

# REPORT DIGEST

## MANAGEMENT AUDIT

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### STATE'S MULTI-YEAR BEVERAGE VENDING AND POURING CONTRACT

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State of Illinois  
Office of the Auditor General

**WILLIAM G. HOLLAND**  
AUDITOR GENERAL

To obtain a copy of the report contact:  
Office of the Auditor General  
Hes Park Plaza  
740 East Ash Street  
Springfield, IL 62703  
(217) 782-6046 or  
TTY: (888) 261-2887

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## SYNOPSIS

House Resolution Number 862 directed the Auditor General to conduct an audit of the procurement practices in connection with the State's multi-year Beverage Vending and Pouring contract. Two companies, Coca-Cola Enterprises Bottling Companies (Coke) and PepsiAmericas, Inc. (Pepsi), submitted proposals. The contract was awarded to Pepsi on July 27, 2007.

Pepsi's technical proposal received an average score of 383 points. Coke's technical proposal received an average score of 341 points which was below the 350 point minimum established in the RFP. As a result, Coke's proposal was rejected. Coke was **not notified** that its proposal did not meet the 350 point requirement until October 26, 2007, **six months after** the price proposals were opened and **after** Coke was told they would be asked to submit a best and final offer.

We noted a number of deficiencies in the evaluation process that could have adversely affected both Coke's and Pepsi's technical proposal scoring. Had these instances not occurred, Coke's score may have been above the 350 points needed and its technical proposal would not have been rejected. Deficiencies in the procurement process included the following:

- Technical proposal scores varied greatly among the evaluation team members. For example, with 500 points being the maximum score possible, the lowest overall score for Coke was 206 while the highest score was 435. Pepsi's scores ranged from 298 to 453. The evaluation team **did not meet** to discuss these major differences in scores as recommended by CMS Evaluation Guidelines.
- Notes to support the scores given **were not provided** by most evaluation team members, which is contrary to CMS Evaluation Guidelines.
- Reference checks, which were conducted by two evaluation team members from the Department of Revenue, were not supported by adequate documentation. The documentation that was provided showed that reference scores **were lowered for both vendors with no indication** of why the scores were lowered. Also, a specific question worth 10 points was not asked of the references but scores were still designated with no indication of why the assigned points were given.
- Evaluation committee **meetings were not adequately documented** to show who attended, what specifically was discussed, and what instructions were given to the evaluation team.
- The **vendor presentations were also not adequately documented** to show who attended or the discussions that took place during the presentations, such as questions asked by the evaluation team and the vendors.



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## REPORT CONCLUSIONS

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Our examination of the Beverage Vending and Pouring procurement identified a number of deficiencies in the procurement process, including noncompliance with Procurement Rules and CMS Evaluation Guidelines. These deficiencies included the following:

- Technical proposal scores varied greatly among the evaluation team members. For example, with 500 points being the maximum score possible, the lowest overall score for Coke was 206 while the highest score was 435. Pepsi's scores ranged from 298 to 453. The evaluation team **did not meet** to discuss these major differences in scores as recommended by CMS Evaluation Guidelines.
- Notes to support the scores given **were not provided** by most evaluation team members, which is contrary to CMS Evaluation Guidelines.
- Reference checks, which were conducted by two evaluation team members from the Department of Revenue, were not supported by adequate documentation. The documentation that was provided showed that reference scores **were lowered for both vendors with no indication** of why the scores were lowered. Also, a specific question worth 10 points was not asked of the references but scores were still designated with no indication of why the assigned points were given.
- Evaluation committee **meetings were not adequately documented** to show who attended, what specifically was discussed, and what instructions were given to the evaluation team.
- The **vendor presentations were also not adequately documented** to show who attended or the discussions that took place during the presentations, such as questions asked by the evaluation team and the vendors.

Because of these deficiencies and others discussed in more detail in the report, we are unable to conclude whether or not this procurement was in the State's best interest.

### Background

On December 6, 2006, the Illinois Department of Revenue posted the Beverage Vending and Pouring Program Request for Proposals. Two companies, Coca-Cola Enterprises Bottling Companies (Coke) and PepsiAmericas, Inc. (Pepsi), submitted proposals. A nine-person evaluation committee, which included members from State agencies, universities, and

the Illinois Committee of Blind Vendors, was established to evaluate the responses to the RFP. The contract was awarded to Pepsi on July 27, 2007. Coke protested the award to Pepsi and their protest was denied on October 26, 2007.

### **Evaluation Process**

The scoring of technical proposals was completed April 16, 2007. Pepsi's average score was 383 while Coke's average score was 341. The Request for Proposals specified that technical proposals that did not receive a minimum of 350 points would be rejected. Officials at Revenue, however, did not initially realize that Coke's score did not meet the 350 point requirement. As a result, pricing proposals for both Coke and Pepsi were opened on April 19, 2007.

