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OFFICE OF THE AUDITOR GENERAL  
WILLIAM G. HOLLAND

*To the Legislative Audit Commission, the Speaker  
and Minority Leader of the House of Representatives,  
the President and Minority Leader of the Senate, the  
members of the General Assembly, and the  
Governor:*

This is our report of the Management Audit of the procurement practices in connection with the State's multi-year Beverage Vending and Pouring contract.

The audit was conducted pursuant to House Resolution Number 862, which was adopted March 6, 2008. This audit was conducted in accordance with generally accepted government auditing standards and the audit standards promulgated by the Office of the Auditor General at 74 Ill. Adm. Code 420.310.

The audit report is transmitted in conformance with Section 3-14 of the Illinois State Auditing Act.

A handwritten signature in black ink, appearing to read "William G. Holland". The signature is stylized and written in a cursive-like font.

WILLIAM G. HOLLAND  
Auditor General

Springfield, Illinois  
March 2009



# REPORT DIGEST

## MANAGEMENT AUDIT

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

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Released: March 2009



State of Illinois  
Office of the Auditor General

**WILLIAM G. HOLLAND**  
AUDITOR GENERAL

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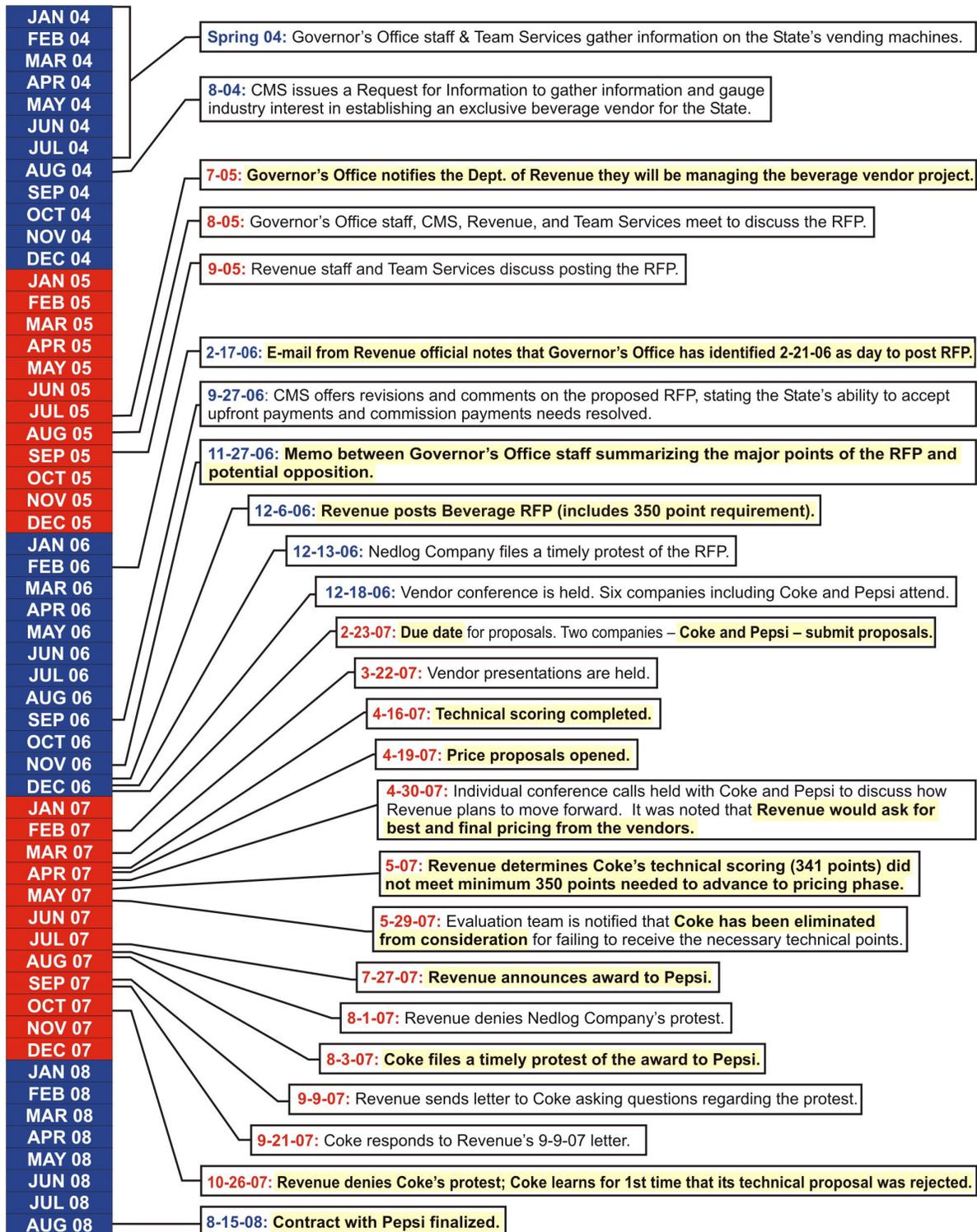
On March 6, 2008, the Illinois House of Representatives adopted House Resolution Number 862 which directed the Auditor General to conduct an audit of the procurement practices in connection with the State's multi-year Beverage Vending and Pouring contract awarded to PepsiAmericas, Inc., to determine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

