



## **Request for Proposals—January 26, 2024**

### **Agency Investigative Procedures**

The Administrative Conference of the United States (ACUS) is accepting proposals from individuals interested in serving as a consultant(s) to produce a report on the issue of agency investigative procedures.

#### **Project Description and Consultant Responsibilities**

Many federal agencies are responsible for detecting, investigating, and prosecuting potential violations of the statutes and regulations they administer. Statutes typically authorize enforcement agencies to take certain investigative actions and, in some cases, require agencies to use certain procedures when they do so. However, the Administrative Procedure Act specifies only a few limited requirements for administrative investigations, and Congress routinely leaves many procedural aspects of agency investigations to agencies' discretion. Likewise, courts generally have not prescribed specific procedures, insisting only that agency investigations comport with basic constitutional precepts.

In previous projects, such as Recommendation 2022-5, *Regulatory Enforcement Manuals*, ACUS has recognized commonalities among agency investigative procedures and recommended best practices for their consistent implementation and dissemination. But ACUS has not yet addressed the specifics of agency investigative procedures, nor has it yet sought to identify best practices for agencies to consider in structuring their investigative procedures. ACUS is now undertaking a project to study and recommend best practices for the procedures that regulatory agencies use to investigate possible noncompliance by regulated entities before initiating enforcement actions.

Among other topics, the project will address:

- Agency practices and procedures for initiating investigations;
- Agency practices for the exchange of evidence and argument between the agency and the targets of investigations;
- The issuance of agency subpoenas and warrants;
- Standards by which agency enforcement personnel consider evidence;
- Agency practices for public and nonpublic proceedings;
- Agency negotiation and settlement procedures;
- Standards by which agency enforcement personnel consider whether to terminate an investigation, negotiate with the target of an investigation, or pursue an enforcement action in an administrative or judicial tribunal; and

- The preparation and communication of recommendations that agencies take no action, settle, or issue a complaint.

The study and resulting recommendations will identify best practices for agencies to consider in structuring their investigative procedures to promote accuracy, efficiency, and fairness in agency investigations.

The draft report will be completed by January 2025, 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 June 2025 plenary session. 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 Kazia Nowacki ([knowacki@acus.gov](mailto:knowacki@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 February 23, 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 regulatory enforcement and agency investigative procedures.