After the pricing proposals were opened, separate conference calls with both Coke and Pepsi were held on April 30, 2007. An e-mail sent by Revenue to the vendors prior to the conference calls noted that vendors would be asked clarifying questions and Revenue was to discuss how they planned to move forward. The e-mail also noted that at some point the vendors would be asked for best and final pricing.

According to Revenue officials, Revenue's General Counsel was the first to notice that Coke did not meet the 350 point technical proposal requirement. This determination was made after the pricing proposals were opened and after the April 30, 2007, conference calls with both vendors.

On May 29, 2007, the project coordinator sent an e-mail to the other members of the evaluation committee. The e-mail stated that upon review by the Department of Central Management Services (CMS) legal and procurement, it was found that Coke failed to receive the necessary technical points to move to the pricing round. The e-mail further stated that there was discussion of cancelling and reposting the RFP but it was determined that this was not necessary. The e-mail concluded that the only choice was to eliminate Coke from consideration. "At this point, Coke only knows that we are delayed. Once we have Pepsi's best and final offer, the situation will be explained to Coke. The situation is not ideal." However, the situation was not explained to Coke until nearly five months later when Coke's protest was denied.

We noted a number of deficiencies in the evaluation process that could have adversely affected both Coke's and Pepsi's technical proposal scoring. Had these instances not occurred, Coke's score may have been above the 350 points needed and its technical proposal would not have been rejected.

The nine members of the evaluation team individually scored Coke's and Pepsi's technical proposals. We noted several issues related to the scoring of the technical proposals:

- The evaluation team did not meet to discuss major differences in scores as recommended by CMS Evaluation Guidelines. The individual scores for both Coke and Pepsi varied greatly. With 500 points being the maximum score possible, the lowest overall score for Coke was 206 while the highest score was 435. The lowest overall score for Pepsi was 298 and the highest score was 453. Additionally, scores for individual subcategories within the evaluation tool also varied greatly. For example, the revenue growth subcategory for Coke ranged from a score of zero to a perfect 75.
- The Department did not determine if two evaluation team members intended to leave certain elements on their evaluation tools blank but instead calculated a zero for all blanks even if evaluators may not have intended to leave the elements blank.
- Contrary to CMS Evaluation Guidelines, only two of the nine evaluators provided notes or comments with their scoring instruments. Without this type of documentation, it is difficult to determine reasons for discrepancies in scoring.

Scoring for references was based on responses to the reference interviews, which were conducted in late March/early April 2007 by two members of the evaluation team both from the Department of Revenue. In the evaluation scoring tool, references were worth 75 points of the total 500 points possible. During our review of references, we noted issues with the process used and with the documentation of references.

- Points were assigned for one reference subfactor **even though the question was never asked of the references**. One of the five reference elements, related to similarity of staff, on the evaluation tool did not correlate with any of the questions on the reference questionnaire. We asked a Revenue official how it was determined whether the same staff were used if the reference was never asked. The Revenue official said that they could tell from the bids that none of the people were the same. Since no questions were asked related to similarity of staff, it is questionable how zero (of 10 possible) points were awarded for Coke and four points were awarded for Pepsi for this subfactor. It is further questioned why Coke received a zero and Pepsi a four, if none of the same people were being used with either vendor.
- The procurement file did not contain any documentation of the reference checks performed or how reference scores were

developed. Documentation that was later provided was incomplete.

- Reference scores were lowered for both vendors **with no indication of why the scores were lowered**. The documentation on how the scores were formulated was minimal. The documentation showed scores that were initially higher for both of the vendors. However, scores were then revised and were lowered for both vendors. Pepsi’s total score was lowered 9 points from 64 to 55. Coke’s overall score was lowered 5 points from 55 to 50. One of the Revenue officials that scored the references stated that the final reference scores reflected the consensus scores of the two evaluators. However, the only documentation provided was a one sentence e-mail between the evaluators which accompanied the revised scores. The e-mail stated “I made the edits per our conversation.” There was no additional documentation to support why the scores were lowered. There was also no documentation to indicate why a particular score was formulated for any of the scores listed.
- The two Department of Revenue evaluation team members that performed the reference checks generally gave lower scores on the technical proposals compared to the other evaluation team members. The evaluation team members that performed the reference checks ranked 8<sup>th</sup> and 9<sup>th</sup> respectively in scoring Coke’s technical proposal. They ranked 5<sup>th</sup> and 8<sup>th</sup> in scoring Pepsi’s technical proposal.

Regarding the procurement process, we also noted the following:

- The technical proposals submitted by Coke and Pepsi **both lacked key information**, such as a staffing plan and a list of product offerings, that was to be included in the offers.
- The Department did not provide potential vendors with an adequate amount of time to review the Beverage Vending and Pouring Program RFP prior to holding the vendor conference.
- The procurement file did not contain adequate records of evaluation committee meetings or the vendor presentations. The procurement file also lacked a record of who attended the vendor presentations. At least one evaluation team member did not attend the vendor presentations and did not receive any of the materials provided by the vendors at the presentations. Because both proposals were lacking several required elements, attendance at the vendor presentations was crucial in evaluating the proposals.

