



Request for Proposals—January 5, 2022
Public Availability of Settlement Agreements
in Agency Enforcement 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 the issue of public availability of settlement agreements in agency enforcement proceedings.

Project Description and Consultant Responsibilities

ACUS has undertaken several projects in recent years related to the public disclosure of important legal materials. Those projects addressed the public availability of agency adjudication materials, agency litigation materials, and guidance documents. ACUS is now undertaking a project to study the public availability of settlement agreements reached in enforcement proceedings before agencies. There can be significant public interest in these agreements. Nevertheless, information contained within them may be protected by law from disclosure, and there may be policy considerations that weigh against their disclosure in some contexts. Agencies have taken different approaches to providing public access to such agreements while safeguarding protected materials.

The project will:

- Identify and explain the legal requirements governing the disclosure of administrative settlement agreements under the Alternative Dispute Resolution Act, Freedom of Information Act, Privacy Act, and other statutes and executive-branch policies;
- Examine policy and prudential considerations weighing in favor of and against the disclosure of administrative settlement agreements; and
- Survey agency rules governing the disclosure of administrative settlement agreements and agency practices for providing public access to them.

The study and resulting recommendations will identify best practices for when and how agencies should provide public access to settlement agreements reached in enforcement proceedings before agencies without disclosing protected materials.

The draft report will be completed by August 1, 2022, and the consultant(s) 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 2022 plenary session.¹

¹ Both the report due date and the date of the plenary session are subject to change in light of COVID-19 and related matters.

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 Matthew Gluth (mgluth@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 January 31, 2022, 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 public disclosure of important legal materials, particularly in the areas of agency enforcement or adjudication.