



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Request for Proposals—August 14, 2024 **Obtaining Government Records for Use in Agency Proceedings**

The Administrative Conference of the United States (ACUS) is accepting proposals from individuals interested in serving as a consultant to produce a report on obtaining government records for use in agency proceedings.¹ The study will support the development of a recommendation for action by federal agencies and, if warranted, by the President and/or Congress.

About ACUS

ACUS is an independent federal agency in the executive branch charged with identifying and promoting improvements in the efficiency, adequacy, and fairness of the procedures by which federal agencies conduct administrative processes.

Many of the hundreds of recommendations ACUS has issued since 1968 have resulted in reforms by federal agencies, the President, Congress, and the Judicial Conference of the United States. All are available at acus.gov/recommendations.

Recommendations are issued by the Conference, which consists of a Chair appointed by the President and confirmed by the Senate; ten presidential appointees; 50 senior federal officials designated by the heads of participating agencies; and 40 leading academics, practitioners, and other private-sector experts. Except for the Chair, all members are unpaid.

Recommendations are typically informed by a report prepared by one or more consultants. Consultants also work closely with committees of Conference members and the full Conference membership to develop the recommendations. Previous consultant reports are available at acus.gov/reports.

Project Description

Agency decision makers and private parties frequently require access to records maintained by federal agencies to decide cases and participate meaningfully in agency proceedings. In some contexts, a private party is responsible for obtaining the record from the government—

¹ This project will address agency proceedings that pertain to individuals, such as proceedings to determine claims for benefits or initial licenses, administrative enforcement actions, and agency investigations. It will not address proceedings conducted for general factfinding or policymaking purposes, such as notice-and-comment rulemaking.

sometimes by submitting a Freedom of Information Act (FOIA) request—and providing the record to a government decision maker. In other contexts, the agency decision maker can obtain the relevant government record without action by a private party, or with the private party’s consent. Procedural and technological reforms to agency processes for obtaining records for use in administrative proceedings have the potential to reduce burdens on private parties and agencies and to promote fairness, accuracy, efficiency, and timeliness in agency decision making.

This project will examine how federal government records are obtained for use in agency adjudicative, licensing, investigative, and similar proceedings. Among other topics, the project will explore:

- Circumstances in which parties in a federal agency proceeding are responsible for obtaining records maintained by a federal agency for use, and the procedures by which private parties obtain such records, for example by filing a FOIA request; and
- Circumstances in which agency officials participating in a federal agency proceeding bear primary responsibility for obtaining records maintained by a federal agency, and the procedures by which government records are transferred between agencies or between agency components.

The project will consist of a report prepared by a consultant(s) and, it is expected, a recommendation adopted by the Conference. Both the report and recommendation will identify agency best practices for obtaining government records for use in agency proceedings.

Consultant Responsibilities

The consultant(s) will complete a draft report by August 2025. The consultant(s) will work with Conference staff to finalize the draft report, which will be provided to a committee of Conference members and made publicly available on the ACUS website.

During fall 2025, the consultant(s) will work with Conference staff and the committee to develop a proposed recommendation. Committees typically meet two to three times per project; meetings are conducted virtually and typically last about three hours.

The consultant(s) will work with Conference staff to complete a final report by November 2025, which will be provided to the full Conference and made publicly available on the ACUS website. The consultant(s) will also work with Conference staff and the full Conference membership to consider the committee-proposed recommendation at a plenary session of the Conference, likely in December 2025.

The Conference may select a single consultant or assemble a team of consultants depending on the proposals it 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 statement (ideally no more than two pages) that:

- Addresses your interest in this study,
- Describes specific topics you would be interested in researching,
- Describes the methodologies you might employ to researching these topics, and
- Identifies any relevant scholarship you have published.

All responsible sources must submit a proposal by 5:00 p.m. Eastern Time on September 15, 2024, in order to be guaranteed consideration by the agency.

Proposals will be evaluated based on quality, clarity, and the proposer’s qualifications. The Conference has a strong preference for consultants who have previously authored scholarly work on the disclosure and availability of agency records, particularly in areas of agency adjudication or enforcement.