- Not all of the evaluation team members were aware of the 350 point technical proposal requirement that vendors needed to attain to be considered for pricing. We interviewed all nine members of the evaluation team and asked if they were aware of the 350 point requirement. Three evaluators definitively stated that they were aware of the requirement. The remaining six evaluators were either not aware of the requirement, had forgotten about the requirement, were not thinking about the requirement, or were unsure if they were aware of the requirement.

## Protests

On August 3, 2007, Coke filed a formal protest of the contract award to Pepsi. Coke's protest was based on their belief that because their questions and clarifications were never addressed, the award was not in the State's best interest as it did not avail itself of a full competitive process. On October 26, 2007, the Department of Revenue denied Coke's protest.

In the denial letter, Revenue hypothesized that if Coke's questions related to items listed in its protest letter, those items would not have affected Coke's technical proposal but only its price proposal. Revenue further concluded that Coke's claim that Revenue never answered its questions is without merit since Coke's questions pertained to its pricing proposal and Coke did not advance to the pricing phase. However, Revenue's conclusion that the issues raised in Coke's protest letter would not have impacted its technical proposal is erroneous as some questions clearly would have impacted the technical proposal.

Revenue **did not determine whether questions were asked** and, if so, whether those questions were answered. Instead, in its denial letter, Revenue concluded "...assuming that the questions that Coke raised in the protest are the same as the questions Coke raised in the phone call, those questions relate to Coke's Price Proposal and not its Technical Proposal. Coke's Technical Proposal score fell below the minimum to advance to the Price Proposal phase and Coke was eliminated from the RFP competition. Therefore, the questions raised by Coke, Revenue's alleged failure to respond to those questions and the merits of Coke's Pricing Proposal had no bearing on Coke's elimination...."

Revenue further stated in its denial letter, "It would be unfair to the other vendor that submitted a complete and timely proposal (a 'final offer') within the proper time frame, if Revenue allowed Coke to submit an incomplete proposal on February 23<sup>rd</sup> and then allowed Coke additional time to cure any defects that plagued Coke's February 23<sup>rd</sup> incomplete proposal." However, **both** vendors' proposals lacked key information that

was required to be submitted. Because of the key information lacking from both proposals, Revenue would have benefited from requesting both vendors to clarify their offers and provide the missing information.

Earlier in the process, a separate vendor also filed a protest. On December 13, 2006, the Nedlog Company of Wheeling, IL (Nedlog) filed a formal protest against the Beverage Vending and Pouring Program RFP. The Department of Revenue did not respond to Nedlog's protest until August 1, 2007, **over seven months later**, when the protest was denied. The response to the protest came after the contract was awarded which is in direct violation of the Standard Procurement Rules. Furthermore, the Department's denial did not fully address Nedlog's claim but instead focused on a second issue that was not raised by Nedlog in its protest.

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## BACKGROUND

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On March 6, 2008, the Illinois House of Representatives adopted House Resolution Number 862 which directed the Auditor General to conduct an audit of the procurement practices in connection with the State's multi-year Beverage Vending and Pouring contract awarded to PepsiAmericas, Inc., to determine whether good procurement practices were exercised in accordance with applicable State laws and rules.

