

Public Hearing Questions for
State Protest Committee
Created by Section 4-56-103, *Tennessee Code Annotated*
(Sunset termination June 30, 2014)

1. Provide a brief introduction to the committee including information about its purpose, statutory duties, staff, and administrative attachment.

❖ Purpose

The state protest committee is established in Tenn. Code Ann. § 4-56-103. That statute designates the commissioners of the departments of finance and administration and general services, and the state treasurer as the three protest committee members. Tenn. Code Ann. § 12-3-514 establishes the process for proposers to appeal the chief procurement officer's determination of a protest arising out of a Tenn. Code Ann. Title 12, Chapter 3 procurement process to the protest committee.

❖ Statutory Duties

The protest process begins at the central procurement office level with a filing with the chief procurement officer. If the protesting party disagrees with the chief procurement officer's decision, the protesting party has the option of appealing to the state protest committee for consideration of its protest. The state protest committee is by statute, an appellate body, with functions directly related to individual procurement protests.

❖ Staff

The department of finance and administration, through its office of general counsel provides administrative support to the state protest committee by coordinating the scheduling and notice of meetings, and distributing the protest documentary record.

❖ Administrative Attachment

The committee is not expressly administratively attached to a state department, but the chair of the committee is the commissioner of the department of finance and administration, so that department provides administrative support.

2. Provide a list of current members of the committee. How many times did the committee meet during fiscal year 2012 and to date for 2013? How many members were present at each meeting? Other than committee members, who attends the meetings?

The current members of the committee are the commissioner of the department of finance and administration (Larry B. Martin), the commissioner of the department of general services (Robert E. Oglesby), and the state treasurer (David H. Lillard, Jr.), or their designees.

Fiscal year 2012: The committee was established as of April 1, 2012. There were no meetings of the committee during FY 2012.

Fiscal year 2013: There were six (6) meetings of the committee during FY 2013. All members were present at each meeting.

Fiscal year 2014: As of November 1, 2013, there have been two meetings of the committee during the fiscal year beginning July 1, 2013.

All members were present at each meeting. In addition to the protesting party, representatives from the central procurement office attend and participate in the meeting. State staff members who work with individual committee members may also be present. The meetings are open to the public.

3. Is the committee subject to Sunshine law requirements (Section 8-44-101 et seq., *Tennessee Code Annotated*) for public notice of meetings, prompt and full recording of minutes, and public access to minutes? If so, what procedures does the committee have for informing the public of its meetings and making its minutes available to the public?

The committee is subject to the Sunshine law requirements and as such, posts public notices of each meeting in several public buildings. In addition, the public notices are posted on the state's website. The committee meetings are audio recorded and a court reporter is also usually present to prepare a meeting transcript. The minutes and meeting recordings are available for public inspection in the department of finance and administration office of general counsel.

4. What were the committee's revenues (by source) and expenditures (by object) for fiscal year 2012 and to date for 2013? Does the committee carry a fund balance and, if so, what is the total of that fund balance? If expenditures exceeded revenues, and the committee does not carry a fund balance, what was the source of the revenue for the excess expenditures?

Not applicable to the state protest committee.

5. Describe the nature and extent of the committee's activities and any major accomplishments for the past two years. Did the committee adopt formal procedures governing its operations as required at Section 4-56-103(a)(2), *Tennessee Code Annotated*?

The state protest committee is not a policy making body. The committee is only convened when a protest is appealed from a protest decision by the chief procurement officer or when the chief procurement officer requests that the stay of award in a pending protest be lifted. As indicated above, there were six meetings of the protest committee during FY 2013, one of which was the inaugural procedural meeting described below, with the remaining five (5) meetings being appeals from a protest decision by the chief procurement officer.

The committee held its inaugural meeting October 31, 2012 to discuss and establish procedures for its operations. The committee elected officers, with the commissioner of the department of finance and administration being elected chair, the state treasurer elected vice-chair, and the commissioner of the department of general services elected secretary. Minutes of the meeting recorded the committee's actions.

6. How many appeals, if any, have been resolved by the state procurement officer without having to be referred to the committee during fiscal year 2012 and to date for 2013?

The central procurement office has advised us that one protest was resolved by that office in September 2013 without appeal to the committee. Otherwise, no protest was heard during FY 2012 or 2013 that was not also heard by the state protest committee.

7. How many appeals, if any, have been heard by the committee during fiscal year 2012 and to date for 2013? How many were upheld and how many were denied?

There were no appeals to the committee during FY 2012. There were five (5) appeals heard in FY 2013 and all of the five were denied. During the fiscal year beginning July 1, 2013, the committee heard one appeal which was denied in part and remanded to the Central Procurement Office in part.

8. How many decisions of the committee, if any, have been appealed to Chancery Court during fiscal year 2012 and to date for 2013?

To date, none of the committee decisions have been appealed to Chancery Court.

9. What sanctions, if any, have been imposed by the procurement officer or the protest committee for violation of the provisions of Section 4-56-103(c)(2), *Tennessee Code Annotated*?

To date, no sanctions have been imposed.

10. How does the committee ensure that its members and staff are operating in an impartial manner and that there are no conflicts of interest? If the committee operates under a formal conflict of interest policy, please attach a copy of that policy.

Tenn.Code. Ann. 4-56-103(b)(2) prohibits any committee member whose department is the requestor of the procurement being protested or resulting contract from hearing the protest. In the event that a committee member's department is the requestor of the procurement/resulting contract, a designee from outside that department serves in that committee member's place.

11. Describe any items related to the committee that require legislative attention and your proposed legislative changes.

None.

12. Should the committee be continued? To what extent and in what ways would the absence of the committee affect the public health, safety, and welfare?

In addition to the chief procurement officer level review of proposer protests, the state protest committee allows the state to become aware of formal vendor concerns related to a specific procurement and to take appropriate corrective action prior to litigation, if it appears that the concerns have validity. Failing to continue the state protest committee means that vendor concerns would be more likely to be heard in court, creating unnecessary expense and delay if a concern could have been alleviated early in the process.