



LEGAL SERVICES CORPORATION

45 CFR Part 1630

Cost Standards and Procedures; Property Acquisition and Management Manual

AGENCY: Legal Services Corporation.

ACTION: Notice of rulemaking workshops, request for expressions of interest in participating in the rulemaking workshops, initiation of open comment period.

SUMMARY: The Operations and Regulations Committee (Committee) of the Board of Directors for the Legal Services Corporation (LSC) is conducting three rulemaking workshops (Workshops) and is requesting public comments on revising LSC's Cost Standards and Procedures rule, 45 CFR part 1630, and LSC's Property Acquisition and Management Manual (PAMM). The discussions in the Workshops and the other comments received will be considered in connection with rulemaking by LSC. LSC is soliciting expressions of interest in participating as a panelist in the Workshops from LSC grantees and other interested stakeholders with relevant experience, such as other funders of civil legal aid programs.

DATES: Expressions of interest in participating in the Rulemaking Workshops for Part 1630 and the PAMM must be received by 5:30 p.m. EST on [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The dates of the Workshops are:

1. April 20, 2016, 1:30 pm to 4:30 pm EST, Washington, DC.
2. May 18, 2016, 1:30 pm to 4:30 pm EST, Washington, DC.

3. June 15, 2016, 1:30 pm to 4:30 pm EST, Washington, DC.

See the SUPPLEMENTARY INFORMATION section for additional relevant dates.

ADDRESSES: Expressions of interest may be submitted by any of the following methods:

E-mail: lscrulemaking@lsc.gov. Include “1630/PAMM Workshops” in the subject line of the message.

Fax: 202-337-6519.

Mail: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K St. NW, Washington, DC 20007.

Hand Delivery/Courier: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K St. NW, Washington, DC 20007.

Instructions: All submissions must include the subject “1630/PAMM Workshops. For detailed instructions on submitting expressions of interest in participating as a panelist in the Workshops or on submitting comments about the topics to be discussed in the Workshops, please see Sections VI. and VII. of the SUPPLEMENTARY INFORMATION section.

FOR FURTHER INFORMATION CONTACT: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K St. NW, Washington, DC 20007; (202) 295-1563 (phone); 202-337-6519 (fax); or sdavis@lsc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On July 16, 2015, LSC management (Management) presented the Committee with a Justification Memorandum recommending publication of an advance notice of proposed

rulemaking (ANPRM) to seek public comment on possible revisions to 45 CFR part 1630 -- Cost Standards and Procedures, and LSC's Property Acquisition and Management Manual (PAMM). Management stated that collecting input from LSC funding recipients through an ANPRM would aid LSC significantly in determining the scope of the rulemaking and in developing a more accurate understanding of the potential costs and benefits of certain revisions. The Committee voted to recommend that the Board approve Management's recommendation and authorize LSC to open rulemaking for Part 1630 and the PAMM. On July 18, 2015, the LSC Board authorized rulemaking and approved the preparation of an ANPRM to revise Part 1630 and the PAMM. On October 9, 2015, LSC published an ANPRM seeking public comment on the proposed changes to Part 1630 and the PAMM. 80 FR 61142, Oct. 9, 2015. The comment period closed on December 8, 2015.

LSC received comments from the National Legal Aid and Defender Association (NLADA), Colorado Legal Services (CLS), and the Northwest Justice Project (NJP). The comments generally expressed concerns about the following: the disparity and potential conflict between LSC's proposed changes and the requirements imposed by recipients' other funders; expanding the prior approval requirements of 45 CFR 1630.5 and Section 3 of the PAMM to include aggregate purchases exceeding a certain dollar threshold; and the proposal to regulate the awarding of service contracts and the disposition of real and personal property by organizations that receive LSC funds. Additionally, NLADA recommended that LSC engage its grantees in additional discussions about the impact that the proposed changes would have on the grantees' operations before drafting a proposed rule.

LSC's Rulemaking Protocol contemplates using rulemaking workshops or negotiated rulemaking when one of those vehicles is appropriate to help LSC gather additional

information before drafting a proposed rule. LSC believes that rulemaking workshops will provide an opportunity for LSC funding recipients to more effectively share their views on LSC's proposed changes to part 1630 and the PAMM and to elaborate on the comments received in response to the ANPRM. On January 28, 2016, the Committee voted to approve rulemaking workshops for LSC's rulemaking on Part 1630 and the PAMM.

IV. Topics for Discussion

The following three topics will be addressed during the Workshops. Each Workshop will focus on one of the topics and may use any or all of the potential items for discussion to direct the discussion.

