div. D-12. The Mayor has intervened in that lawsuit, purportedly as the trustee of the Wisner Trust. The Council has also intervened in that lawsuit in support of the position that the Ratification Agreement is invalid.

Purpose

The Council is seeking qualified respondents to provide legal advice and recommendations regarding the status of the Wisner Trust, the legality of the Ratification Agreement, the legal status and ownership of the former trust corpus, and the Council's rights and responsibilities relative to oversight of the Wisner property. The engagement will include representation of the Council in the pending *Herman, Herman & Katz* litigation, and may include such additional litigation as may be necessary or advisable to preserve the Council's rights.

Qualifications Statement Content

Respondent's response to this RFQ shall include the following:

- I. A statement detailing respondent's experience in the following areas of law:
 - a. Interpretation/drafting/litigation involving complex trusts;
 - b. Representation involving municipalities or local governments, with a particular emphasis on issues relating to separation of powers and home rule;
 - c. General litigation and appeals, with a particular emphasis on high-profile legal matters.
- II. A complete "Consulting Services Questionnaire" using the format that is provided in Attachment 2. Any subcontractors proposed to be used must also submit a complete questionnaire that must be attached to the prime firm's questionnaire.
- III. Professional experience and resumes of partners, principals, and employees in the firm who will be responsible for, and actively involved in, the provision of professional services for the Council ("Key Personnel").
- IV. A brief description of three or more assignments which best illustrate the respondent's current qualifications relevant to the areas requested in this RFQ, including samples of work product.
- V. Demonstrated ability to provide coverage for City Council matters related to this assignment when the principal consultant is unavailable because of other assignments, illness, vacation, or similar conflicting demands.

VI. A sworn affidavit listing all persons with an ownership interest in the respondent. An “ownership interest” shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that hold an interest in a publicly traded corporation. The affidavit is a public record.

VII. A sworn affidavit that no other person holds an ownership interest in the respondent via a counter letter.

VIII. A list of all persons, natural or juridical, who are retained by the respondent at the time of the application and who are expected to perform work as sub-contractors in connection with respondent’s work for the City Council. The Council may require information on employees or sub-contractors of or ownership interests in the subcontractor. This list is a public record.

IX. A list of professional labor fees for all personnel included in the respondent’s response to this RFQ and any others in respondent’s firm who may be called upon to perform work related to this RFQ, and a clear and concise statement that such professional labor fees throughout the contract term will be the most cost efficient and will not exceed the lowest professional labor fee for similarly situated clients of the firm.

Please note that Council contracts must comply with the requirements of City Code Section 70-467 relative to DBE participation.

Potential Conflict of Interest

All respondents providing a response to the RFQ shall provide a clear and unambiguous indication of any potential or real conflicts of interest it or any of its sub-contractors may have with respect to performing the work outlined in this RFQ on behalf of the Council.:

I. Any work performed (whether compensated or not) on behalf of any Councilmember, the City Council, the Mayor, or the City of New Orleans within the past five years.

II. Any work adverse to any Councilmember, the City Council, the Mayor, or the City of New Orleans.²

III. Any work performed within the last five years for (i) the Edward Wisner Donation; (ii) Louisiana University; (iii) Tulane University; (iv) the Salvation Army; or (v) any of the other signatories of the Ratification Agreement.

² Attorneys are frequently retained to engage the Council on behalf of private individuals in zoning, land use, tax abatements and other matters. These types of representations need not be disclosed, except for those resulting in litigation and those reasonably likely to result in litigation.

For any such work performed, the respondent shall indicate the scope of the engagement, the time frame, the amount of compensation received and why the respondent deems such work to be or not be in conflict with the execution of the proposed scope of work.

The Council shall be the sole arbiter as to any conflicts of interest and shall make the final determination as to whether any potential or real conflict of interest exists.

Limitation on Respondents Competing for this RFQ

Any person or firm contributing to the development of this RFQ shall be prohibited from submitting a qualifications statement for selection of that procurement.

Evaluation Criteria

Upon receipt by the due date of responses to this RFQ by qualified firms, the Council's staff Selection Review Committee ("SRC") will evaluate all responses received based upon the criteria listed herein and in Council Rule 42. Particular emphasis will be placed on the following criteria:

- I. Training and experience of the Key Personnel and other professional personnel in the provision of services required by this RFQ.
- II. Quality of work samples presented.
- III. Clear understanding by the respondent of work to be performed.
- IV. Knowledge of local conditions.
- V. Capability and experience in providing consistent, timely, and cost-effective services, as determined by information requested from references or the Council's actual experiences.
- VI. Estimated cost, based on hourly rates of consultants at various levels of expertise and experience.
- VII. Whether respondent has met, or demonstrated good-faith efforts to meet, the 35-percent DBE utilization goal applicable to City Council professional service contracts, as more fully set forth in Section 70-466 of the New Orleans City Code.
- VIII. Participation by persons living and/or working in New Orleans at a professional level.

RFQ Process

Except as provided herein below, no written, electronic, or oral communications from any actual or potential respondent to this RFQ or anyone acting as agent or representative for such person shall be made to any Councilmember, city employee, or Council staff person during this RFQ process, which is defined as the Blackout Period. The Blackout Period is a specified period of time during this competitive RFQ process in which any actual or potential respondent or their/its agent or representative is prohibited from communicating with any City Councilmember, Council staff person, or City of New Orleans employees regarding any matter related to the RFQ process. All communications to and from any actual or potential respondent and/or their/its agent or representative during the Blackout Period must be in accordance with this RFQ's defined method of communication with the designated contact person. The Blackout Period will begin upon posting of this RFQ. The Blackout Period will end when the Council selects a consultant.

All questions regarding this RFQ shall be submitted by email to Adam Swensek, City Council Executive Counsel, at adam.swensek@nola.gov.

RFQ submissions, including samples of work products, must be submitted electronically to Adam Swensek and in hard copy form by 5:00 p.m. on Friday, March 25, 2022 to the City Council Central Staff Office, Room 1E06, 1300 Perdido Street, New Orleans, LA 70112.

The Inspector General shall be notified in writing prior to any meeting of a selection or negotiation committee relating to the procurement of goods or services by the city, including meetings involving third party transactions. The notice required shall be given to the Inspector General as soon as possible after a meeting has been scheduled, but in no event later than twenty-four hours prior to the scheduled meeting. The Inspector General may attend all city meetings relating to the procurement of goods or services as provided herein and may pose questions and raise concerns consistent with the functions, authority, and powers of the Inspector General. An audio recorder or court stenographer may be utilized to record all selection or negotiation committee meetings attended by the Office of the Inspector General.

Length of Contract

The contract will extend for a twelve-month period. However, the Council may renew the contract for four additional twelve-month periods, assuming continuing need for the services and mutual satisfaction. Each respondent is to include in its submittal a clear and concise statement of those personnel and firm resources for which it is willing and can commit to make available during such period.

Additional Information

1. The City of New Orleans is not liable for any costs incurred prior to entering into a formal written contract. Any costs incurred in the preparation of the statement interview, or other pre-contract activity are the responsibility of the person submitting the statement.
2. All submissions become the property of the City and as such are public information.
3. Section 2-1120 of the Code of the City of New Orleans, relative to the Office of the Inspector General provides in part as follows:

"It is agreed that the contractor or applicant will abide by all provisions of City Code § 2-1120, including, but not limited to, City Code § 2-1120(12), which requires the contractor to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the contract. In signing this contract, the contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena."