



Request for proposals – May 16, 2011

MIDNIGHT RULES

The Administrative Conference of the United States seeks proposals by potential consultants for a study of “midnight rules.”

Background. In the last three months of a presidential administration, rulemaking activity increases considerably when compared to the same period in a non-transition year.¹ Some scholars have suggested that, although part of this increase likely results from ordinary procrastination and external delays, administrations also use the “midnight” period strategically. First, administrations are said to have reserved particularly controversial rulemakings for the final months of an outgoing president’s term. Second, administrations are said to have issued rules in their final months that have the purpose of embarrassing or impeding the activities of the next administration.²

Project. The Conference wishes to study the issue of midnight rules. The study should seek to establish whether rules issued in the final months of a presidential administration indeed have a different character than rules issued at other times, and, if so, why. If the study concludes that rules issued during this period are more likely to have undesirable qualities, it should recommend proposed procedures that could improve presidential and agency practices with regard to midnight rules. Any recommendation should recognize that an outgoing President remains in power until the last moment of his or her constitutionally assigned term.

How to submit a proposal

Proposals are invited from those who would like to serve as a consultant on this project. All responsible sources may respond to this invitation, and the responses will be considered by the Conference staff.

The product of a consultant’s study is a report that is delivered first for review by the Conference staff and then to a committee of the Conference membership. The report should provide proposed recommendations. The consultant interacts with Conference staff and works with the committee as the committee debates and further shapes the recommendation. The recommendation is then forwarded to the Council of the Conference and ultimately to the full Conference membership meeting in plenary session. If approved at the plenary session, the recommendation becomes an official recommendation of the Administrative Conference. (For a general understanding of how the Conference is organized, see 5 U.S.C. §§ 591-596.)

¹ One study shows that, as measured by Federal Register pages, rulemaking activity increases by an average of 27.4%. See Jack M. Beerman, *Presidential Power in Transitions*, 83 B.U.L. Rev. 947, 954, n.12 (2003).

² See *id.* at 959, 963-67.



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The Conference typically provides a consulting fee for a study plus a budget for expenses. The Conference also typically encourages its consultants to write up the results of their studies for publication. Thus, working as a Conference consultant provides some compensation, a publication opportunity, and the opportunity to work with Conference members from federal agencies, academia, the private sector, and public interest organizations to help shape and improve administrative law.

To submit a proposal to serve as the ACUS consultant on this project, you must:

- Send an e-mail to Jonathan R. Siegel, ACUS Director of Research and Policy, at jsiegel@acus.gov. Proposals must be submitted by e-mail.
- Include the phrase “ACUS Project Proposal” in the subject line of your e-mail.
- In the body of your e-mail or in an attachment:
 - State the name of the project for which you are submitting a proposal (Midnight Rules project).
 - Explain why you would be a good person to work on the project.
 - Explain how you would conduct the proposed project—what research you would do, how you would do the research, and how you would develop recommendations based on the research. There is no required format and 2-3 pages should probably be sufficient for this section.
 - Include your CV.
 - State how much you would need for expenses. A typical ACUS research contract includes a consulting fee of \$12,000, travel expenses of \$1,000, and research assistance expenses of \$1,000. There is some flexibility in the expense budget based on factors relating to the proposal (e.g., the consultant's location relative to Washington, DC, and the need for research assistance and empirical or interviewing work). The amount of the expenses is not a critical factor in the award of the contract; the quality of the proposal and of the consultant is more important.
 - Propose a schedule for the project. ACUS research projects typically call for submission of an outline, a draft report, and a final report. The most important deadline is submission of the draft report, which should be substantially complete and ready for consideration by an ACUS committee. Proposals for this project should target the submission of the draft report for either August 31, 2011 or January 16, 2012 (so that the recommendation can be targeted for completion at a plenary session of the Conference held in December 2011 or June 2012). The earlier submission date is preferable if consultants could be ready by that date, but the proper handling of the project is the prime consideration.



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- Submit your proposal by close of business on May 31, 2011. Proposals may be submitted until the award of the contract, but only proposals submitted by the stated deadline are guaranteed to receive consideration.

Proposals will be evaluated based on:

- The qualifications and quality of the researcher(s)
- The quality of the proposal
- The timeline of the proposal
- The likelihood that the research will lead to an Administrative Conference recommendation that will improve government
- The cost of the proposal (although the other factors are more important)

Failure to follow the above instructions may result in your proposal's not being considered. Including the phrase "ACUS Project Proposal" in the subject line of your e-mail is important so that your proposal can be easily located.

Those submitting proposals should understand that an ACUS project will require many hours of work on the part of the consultant. In addition to the work involved in researching and writing the consultant's report, the consultant will need to work with ACUS staff and ACUS committees as the Conference considers a recommendation based on the report. The consulting fee is not designed to match the consultant's normal consulting rates. It is a significant public service to serve as an ACUS consultant.