Topic 1: Requirements of Other Funders. How do LSC's proposed changes to its cost standards and procedures and property acquisition and disposition requirements interact with the requirements imposed by recipients' other funders, including the requirements governing intellectual property created using various sources of funding?

Potential Items for Discussion on Topic 1:

- Generally, do other funders require recipients to provide notice and/or seek prior approval for the acquisition and disposition of real property and personal property? If so, what processes and documentation do the funders require?
- Do LSC's proposed changes to Part 1630 and the PAMM directly conflict with the requirements of other funders? If so, how?
- Do other funders require recipients to seek prior approval for procurements of goods and services? If so, what procedures must recipients follow to seek approval?
- Do other funders require recipients to seek prior approval for purchases of single items above a certain threshold amount? If so, what is that threshold amount?

- Do other funders require recipients to seek prior approval for purchases of multiple items when the aggregate cost of the items exceeds a certain dollar threshold? If so, what is that threshold amount?
- How can LSC structure its prior approval process to more closely align with the requirements imposed by other funders?
- What are the requirements of other funders with respect to the use and ownership of products, data, or intellectual property developed with their funds? For example, do other funders reserve rights in intellectual property developed with their funds, or require recipients to display the funder's identity on products such as websites or brochures?
- How do LSC's cost standards compare and interact with cost standards imposed by recipients' other funders?

Topic 2: LSC's Proposals. In the ANPRM, LSC proposed to regulate services contracts.

LSC also proposed to require recipients to seek prior approval of aggregate purchases of personal property, acquisitions of personal and real property purchased or leased using LSC funds, and disposal of real or personal property purchased or leased using LSC funds.

Potential Items for Discussion on Topic 2:

- What are the administrative costs (in terms of dollars, time, and resources) of obtaining prior approval from LSC with respect to property acquisition and disposition? How can LSC revise its prior approval process to lessen these administrative costs?
- How can LSC clarify when recipients must seek prior approval to acquire and dispose of real and personal property?

- If LSC raises the threshold amount at which single purchases of personal property require prior approval, what other changes, if any, should LSC make to part 1630 to accompany this increase?
- Should LSC adopt a separate and distinct prior approval threshold amount for aggregate purchases of personal property?
- If LSC proposes to require prior approval for purchases of multiple items whose aggregate value exceeds a certain dollar amount threshold, should LSC limit the types of purchases subject to this prior approval requirement? For example, should LSC require recipients to seek prior approval for purchases of multiple computers, printers, or pieces of furniture exceeding a certain dollar amount, but not require recipients to seek prior approval for multiple purchases of units of printer paper or similar office supplies?
- Should LSC require recipients to seek instructions for disposition of real or personal property if the fair market value of the property exceeds a certain dollar threshold? If so, what should the threshold be?
- Should LSC require recipients to seek disposition instructions from LSC before disposing of personal or real property acquired with LSC funds? If so, what factors should LSC consider when establishing such instructions?

Topic 3: Establishing Standards based on the Office of Management and Budget’s

(OMB) Uniform Guidance. LSC proposed to establish minimum standards for recipients’ procurement policies based on the OMB Uniform Guidance. LSC also proposed to revise part 1630 for consistency with the Uniform Guidance, where appropriate.

Potential Items for Discussion on Topic 3:

- Generally, what are the existing procurement policies that recipients currently have in place to maintain internal controls regarding purchases and compliance with LSC's rules in part 1630 and the PAMM?
- Do recipients have different procurement policies for real property, personal property, and services?
- Should LSC establish minimum standards for procurement policies for recipients to use for acquisitions of personal property when the acquisition costs exceed a certain threshold amount?
- What changes would recipients have to make to their policies if LSC adopted minimum standards for recipients' procurement policies based on OMB's Uniform Guidance in 2 CFR part 200? If LSC were to model its revised procurement standards based on the standards in the OMB Uniform Guidance, would LSC's policy conflict with the requirements of other funders?

V. Nature of the Workshops

Rulemaking workshops enable LSC to meet with interested parties to discuss, but not negotiate, proposed LSC rules and regulations. Workshops for part 1630 and the PAMM will consist of three publicly noticed meetings of the Committee with the participation of Management, invited stakeholder representatives, and other interested and well-informed parties to discuss the three topics outlined above. During the Workshops, the panelists and participants will hold open discussions, moderated by a member of the Committee (or other person designated by the Committee chair), to share ideas regarding how to revise Part 1630 and the PAMM.