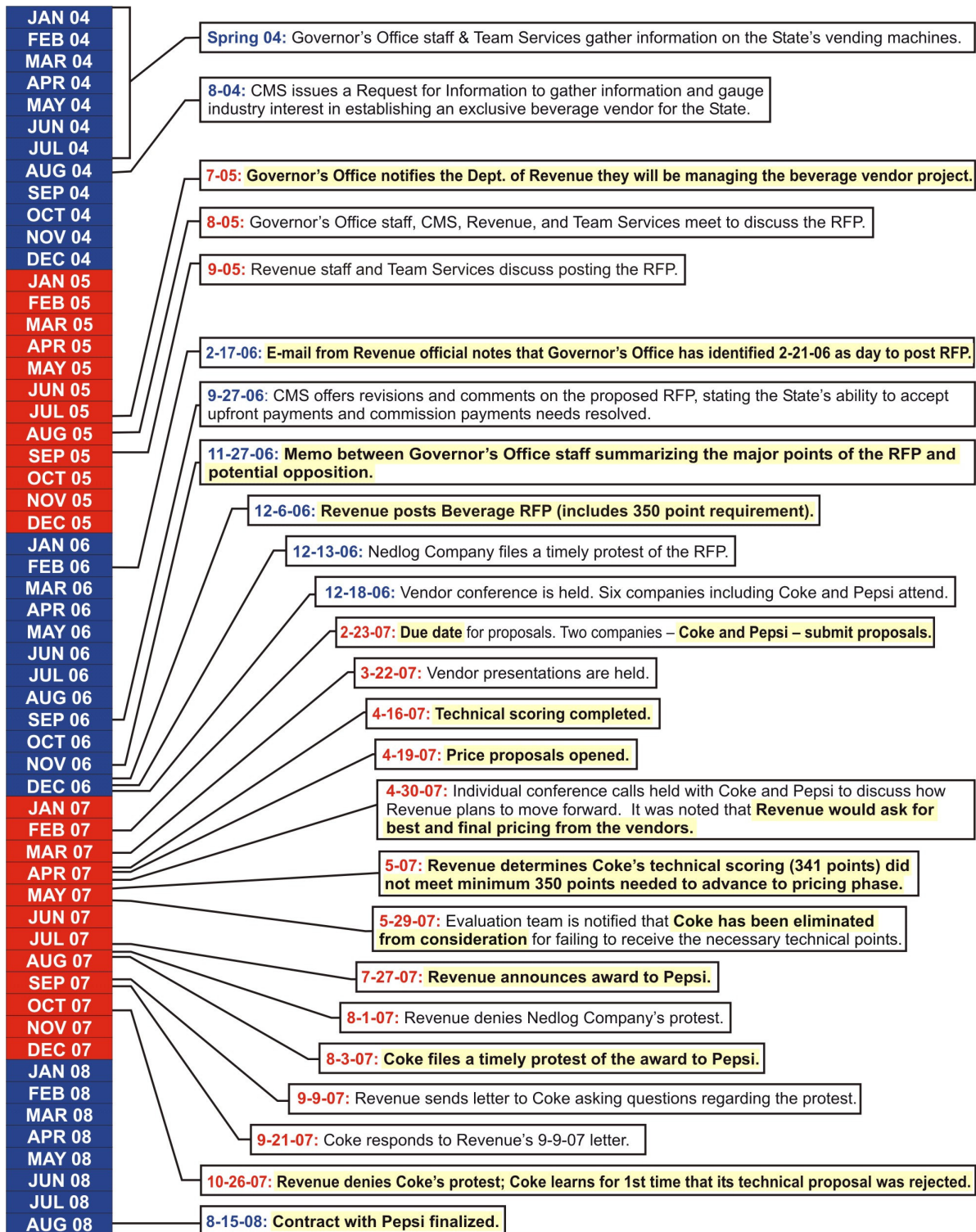
The Resolution specifically authorizes the Auditor General to review, determine, and publicly report on whether the Chief Procurement Officer's activities and decisions in connection with this procurement were in the State's best interest.

On December 6, 2006, the Illinois Department of Revenue posted the Beverage Vending and Pouring Program Request for Proposals (RFP). Two companies, Coca-Cola Enterprises Bottling Companies (Coke) and PepsiAmericas, Inc. (Pepsi), submitted proposals. A nine-person evaluation committee, which included members from State agencies, universities, and the Illinois Committee of Blind Vendors, was established to evaluate the responses to the RFP. On July 27, 2007, Revenue announced the award of the contract to Pepsi.

Seven days later, on August 3, 2007, Coke protested the award of the contract to Pepsi. Coke's protest letter stated, "Our protest is based on our belief that because our questions and clarifications were never addressed, the award to our competitor is not in the state's best interests, as it did not avail itself of a full competitive process." On October 26, 2007, Revenue formally denied Coke's protest. Digest Exhibit 1 provides an overall timeline of the procurement process. (pages 5-9)



### Digest Exhibit 1 TIMELINE OF PROCUREMENT PROCESS



Source: OAG summary of documents from the Department of Revenue's procurement file.

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## VENDOR CONFERENCE

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**The Department did not provide potential vendors with an adequate amount of time to review the RFP prior to holding the vendor conference.**

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The Department did not provide potential vendors with an adequate amount of time to review the Beverage Vending and Pouring Program RFP prior to holding the vendor conference. According to the National Association of State Procurement Officials' *Issues in Public Purchasing* (p.37), the pre-bid conference should be scheduled to permit bidders/proposers adequate time to read and digest the solicitation, **a minimum of 10 working days**. The Department issued the RFP on Wednesday, December 6, 2006, and held a vendor conference on Monday, December 18, 2006, which was eight working days after the issuance of the RFP.

Due to the complexity and unique nature of this RFP, it was even more important that vendors be given an adequate amount of time to review the RFP prior to the vendor conference. Previous drafts of the Beverage Vending and Pouring RFP included timelines for holding the vendor conference. Three previous drafts of the RFP all had 24 calendar days and 17 working days between the scheduled issuance of the RFP and the vendor conference. (pages 15-16)

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## OFFERS RECEIVED

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Coke and Pepsi submitted offers by the February 23, 2007, due date. The offers consisted of a technical proposal, a price proposal, and required forms and certifications. The RFP required that the price proposal be submitted in a separate sealed envelope.

