



Request for Proposals—March 7, 2023

Public Participation in Agency Decision Making

The Administrative Conference of the United States (ACUS) publishes book-length reference guides, called sourcebooks, on a range of topics related to federal administrative procedure. Recent sourcebooks survey and comprehensively analyze statutory provisions governing how courts review agency rules and orders, map the organizational structure of the executive branch, and examine federal agency adjudication that is not subject to the Administrative Procedure Act’s formal hearing provisions. Sourcebooks are available at www.acus.gov/sourcebooks.

ACUS is now undertaking a project to survey and comprehensively analyze legal requirements and policies related to public participation in agency decision-making processes. The project will result in the publication of a new sourcebook that will assist agency officials, Congress, and the judiciary in performing their work, and inform the public.

Project Description and Consultant Responsibilities

Public participation is an integral part of many agency decision-making processes—including rulemaking, adjudication, licensing, and investigation—and central to ACUS’s mission (5 U.S.C. § 591). As ACUS recognized in the context of rulemaking: “By providing opportunities for public input and dialogue, agencies can obtain more comprehensive information, enhance the legitimacy and accountability of their decisions, and increase public support for their rules.”

ACUS has addressed the importance of and best practices for public participation in numerous recommendations and reports. ACUS has also hosted forums on the subject, convening public- and private-sector experts to address participation by underserved communities and their members in agency processes for regulatory policymaking and possible reforms to enhance public participation in the rulemaking process beyond notice and comment. To view these recommendations, reports, and forums, visit www.acus.gov/public-participation.

The Administrative Procedure Act supplies basic legal requirements for public engagement that most agencies must follow before they take certain actions. When they make rules, for example, agencies generally must give interested persons an opportunity to participate by submitting written data, views, and arguments (5 U.S.C. § 553(c)). Many other statutes direct multiple or specific agencies to provide opportunities for members of the public to share information or provide input to inform agency decision making. Presidential directives, Office of Management and Budget (OMB) guidance, and agency rules and policies may also impose requirements or establish policies for public engagement across the government or in specific programs.

The consultant(s) for this project will survey federal statutes, presidential directives, OMB guidance, and agency rules and policies to identify legal requirements and policies governing

when and how different agencies engage with the public as part of their decision-making processes. Topics the survey will address include:

- Whether opportunities for public participation are required by law, discretionary with an agency, or provided upon request by a member of the public;
- Whether during decision-making processes members of the public are afforded an opportunity to share information or provide input;
- Whether agencies must specially engage with specific stakeholders (e.g., state, local, and tribal governments, small entities, low-income and minority populations);
- Whether and how agencies must publicize opportunities for public participation;
- How members of the public participate in agency decision making (e.g., through written submissions or oral presentations);
- When and how agencies must disclose communications with or received from members of the public; and
- How agencies must consider or respond to information and input provided by members of the public.

Based on the survey, the consultant(s) will prepare a new sourcebook that provides a comprehensive overview and cross-cutting analysis of federal statutes and executive-branch rules and policies governing public participation in agency decision making.

The draft sourcebook will be completed by April 2024, and the final sourcebook will be completed by July 2024, or such later dates as ACUS may determine. ACUS may select a single consultant or assemble a team of consultants depending on the proposals it receives. Along with a budget for expenses related to the project, each consultant will receive between \$10,000 and \$40,000, with the final figure for each consultant to be determined based on the number of consultants and the allocation of responsibilities among them. The total value of consulting fees will not exceed \$40,000 depending on the number of consultants selected. There will also be a budget for research assistant expenses, not to exceed \$6,000 in the aggregate.

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) 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 sourcebook should address. **All responsible sources must submit a proposal by 5:00 p.m. Eastern Time on April 7, 2023, in order to be guaranteed consideration by the agency.**

Proposals will be evaluated based on quality, clarity, and the proposer’s qualifications. ACUS has a strong preference for consultants who have previously authored scholarly work on public participation and public engagement in agency decision-making processes.