



Request for Proposals—June 19, 2020

Alternative Dispute Resolution in Agency Adjudication

The Administrative Conference of the United States (ACUS) is accepting proposals from individuals interested in serving as a consultant on a multi-member research team that will produce a report on federal administrative agencies' use of alternative dispute resolution (ADR).

ACUS has played an instrumental role promoting and refining federal agencies' use of ADR. Congress enacted the ADR Act in 1990 and amended it in 1996 based largely on ACUS's research and recommendations. Since then, ACUS has addressed the use of ombuds generally and ADR mechanisms to resolve disputes involving Freedom of Information Act (FOIA) requests, farm loans, fair housing, and the Americans with Disabilities Act.

Project Description and Consultant Responsibilities

ACUS is undertaking a project to study how federal agencies use and might better use different types of ADR—including conciliation, facilitation, factfinding, minitrials, arbitration, the use of ombuds, and especially mediation—to resolve agency adjudications related to their core statutory missions. The ACUS study will also address the use of ADR to resolve disputes before the initiation of a formal agency adjudicative proceeding or federal court case involving the agency's enforcement authority.

The project will address existing practices and consider possible best practices related to, among others, the following topics:

- the selection and implementation of the appropriate type of ADR and associated procedures;
- the selection of personnel to conduct and manage ADR proceedings;
- the qualifications, training procedures, and ethics and confidentiality requirements for ADR personnel;
- the solicitation and use of feedback from ADR participants;
- ADR case management practices; and
- interagency mechanisms to facilitate ADR and provide support and resources for agency ADR practitioners (e.g., training modules, reference guides, best practices).

This project will not address the use of ADR in negotiated rulemakings; in federal court cases; or with respect to disputes incident to agencies' core statutory missions, including those involving customer service complaints, FOIA requests, agency personnel matters, and procurement and contract disputes.

The study will result in a multi-part report for the Office of the Chairman. Each consultant will bear primary responsibility for preparing the initial draft of one or more parts of a report, as assigned by ACUS's Office of the Chairman. (A consultant will be permitted to publish his or her contribution to the report according to agreed-upon terms.) If ACUS decides to put all or part of the report before its Assembly (in the first instance, before one of its committees) for the formulation of a formal ACUS recommendation, a consultant may be required to attend ACUS committee meetings and an ACUS plenary session.

The draft report will be completed by April 2021, and a final report will be completed by June 2021, or such later dates as ACUS may determine. Each consultant will receive a fee of between \$5,000 and \$10,000 as determined by the Office of the Chairman at the outset of the engagement based on the scope of the work involved, plus a budget for travel and research assistance expenses. The fee and other terms of engagement (including publication rights) will be set forth in an agreement upon ACUS's acceptance of a proposal.

Submitting a Proposal and Evaluation Criteria

If you are interested in serving as a consultant, please send an email to Jeremy Graboyes (jgraboyes@acus.gov) with the phrase "ACUS Project Proposal" in the subject line. Attach your curriculum vitae, along with a short (ideally no more than one page) statement that identifies the specific topic(s) of ADR in adjudication, whether drawn from the list above or otherwise, that you wish to address and describes what you see as the primary issues that the report should address within the topic(s).

All responsible sources must submit a proposal by 5:00 p.m. Eastern Time on July 3, 2020, in order to be guaranteed consideration by the agency.

Proposals will be evaluated based on quality and the proposer's qualifications. ACUS has a strong preference for consultants who have previously authored scholarly work on the use of ADR or federal administrative procedure. After consultation with the selected consultant(s), the Office of the Chairman will assign each consultant the topic(s) and scope of work.