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**The technical proposals submitted by Coke and Pepsi both lacked key information.**

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The RFP was very specific as to what was to be included in the technical proposal, however, **the technical proposals submitted by Coke and Pepsi both lacked key information** that was to be included. Basic information such as a staffing plan and a list of product offerings was not included in either offer. (pages 17-19)

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## VENDOR PRESENTATIONS AND TEAM MEETINGS

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The procurement file did not contain adequate records of the vendor presentations. Both Coke and Pepsi made vendor presentations on March 22, 2007. The procurement file contained a list sent to the vendors of topics to be covered during the presentations and copies of the PowerPoint presentations given by the vendors. However, the procurement file did not contain records to indicate the discussions that took place during the presentations, such as questions asked by the evaluation team and questions asked by the vendors. *Issues in Public Purchasing* (p.43), published by the National Association of State Procurement Officials, notes that responsibilities of an evaluation

committee include keeping “...accurate records of all meetings, conferences and negotiations.”

The procurement file also lacked a record of who attended the presentations. Evaluation guidelines issued by CMS state that “...committee members must attend all meetings of the committee, including interviews with the proposers if conducted...” Based on interviews with the evaluation team members, at least one evaluation team member did not attend the vendor presentations. The team member said he did not attend the presentations and did not receive any of the materials provided by the vendors at the presentations. Because both proposals were lacking several required elements, attendance at the vendor presentations was crucial in evaluating the proposals.

The procurement file did not contain adequate records of evaluation committee meetings. The evaluation committee met on at least two occasions prior to the vendor presentations and at least once following the vendor presentations after the price proposals were opened. The procurement file contained an agenda for one of the meetings but did not contain any additional notes to indicate what specifically was discussed or what instructions were given to the evaluation team. There also was no record of who attended the meetings so it is unclear if all of the members of the evaluation committee participated. (pages 20-23)

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## SCORING THE PROPOSALS

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The nine members of the evaluation team individually scored Coke’s and Pepsi’s technical proposals. The evaluation team did not meet to discuss major differences in scores as recommended by CMS Evaluation Guidelines. CMS Guidelines state, “Any major differences in scores should be discussed to determine if an error was made; or an evaluator missed or misinterpreted a vendor’s proposal.” The individual scores for both Coke and Pepsi varied greatly. With 500 points being the maximum score possible, the lowest overall score for Coke was 206 while the highest score was 435. The lowest overall score for Pepsi was 298 and the highest score was 453.

Additionally, scores for individual subcategories within the evaluation tool also varied greatly. For example, the revenue growth subcategory for Coke ranged from a score of zero to a perfect 75. For Pepsi, the revenue growth subcategory ranged from a low score of 20 to a perfect 75.

The Department did not determine if two evaluation team members intended to leave certain elements on their evaluation tools blank. One evaluation team member did not provide a score for either Pepsi or Coke for an element under the revenue growth subcategory. Another evaluation

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**One evaluation team member did not attend the vendor presentations and did not receive materials provided at the presentations.**

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**The evaluation team did not meet to discuss major differences in scores as recommended by CMS Evaluation Guidelines.**

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**For one subcategory, scores for Coke ranged from zero points to a perfect 75 points.**

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team member left two elements blank on Coke’s evaluation and two different elements blank on Pepsi’s evaluation.

Only two of the nine evaluators provided notes or comments with their scoring instruments. Without this type of documentation, it is difficult to determine reasons for discrepancies in scoring. CMS Guidelines state, “Rating points must be supported by thorough and appropriate comments. The points given must be consistent with the comments. General statements such as ‘good proposal’ without something to qualify the statement (i.e., why it is a good proposal) are not acceptable. Evaluations, which are not accompanied by thorough supporting comments, should be returned to the evaluator for further consideration.” The Department did not return the evaluation sheets for members to insert comments to support their scores. (pages 23-26)

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## REFERENCES

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The RFP required vendors to provide references from established firms or government agencies that could attest to the vendor’s experience and ability to perform the contract subject of the RFP. In the evaluation scoring tool, references were worth 75 points of the total 500 points possible.

The project coordinator also coordinated the reference checks and asked for volunteers to participate in calling references. However, **only one other evaluation team member, also from the Department of Revenue**, participated in the calls. The reference calls were conducted in late March/early April 2007, after the vendor presentations and **after** the majority of the evaluation scoring tools had been completed and submitted to the project coordinator.

### Reference Questionnaire

The reference questionnaire used by Revenue for this procurement did not follow a template issued by CMS. As a result, one of the five reference elements on the evaluation tool did not correlate with any of the questions on the reference questionnaire. Based on the reference questionnaire, references were not asked if the vendor’s same people were used at the reference location.

We asked a Revenue official how it was determined whether the same staff were used if the reference was never asked. The Revenue official said that they could tell from the bids that none of the people were the same.

The CMS guidelines specifically state to ask the reference contact if they have had any of the work performed by any of the vendor’s actual

proposed staff. Since no questions were asked related to similarity of staff, it is questionable how zero (of 10 possible) points were awarded for Coke and four points were awarded for Pepsi for this subfactor. It is further questioned why Coke received a zero and Pepsi a four, if none of the same people were being used with either vendor. The Revenue official was unsure why there was a difference between the two scores.