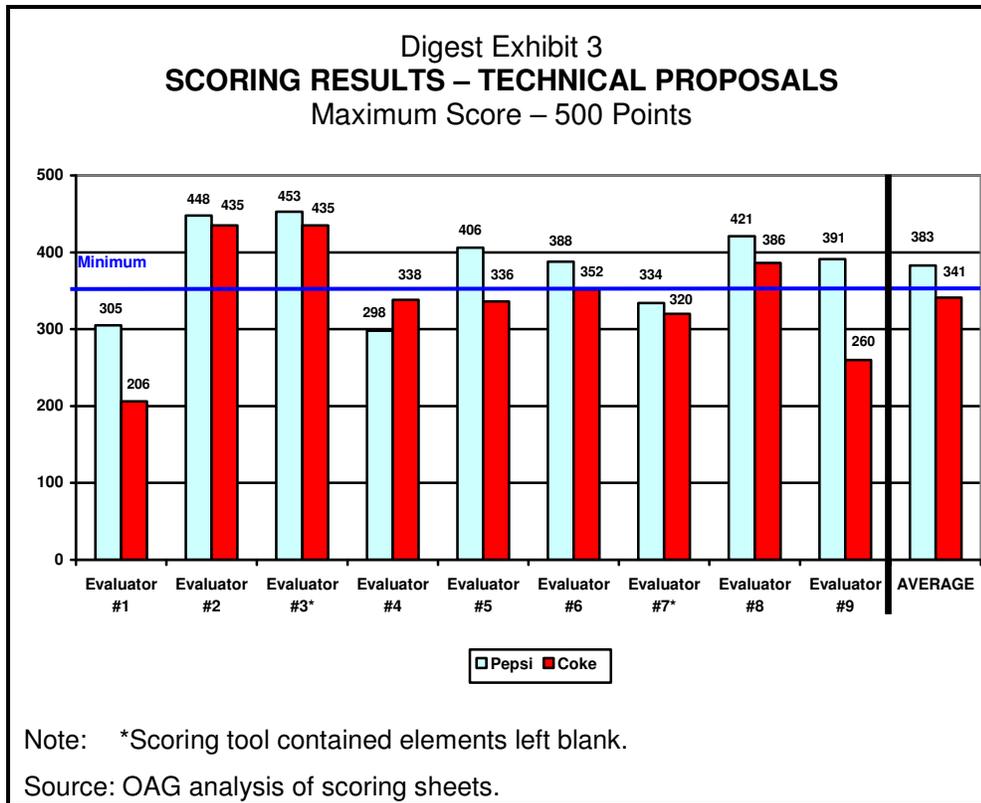
After the reference scores were determined by the two evaluators, those scores were inserted into the technical scoring instrument for all of the evaluation team members. Neither vendor received an exceptional score for their reference checks. The two Department of Revenue evaluation team members that 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



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## Chapter One

# INTRODUCTION AND BACKGROUND

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## REPORT CONCLUSIONS

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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## INTRODUCTION

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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. (See Appendix A)

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.

