ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Request for Proposals—August 14, 2017

Public Engagement in Rulemaking

The Administrative Conference is seeking a consultant to undertake a research project that will study the tools and practices agencies use to solicit and support informed public comment prior to and during the informal rulemaking process and develop recommendations for enhancing those efforts.

Proposals are due by 6:00 PM Eastern Time on August 29, 2017.

Background.

Agencies, scholars, and other experts have sought to foster both public understanding of, and meaningful comment in, both the informal rulemaking process and pre-rulemaking policy development. These efforts have included an emphasis on plain writing and summaries in notices of proposed rulemaking and other policy documents; the publication of FAQs and other guidance online and in print; videos and other visual and/or interactive media; and customized web platforms.[1] Agencies have also worked to foster stakeholder participation through in-person listening sessions, technical workshops, and similar forums. Although both in-person and web-based efforts to support meaningful public input prior to and during rulemaking have been pursued for over a decade, the comments agencies receive from non-expert stakeholders often fail to include the kind of data or other evidentiary information needed to support valid claims and arguments in the rulemaking process.

The Conference has previously studied public engagement in rulemaking. Relevant recommendations include: Recommendation 2011-1, _Legal Considerations in e-Rulemaking_; Recommendation 2011-2, _Rulemaking Comments_; Recommendation 2011-8, _Agency Innovations in e-Rulemaking_; and Recommendation 2013-5, _Social Media in Rulemaking_.[2] To build on these

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[1] For more information on web-enabled public engagement in rulemaking, including the use of rulemaking-specific web platforms, see Cary Coglianese, Federal Agency Use of Electronic Media in the Rulemaking Process 15–18 (Dec. 5, 2011) (report to the Admin. Conf. of the U.S.),
https://www.acus.gov/sites/default/files/documents/Coglianese-Federal-Agencies-Use-of-Electronic-Media-in-Rulemaking-FINAL-REPORT.pdf.

[2] Recommendation 2013-5, _Social Media in Rulemaking_, and its accompanying report comprehensively assessed legal considerations relevant to agency use of social media. This new study may examine pertinent legal questions that have arisen after 2013 insofar as any are identified by study participants. However, unlike Recommendation 2013-5, this study will examine social media as one of a range of tools that can be used to promote quality commenting, rather than as a distinct subject.

recommendations, the Conference intends to study, in greater depth, agency efforts to encourage effective public input. The study will examine how agencies use public input both to shape their regulatory agendas and to improve proposed rules. This will include a careful assessment of how to solicit and support meaningful public input in pre-rulemaking policy development, which is likely to give agencies valuable guidance on how to optimally set their regulatory agendas. It will also include an examination of activities agencies might undertake to maximize the probability that public comments they receive contain information that is useful in shaping a final rule.

Project Description.

The Conference seeks proposals for a comprehensive study of the tools and practices agencies have used to solicit and support meaningful public comment in both rulemaking and pre-rulemaking policy development and agenda-setting. The goal of this study is to identify and evaluate the success of these tools and practices so that agencies can invest resources in using those that are most likely to be effective in gaining informed public input and in advancing agencies' policymaking goals.

A detailed scope of work follows, but the Conference encourages prospective consultants to comment on the scope of work in their project proposals, and identify/include any additional research subjects related to this topic that the Conference may wish to consider.

Scope of Work

The study should include consideration of the following:

- An evaluation of what kinds of data, other evidentiary information, arguments, etc. are most valuable for agencies in different policy-making contexts (e.g., setting regulatory priorities vs. developing policy through rulemaking).
- An identification of the tools and practices agencies have used to educate the public about agency policy development and/or solicit and support informed public input, including:
  - plain writing (including formatting and organizational navigation aids such as bulleted and numbered lists, headings, etc. to guide readers though complex text) and summaries in notices of proposed rulemaking and other policy documents;
  - FAQs and other guidance published online and in print;
  - Videos and other visual and/or interactive or social media;
  - customized web platforms, and;
  - in-person listening sessions, technical workshops, and similar forums.
- An assessment of what tools and practices have been effective, or clearly ineffective, and the circumstances that influence agencies' success or failure when using these efforts to solicit meaningful public input or comment. This assessment should help agencies decide when their investment in supporting more informed comment is likely to yield the greatest return.