### **Reference Documentation and Scoring**

The procurement file did not contain any documentation of the reference checks performed or how reference scores were developed. After examining the procurement file, we requested documentation related to references. The Department initially could not provide documentation for four of the six reference inquiries. The Department provided two of the three reference inquiries for Coke. The Department could not provide any of the reference inquiries for Pepsi.

After repeated requests, the Department provided handwritten reference inquiries for three additional reference checks including the missing Coke reference and two Pepsi references. The documentation for the missing Coke reference did not contain the questions asked but included only handwritten notes. The Department was unable to provide any documentation related to the third Pepsi reference. The utilization of references is part of the evaluation process and the evaluation process must be documented in the procurement file.

In addition, documentation on how the scores were formulated was minimal. The documentation showed scores that were initially higher for both of the vendors. However, **scores were then revised and were lowered for both vendors.** Digest Exhibit 2 shows the original and revised scoring for each of the reference elements in the evaluation tool. Pepsi's total score was lowered 9 points from 64 to 55. Coke's overall score was lowered 5 points from 55 to 50.

We asked the Department why the scores were lowered. One of the two Revenue officials that scored the references stated that the final reference scores reflected the consensus scores of the two evaluators. However, the only documentation provided was an April 13, 2007, e-mail between the evaluators which accompanied the revised scores. The e-mail stated, "I made the edits per our conversation." **There was no additional documentation to support why the scores were lowered.** There was also no documentation to indicate why a particular score was formulated for any of the scores listed.

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**The procurement file did not contain any documentation of the reference checks performed or how scores were developed.**

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**Reference scores were lowered with no explanation of why the scores were lowered.**

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Digest Exhibit 2 <b>SCORING FOR REFERENCES – ORIGINAL VS. REVISED</b>					
Evaluator Considerations in Arriving at Score	Maximum Points	Pepsi		Coke	
		Original Score	Revised Score	Original Score	Revised Score
How does the size of the reference compare to the State?	10	5	4	7	6
Are the services the client requires similar to those required by this RFP? Were they pleased with the services received?	10	10	7	8	8
Did the client require and receive similar staff skills?	10	7	5	10	6
How many of the Vendor's same key people that were used at the reference will be used on the State's engagement?	10	7	4	0	0
Points awarded for reference quality will be determined by responses to the Reference Questionnaire. One score will be calculated for each vendor, and all evaluators will insert that score into their respective scoring sheets.	35	35	35	30	30
<b>Total Score</b>	<b>75</b>	<b>64</b>	<b>55</b>	<b>55</b>	<b>50</b>
Source: Department of Revenue reference scoring sheets.					

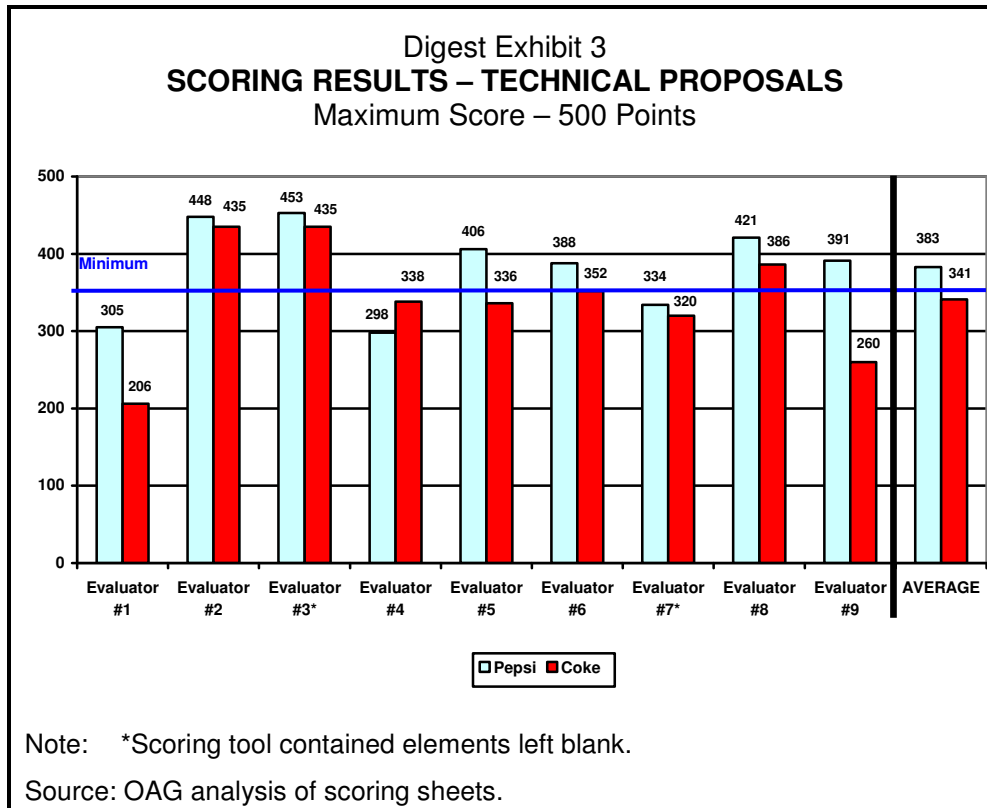
After the reference scores were determined by the two evaluators, those scores were inserted into the technical scoring instrument for all of the evaluation team members. Neither vendor received an exceptional score for their reference checks. The two Department of Revenue evaluation team members that performed the reference checks generally gave lower scores on the technical proposals compared to the other evaluation team members. The evaluation team members that performed the reference checks ranked 8<sup>th</sup> and 9<sup>th</sup> respectively in scoring Coke's technical proposal. They ranked 5<sup>th</sup> and 8<sup>th</sup> in scoring Pepsi's technical proposal. (pages 26-30)