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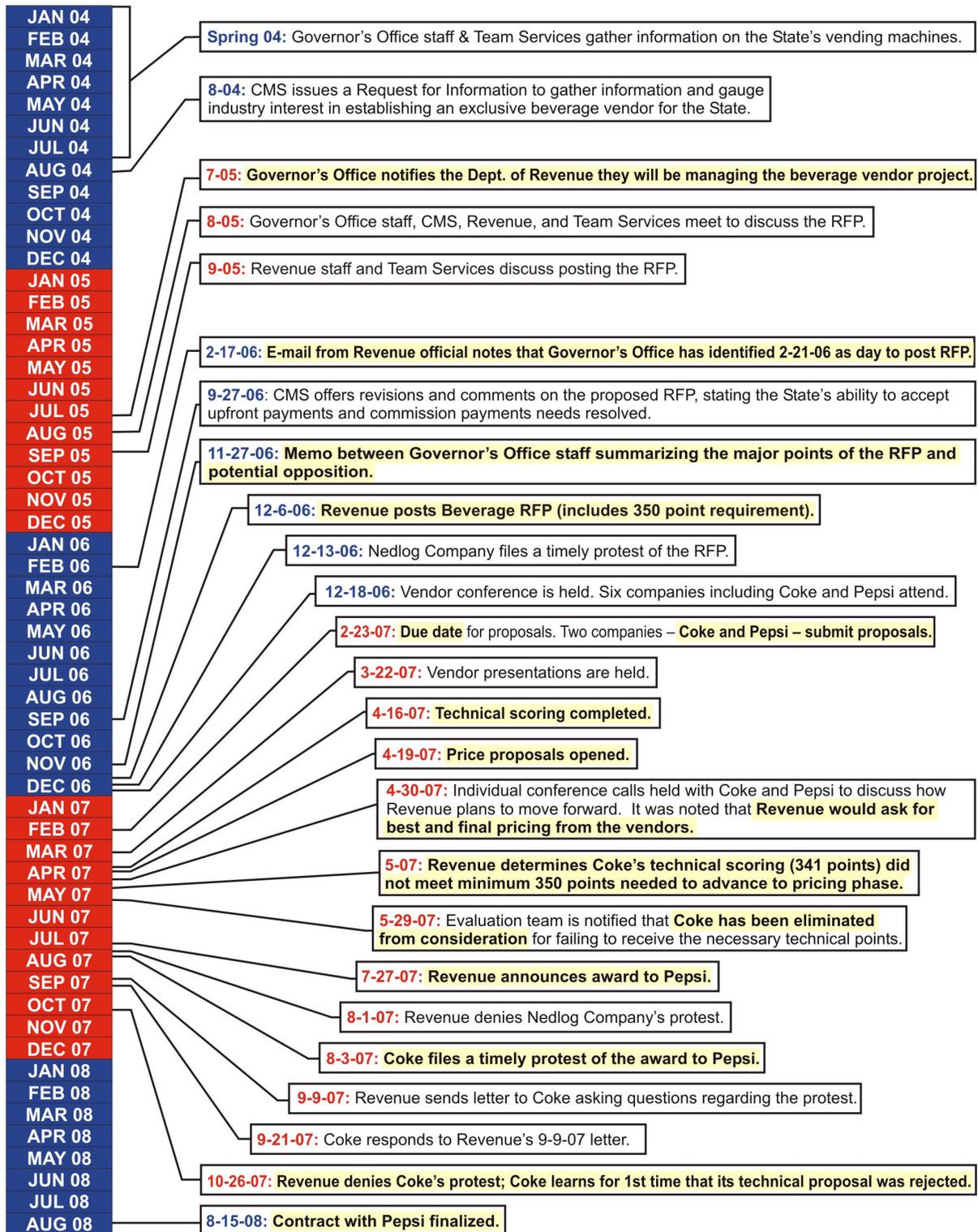
## BACKGROUND

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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. 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. Exhibit 1-1 provides an overall timeline of the procurement process.

### Exhibit 1-1 TIMELINE OF PROCUREMENT PROCESS



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

## Development of the Request for Proposals

In early 2004, staff from the Governor’s Office, working with the sales and marketing company Team Services LLC, began gathering information on the State’s vending machines. Agencies were asked to provide cost and sales information on their vending machines and the percentage of sales the State received. In July 2004, agencies were asked to provide copies of all current contracts for beverage vending and pouring rights at State facilities.

In August 2004, the Department of Central Management Services (CMS) issued a Request for Information (RFI) for an exclusive beverage vendor. The information gathered from the RFI was to be used to help the State decide whether to go forward with the program and also to help shape the Request for Proposals. The stated purpose of the RFI was to gauge industry interest and receive feedback with regard to the State establishing an exclusive arrangement with a vendor to provide beverage vending products and services at State facilities. The RFI also stated that the goal was to enter into a multi-year agreement that would provide designation as the “Official Beverage of Illinois.”

