



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Request for Proposals—August 7, 2023

Public Engagement in Agency Rulemaking Under the Good Cause Exemption

The Administrative Conference of the United States (ACUS) is accepting proposals from individuals interested in serving as a consultant to produce a report on public engagement in rulemakings where agencies find for good cause that notice and comment would be impracticable, unnecessary, or contrary to the public interest.

Project Description and Consultant Responsibilities

The Administrative Procedure Act (APA) allows agencies to forgo notice-and-comment rulemaking procedures when they find for good cause that such procedures would be impracticable, unnecessary, or contrary to the public interest.¹ Previous ACUS recommendations have addressed public engagement in rulemakings subject to this “good cause” exemption, including circumstances when agencies should use interim final rulemaking or direct final rulemaking to request public comment on exempt rules in the *Federal Register*.² Although not focused specifically on rules subject to the good cause exemption, recent ACUS recommendations and public forums have increasingly identified alternative forms of public engagement (such as targeted outreach and meetings with interested parties) that may allow agencies to engage more effectively with interested and affected persons, especially members of historically underserved communities, outside the notice-and-comment process.

This project will study when agencies assert the good cause exemption and recommend best practices for public engagement when agencies find good cause to forgo notice-and-comment rulemaking procedures. Among other relevant topics, this project will recommend best practices for agencies to employ in determining (1) whether to undertake pre- or post-promulgation public engagement efforts with respect to such rules, (2) what types of public engagement to use (including *Federal Register* notices, targeted outreach, and meetings with affected interests or other interested persons), and (3) how and when to use information obtained through such public engagement efforts to modify or improve their rules.

The consultant(s) will complete a draft report by August 2024 and will thereafter be expected to work with Conference staff and committees as the Conference develops recommendations from the report in time for the Conference’s December 2024 plenary session. The Conference may select a single consultant or assemble a team of consultants depending on the proposals it

¹ 5 U.S.C. § 553(b)(B).

² See, e.g., Admin. Conf. of the U.S., Recommendation 95-4, *Procedures for Noncontroversial and Expedited Rulemaking*, 60 Fed. Reg. 43,110 (Aug. 18, 1995); Admin. Conf. of the U.S., Recommendation 83-2, *The “Good Cause” Exemption from APA Rulemaking Requirements*, 48 Fed. Reg. 31,180 (July 7, 1983).

receives. Consultants will receive between \$8,000 and \$25,000, plus a budget for related expenses, depending on the number of consultants and allocation of responsibilities. The total value of consulting fees for this project will not exceed \$25,000, to be apportioned in accordance with the number of consultants and division of responsibilities.

Submitting a Proposal and Evaluation Criteria

If you are interested in serving as a consultant for the report, send an email to Benjamin Birkhill (bbirkhill@acus.gov) with the phrase “ACUS Project Proposal” in the subject line. Attach your curriculum vitae to the email, along with a short (ideally no more than one page) statement identifying what you see as the primary issues that the report should address. **All responsible sources must submit a proposal by 5:00 p.m. Eastern Time on September 4, 2023, in order to be guaranteed consideration by the agency.**

Proposals will be evaluated based on quality, clarity, and the proposer’s qualifications. ACUS has a strong preference for consultants who have previously authored scholarly work on public participation and public engagement in agency decision-making processes.