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## OPENING OF PRICE PROPOSALS

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The scoring of technical proposals was completed April 16, 2007. Digest Exhibit 3 shows the compiled scores from the nine evaluators and the average scores for both Coke and Pepsi. Pepsi's average score was 383 while Coke's average score was 341.



The pricing proposals for both Coke and Pepsi were opened three days later on April 19, 2007. After the pricing proposals were opened, separate conference calls with both Coke and Pepsi were held on April 30, 2007. An e-mail sent by Revenue to the vendors prior to the conference calls noted that vendors would be asked clarifying questions and Revenue was to discuss how they planned to move forward. The e-mail also noted that at some point the vendors would be asked for best and final pricing.

The RFP specified that vendor offers that did not attain a minimum of 350 points on their technical proposals “will be rejected.” Officials at Revenue did not initially realize that Coke had not received the minimum of 350 points on the technical proposals required to proceed to the pricing phase. According to Revenue officials, Revenue’s General Counsel was the first to notice that Coke did not meet the 350 point technical proposal requirement. This determination was made after the pricing proposals were opened and after the April 30, 2007, conference call with both vendors.

On May 29, 2007, the project coordinator sent an e-mail to the other members of the evaluation committee. The e-mail stated that upon review by CMS legal and procurement, it was found that Coke failed to receive the necessary technical points to move to the pricing round. The e-mail further stated that there was discussion of cancelling and reposting the RFP but it was determined that this was not necessary. The e-mail

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**Revenue held a conference call with Coke officials to discuss pricing prior to rejecting Coke’s technical proposal.**

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concluded that the only choice was to eliminate Coke from consideration. “At this point, Coke only knows that we are delayed. Once we have Pepsi’s best and final offer, the situation will be explained to Coke. The situation is not ideal.” However, the situation was not explained to Coke until nearly five months later when Coke’s protest was denied.

### **350 Point Requirement**

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**Not all of the evaluation team members were aware of the 350 point technical proposal requirement that vendors needed to attain to be considered for pricing.**

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Not all of the evaluation team members were aware of the 350 point technical proposal requirement that vendors needed to attain to be considered for pricing. We asked the Department if it was ever communicated to the team members that potential vendors needed to score at least 350 points on the technical proposal in order to be considered for pricing. A Department official said that the 350 point requirement was never directly discussed, but that team members should have been aware of the requirement because it was noted in the RFP.

We interviewed all nine members of the evaluation team and asked each of the evaluation team members if they were aware that the vendors needed to score at least 350 points on the technical proposal to be considered for pricing. Three evaluators definitively answered that they were aware of the requirement. The remaining six evaluators were either not aware of the requirement, had forgotten about the requirement, were not thinking about the requirement, or were unsure if they were aware of the requirement. (pages 30-33)

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### **NEDLOG PROTEST**

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On December 13, 2006, the Nedlog Company of Wheeling, IL (Nedlog) filed a formal protest against the Beverage Vending and Pouring Program RFP. Nedlog stated in the protest letter that the RFP is in direct violation of the Illinois Procurement Code. Nedlog cited part of 30 ILCS 500/20-50 which states:

“A solicitation or specification for a contract...may not require, stipulate, suggest, or encourage a monetary or other financial contribution or donation as an explicit or implied term or condition for awarding or completing the contract.”

Nedlog stated that the RFP is replete with language that is in direct conflict with this part of the Procurement Code. Nedlog also stated in the protest letter: “In order to maximize competition in any successor RFPs, the places of performance as well as the beverage categories that are bundled in the subject RFP should be unbundled and solicited separately.”



The RFP was awarded on July 27, 2007. Attorneys for Nedlog emailed CMS on August 1, 2007, noting that the State had announced an award for the Beverage Vending Program but Nedlog had not received a response to their protest. That same day, over seven months after Nedlog’s protest, Revenue formally denied Nedlog’s protest. The Department’s denial did not fully address Nedlog’s claim but instead focused on a second issue that was not raised by Nedlog in its protest.