Over the next year, the State, working with Team Services, developed the RFP. A July 2005 e-mail from a staff person in the Governor’s Office to the Director of the Department of Revenue discussed the beverage RFP. The e-mail said that the RFP asks beverage companies to bid on the vending machines operated by the State and University of Illinois as well as sponsorship and pouring rights for the State Fair, the world shooting complex in Sparta, and the University of Illinois athletic programs. The staff person stated, “After considerable contemplation I believe that the Department of Revenue is the most appropriate department to oversee the management of the project.” There was no other documentation to support the Governor’s Office staff person’s contemplation of why this procurement was assigned to the Department of Revenue instead of being procured at CMS.

Revenue staff, CMS staff, and Team Services continued to work on the RFP over the next year. Based on e-mail documentation, the RFP was close to being posted on two occasions: September 2005 and February 2006.

One key element of the RFP was the pricing component. The RFP requested vendors to bid on differing pricing elements some of which consisted of upfront payments. The RFP specified that the evaluation of the pricing component would be based on a Net Present Value (NPV) calculation which included:

- *Exclusive Beverage Program License Fee* – amount vendor will pay at the initiation of the contract toward exclusively managing the beverage operations for the complete term of the contract;
- *Guaranteed Annual Vending Commitment* – amount the vendor will pay as an annual guarantee of vending commission;
- *Annual Commission Addition* – additional amounts the vendor will pay in recognition of the benefits received by the sale of product above the Guaranteed Annual Vending Commitment;
- *Marketing Commitment* – amount the vendor will pay on an annual basis for marketing benefits outlined in the RFP.

A CMS review of the RFP (dated September 27, 2006, but with no author listed) noted that the State's ability to accept upfront payments and commission payments needed to be resolved. CMS said that it was prohibited from either one of these in a procurement for office supplies. In November 2006, an outside law firm reviewed the draft RFP and offered comments on potential legal issues. The law firm concluded that while there are a number of aspects to the RFP which may give rise to objections, CMS can "...make a good faith argument that it is acting within the scope of its authority as Chief Procurement Office for the State in issuing the Beverage RFP...." As discussed in Chapter Three, the Nedlog Company objected to the pricing structure and filed a formal protest of the RFP.

On November 27, 2006, Governor's Office staff issued a memo which outlined the major points of the RFP. It included discussions on the terms of the agreement, potential increased revenue, RFP timeline, selection committee, and potential opposition. The RFP was posted on December 6, 2006. Appendix G shows the locations of vending machines by county as listed in the RFP.

### **Participation of Universities and Blind Vendors**

Four universities and the Illinois Committee of Blind Vendors joined the State as partners in the solicitation. The four universities that participated were the University of Illinois at Urbana-Champaign, the University of Illinois at Chicago, the University of Illinois at Springfield, and Northeastern Illinois University. The four universities and the Illinois Committee of Blind Vendors were also represented on the evaluation committee.

The Illinois Committee of Blind Vendors represents individuals who are visually impaired and operate vending facilities throughout the State. Under the proposed agreement, Blind Vendors would continue to operate their inventory of machines. The Blind Vendors agreed to partner with the State by exclusively buying and reselling the products of the winning vendor at the negotiated contract prices.

In addition to the four universities that participated, other State universities had the option to participate but elected not to take part in the solicitation. We talked with officials from three of the universities (Northern Illinois University, Southern Illinois University, and Western Illinois University) that did not participate to determine why they elected not to join the solicitation. Two universities noted that they already had a contract in place that was not set to expire until well after the Statewide contract would go into effect. Another university said there was a level of uncertainty with the Statewide RFP. The university felt more comfortable doing their own solicitation and being in control of the contract and the commissions that would be generated.

### **Beverage Selection Evaluation Committee Members**

An evaluation committee was established to evaluate the responses to the RFP. Exhibit 1-2 lists the evaluation committee members. The evaluation committee consisted of 11 representatives from all of the affected parties to the RFP including State agencies, universities, and the Illinois Committee of Blind Vendors. The Associate Director of the Department of Revenue was the project coordinator. In addition to the 11 evaluation committee members, the

roster in the procurement file included the names of three people that were to act as beverage vendor selection advisors. These included Revenue’s State Procurement Officer and two employees from CMS.