LSC will host three Rulemaking Workshops at its headquarters, 3333 K Street,

NW, Washington, DC 20007. The first Workshop will be held on April 20, 2016, and will focus on the first topic for discussion. The second workshop will be held on May 18, 2016 and will focus on the second topic for discussion. The third Workshop will be held on June 15, 2016 and will focus on the third topic for discussion. LSC will consider accommodating panelists who are unable to attend in person electronically via telephone or webinar. LSC will publish additional details regarding the time, webinar and call-in information, and agenda for each Workshop at least one week prior to the scheduled date of the Workshop.

VI. Composition of Workshops

The Workshops will be in the form of a panel discussion consisting of Committee members, LSC staff members, Office of Inspector General (OIG) staff members, and a select number of interested stakeholders selected by LSC. LSC will select participants for each workshop to participate as members of the Workshop panel. LSC will seek to select panelists to create diversity in terms of organizational size, service area and geographic location, funding sources, and percentage of funding received from LSC. Some participants may be selected to participate in more than one workshop. Interested persons should submit an expression of interest according to the instructions outlined below.

LSC is inviting expressions of interest in participating on Workshop panels from its grantees and other stakeholders with relevant experience. LSC is particularly interested receiving expressions of interest from Executive Directors and accounting and finance personnel of LSC funding recipients. Panelists should have experience in handling procurements for LSC funding recipients and applying LSC's cost standards and procedures. Additionally, LSC is interested in receiving expressions of interest from other

fundors of civil legal aid programs, including private foundations and federal, state, and local governments, to participate in the first workshop. Persons interested in participating as panelists should submit expressions of interest including, at a minimum: (1) a brief biographical statement, (2) a brief statement of relevant experience in applying and/or implementing the requirements of part 1630 and the PAMM, and (3) the specific workshop(s) in which the prospective panelist is interested in attending.

Expressions of interest in participating as a panelist should be submitted, in writing, to Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation; via e-mail to sdavis@lsc.gov; via fax to 202-337- 6519; or by mail or courier/hand delivery 3333 K Street, NW, Washington, DC 20007. Expressions of interest must be received by LSC by 5:30 pm EST on the date provided in the DATES section. LSC will select panelists shortly after the deadline and will inform all those who expressed interest whether or not they have been selected.

Prior to each meeting, those selected as panelists will be asked to register with LSC to ensure that sufficient arrangements can be made for their participation. Panelists are expected to cover their own expenses (travel, lodging, etc.). LSC may consider providing financial assistance to a panelist for whom travel costs would represent a significant hardship and barrier to participation. Any such person should so note in his/her expression of interest for LSC's consideration. LSC will also consider allowing interested applicants who cannot attend the Workshops in person to participate on the panel remotely.

VII. Public Participation: Panelists and Open Comment

In addition to the panel, LSC encourages observation and participation by all interested individuals and organizations. The Workshops will be open to public

observation, and portions of the Workshop will be open for public comment from in-person, webinar, and telephone participants. The meeting agenda will include opportunities for individuals in attendance who are not members of the panel to participate in person, by webinar, or via telephone, as well as incorporating previously submitted written comments by those unable to attend. LSC will transcribe the meetings and make the webinar available on its website.

Through this notice, LSC is also opening a written comment period. LSC welcomes written comments during the comment period and will consider the comments received in the rulemaking process. Written comments received prior to the Workshops may be addressed in the Workshops. Written comments are requested by the following dates:

1. April 8, 2016 for LSC to consider including in the first Workshop discussion.
2. May 6, 2016 for LSC to consider including in the second Workshop discussion.
3. June 3, 2016 for LSC to consider including in the third Workshop discussion.

All other written comments must be received by July 15, 2016. Written comments submitted to LSC must be in .pdf format (if submitted electronically) and sent to sdavis@lsc.gov. If delivered via facsimile, mail, or courier/hand delivery, please address the comments to: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K St, NW, Washington, D.C. 20007; (202) 337-6519 (fax).

LSC will not consider comments sent by any method or received after the end of the comment period.

VIII. Important Notes

Information received in response to this Notice of Rulemaking Workshops and

Request for Expressions of Interest in Participation in the Rulemaking Workshops may be published or summarized by LSC without acknowledgement of or permission from you or your organization. Furthermore, your responses may be releasable to the public under the LSC's adoption of the Freedom of Information Act (FOIA), 42 U.S.C. 2996d, and the LSC FOIA regulation, 45 CFR part 1602. LSC, at its discretion, may request individual commenters to elaborate on information in their written comments.

Dated: February 19, 2016.

Stefanie K. Davis

Assistant General Counsel

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