The Administrative Code – Standard Procurement Rules state: “When a protest has been timely filed and before an award has been made, the Procurement Officer shall make no award of the contract until the protest has been resolved.” (44 Ill. Adm. Code 1.5550(d)) The Department of Revenue did not respond to Nedlog’s protest until after the contract was awarded which is in direct violation of the Standard Procurement Rules.

Lastly, the Code states, “The Protest Review Office will resolve the protest as expeditiously as possible after receiving all relevant, requested information.” (44 Ill. Adm. Code 1.5550(e)) The denial was made more than seven months after the protest was filed. There was no documentation to indicate that any additional information was requested from Nedlog. (pages 38-41)

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**Revenue violated the Standard Procurement Rules in responding late to Nedlog’s protest.**

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## **COKE PROTEST**

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On August 3, 2007, Coke filed a formal protest of the contract award to Pepsi. Coke’s protest was based on their belief that because their questions and clarifications were never addressed, the award was not in the State’s best interest as it did not avail itself of a full competitive process.

Coke stated in the protest letter that they had previously requested critical information to clarify several definitions, phrases, terms, and commitments in the RFP. The letter went on to list the 13 items in question. The letter also listed dates where Coke stated that they attempted to obtain additional information and clarification. Coke also stated in the letter, “We could not provide a final offer due to the requested missing information that we never received.” Coke’s entire protest letter is presented in Appendix F of the report.

On October 26, 2007, Revenue denied Coke’s protest. In the denial letter, Revenue states, “The protest letter lists three issues as the basis for challenging the award: (1) Revenue never answered Coke’s questions so Coke never had the opportunity to submit a final offer; (2) the award to Pepsi is not in the best interest of the State of Illinois; and (3) Revenue did not avail itself of the full competitive process.”

However, Coke's only issue in its protest letter was that their questions and clarifications were never addressed. Coke specifically states, "...because our questions and clarifications were never addressed, the award to our competitor is not in the state's best interests, as it did not avail itself of a full competitive process." Revenue mistakenly breaks this into three separate issues which distracts from the main issue of whether Coke submitted questions that were never addressed.

Revenue states in the denial letter that questions needed to be submitted by February 16, 2007, as specified in the RFP, and any dates Coke listed that were past this deadline are therefore irrelevant. Revenue concludes that the only relevant date is the January 19<sup>th</sup> phone conversation between a Coke official and a Revenue official.

Revenue does not attempt to determine what, if any, questions were asked on that date. Instead, Revenue hypothesizes that if Coke's questions on that date related to the 13 items listed in its protest letter, those items would not have affected Coke's technical proposal but only its price proposal. Coke is then informed for the first time that its technical proposal did not receive sufficient points to advance to the pricing phase. Revenue further concludes that Coke's claim that Revenue never answered its questions is without merit since Coke's questions pertained to its pricing proposal and Coke did not advance to the pricing phase.

Revenue's conclusion that the issues raised in Coke's protest letter would not have impacted its technical proposal is erroneous. For example, one issue Coke listed involved debit cards. On the evaluation scoring tool, debit card technology was worth 10 points. If, because of unanswered questions, Coke was unable to respond appropriately regarding debit card technology, Coke's technical proposal would clearly have been impacted. Other issues listed in Coke's protest letter such as staffing, repair service, and equipment maintenance also had the potential of impacting Coke's technical proposal.

Revenue did not determine whether questions were asked and, if so, whether those questions were answered. Instead, in its denial letter, Revenue concludes "...assuming that the questions that Coke raised in the protest are the same as the questions Coke raised in the phone call, those questions relate to Coke's Price Proposal and not its Technical Proposal. Coke's Technical Proposal score fell below the minimum to advance to the Price Proposal phase and Coke was eliminated from the RFP competition. Therefore, the questions raised by Coke, Revenue's alleged failure to respond to those questions and the merits of Coke's Pricing Proposal had no bearing on Coke's elimination...."

### Clarifying Offers

Revenue states in its denial letter “It would be unfair to the other vendor that submitted a complete and timely proposal (a ‘final offer’) within the proper time frame, if Revenue allowed Coke to submit an incomplete proposal on February 23<sup>rd</sup> and then allowed Coke additional time to cure any defects that plagued Coke’s February 23<sup>rd</sup> incomplete proposal.” However, **both** vendors’ proposals lacked key information that was required to be submitted.


The RFP, the Illinois Procurement Code, and the Standard Procurement Rules all allowed Revenue to request clarification. Because of the key information lacking from both proposals, Revenue would have benefited from requesting both vendors to clarify their offers and provide the missing information. This could have been done as a best and final offer request during the technical proposal phase and would have allowed both vendors equal treatment and opportunity to revise their offers. (pages 41-45)

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### AUDIT RECOMMENDATIONS

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The audit report contains 11 recommendations. Revenue agreed with the recommendations. Appendix H of the audit report contains the Department’s complete responses.



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WILLIAM G. HOLLAND  
Auditor General

WGH/DJB  
March 2009