How to Submit a Proposal.

Proposals are invited from qualified persons who would like to serve as a research consultant on this project. All responses will be considered by the Conference staff and the Vice Chairman.

A consultant's study should result in a report that is delivered first for review by the Conference staff and Vice Chairman and then forwarded to a committee of the Conference membership for consideration. The report should provide proposed recommendations. The consultant works with Conference staff and the committee to refine and further shape the report and may work with Conference staff to revise the recommendations. Draft recommendations approved by the committee are then forwarded to the Council of the Conference for consideration, and the Council will make a determination as to whether to place the draft recommendations on the plenary session agenda (with or without a statement of its views) for consideration by the full Conference membership. If approved at the plenary session, a recommendation becomes an official recommendation of the Administrative Conference. (For a general understanding of how the Conference is organized and operates, see 5 U.S.C. §§ 591-596, and http://www.acus.gov.)

The Conference will provide a consulting fee for this study plus a budget for related expenses. The Conference also typically encourages its consultants to publish the results of their studies in journals or other publications. 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, procedure, and practice.

Those submitting proposals should understand that, in addition to the work involved in researching and writing the consultant's report, the consultant will (in most cases) need to work with Conference staff and committees as the Conference develops a recommendation based on the report. The consulting fee is not designed to match a consultant's normal consulting rates. It is a significant public service to serve as a consultant to the Conference.

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

- Send an e-mail to Reeve Bull, Research Chief, at rbull@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, please:

- State the name of the project for which you are submitting a proposal (Public Engagement in Rulemaking).

- Explain why you would be well qualified to work on the project. Include your *curriculum vitae* or other summary of relevant experience.

- Explain your research methodology 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.

- State how much funding you would need for the project, keeping in mind that a typical Conference research contract includes a consulting fee of around $20,000 plus travel expenses of $2,000 and research assistance expenses of $1,000. There may be some flexibility in the 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), so your proposal should suggest any special needs in this regard. The amount of the consulting fee and expenses will not be a critical factor in the award of the contract; the quality of the proposal and of the consultant's ability to carry out the study will be the most important factors.

- Propose a schedule for the project. The Conference's research projects typically call for submission of an outline, a draft report, and a final report. Multiple draft reports may be necessary based on input from the Vice Chairman, staff, or committee. The draft report should be substantially complete and ready for consideration by the committee. Proposals for this project should target the submission of the draft report so that the recommendation can be targeted for completion at a plenary session of the Conference held in June 2018. A Winter 2017-2018 submission date for the draft report is preferred, but high quality research leading to a well-written report will be the prime consideration.

Deliverable	Due Date
Draft Project Outline	Contract Award + 30 Days
Final Project Outline	Draft Project Outline + 15 Days
Draft Report	Final Project Outline + 180 Days
Final Report	Draft Final Report + 45 Days

Submit your proposal by 6:00 PM Eastern Time on August 29, 2017. Only proposals submitted by the stated deadline are guaranteed to receive consideration. Proposals may also be submitted or amended at any time until the award of the contract, and the Conference may consider any proposals or amended proposals received at any time before the award of the contract.

Proposals will be evaluated based on:

- The qualifications and experience of the researcher(s), and knowledge of literature in the field (if applicable);
- The quality and clarity of the proposal;
- The timeline of the proposal, and the ability of the researcher to perform the research in a timely manner;
- The likelihood that the research will contribute to greater understanding of the subject matter studied and lead to an Administrative Conference recommendation that will improve administrative procedures in the federal government; and
- The cost of the proposal (although the other factors are more important)

Failure to follow the above instructions may result in your proposal 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 identified.