Exhibit 1-2 <b>BEVERAGE SELECTION EVALUATION COMMITTEE</b>		
<b>Department of Revenue</b> Associate Director	<b>Department of Revenue</b> Program Administrator Administrative Services	<b>Department of Agriculture</b> State Purchasing Officer
<b>Administrative &amp; Regulatory Shared Services</b> Administrative Director	<b>Illinois Committee of Blind Vendors</b> Chairman	<b>Northeastern Illinois University</b> Director of Purchasing
<b>University of Illinois at Urbana-Champaign</b> Executive Assistant Vice President for Business and Finance	<b>University of Illinois at Chicago</b> Associate Vice Chancellor for Student Affairs	<b>University of Illinois at Springfield</b> Associate Vice Chancellor for Student Affairs
<b>Central Management Services</b> General Manager of Facility Operations State Wide <b>(Did not score proposals)</b>	<b>University of Illinois at Chicago</b> Associate Director of Purchases <b>(Did not score proposals)</b>	
Source: Evaluation committee documents from the Department of Revenue's procurement file.		

While 11 people were listed on the committee, only 9 members scored the proposals. According to the Department, two of the members were never intended to score the proposals. However, the Department could not provide documentation to show that these two members were not intended to score vendor proposals. We spoke with one of the individuals in question who confirmed that she was to act only in an advisory role and was never to actually score the proposals. The other member in question had left State employment.

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## FINALIZATION OF THE CONTRACT

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The contract was awarded to Pepsi on July 27, 2007. However, a contract with Pepsi was not executed until over a year later on August 15, 2008.

The contract was signed by Pepsi on May 14, 2008. Revenue’s Chief Fiscal Officer signed the contract on June 3, 2008, and Revenue’s Chief Legal Counsel signed the contract on June 6, 2008. However, the Director of Revenue signed but did not date the contract. The State Comptroller’s Accounting Bulletin Number 124 requires every contract signature to be dated below the actual signature.

A handwritten note attached to the contract said that August 15, 2008, was being used as the start date because that was when Revenue’s State Procurement Officer received the contract. A copy of the fully-executed contract was also sent by Revenue to Pepsi on August 15, 2008.

Section 1.1 of the contract states “Unless otherwise specified, this contract shall commence upon the last dated signature of the Parties and expire on the tenth (10<sup>th</sup>) anniversary of the signature date.” Based on the signature dates in the contract, the contract should have commenced on June 6, 2008, not August 15, 2008.

<b>CONTRACT EXECUTION</b>	
<b>RECOMMENDATION NUMBER  1</b>	<i>The Department of Revenue should ensure that contracts contain dated signatures as required by Comptroller’s Accounting Bulletin Number 124. In addition, the Statewide Beverage Contract should commence on the last dated signature as specified in the contract.</i>
<b>ILLINOIS DEPARTMENT OF REVENUE’S RESPONSE</b>	Recommendation accepted. As a result of this recommendation, the Department has included this item as part of its procurement checklist. IDOR managers have also been reminded that no services can begin or products purchased until a contract has been signed and dated by all parties. The State Beverage Contract commenced long after Revenue’s Director signed this contract on August 15, 2008.

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## **AUDIT SCOPE AND METHODOLOGY**

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This audit was conducted in accordance with generally accepted government auditing standards and the audit standards promulgated by the Office of the Auditor General at 74 Ill. Adm. Code 420.310. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit objectives for this audit were those as delineated in House Resolution Number 862 (see Appendix A), which directs the Auditor General to conduct an audit of the procurement practices in connection with the State’s multi-year Beverage Vending and Pouring contract. The audit objectives are listed in the Introduction section of Chapter One. Fieldwork for this audit was conducted from July to September 2008.

In conducting the audit, we reviewed applicable State statutes and rules. We reviewed compliance with those laws and rules to the extent necessary to meet the audit’s objectives. Any instances of non-compliance we identified are noted in this report. In addition to laws and rules, we reviewed a number of different criteria including the following:

- Beverage Vending and Pouring Program RFP requirements;
- CPO Notices from CMS regarding procurement;
- Guidelines and procedures from CMS’ Illinois Center for Procurement Resources;

- Best practices documents from the National Association of State Procurement Officials, the American Bar Association, and the National State Auditors Association; and
- Other Department of Revenue RFPs.

We also reviewed management controls and assessed risk related to the audit’s objectives. A risk assessment was conducted to identify areas that needed closer examination. Any significant weaknesses in those controls are included in this report.

During the audit we met with officials from the Department of Revenue as well as all of the members of the evaluation team. We met with officials from both Coke and Pepsi. We also spoke with universities that elected not to participate in the Statewide Beverage Vending and Pouring contract.

We examined all documents from the procurement file at the Department of Revenue and additional documentation obtained from personal files of individuals involved in the procurement. We also examined documentation provided by Coke.

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## **REPORT ORGANIZATION**

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The remainder of this report is organized into the following chapters:

- Chapter Two – Evaluation Process
- Chapter Three – Protests



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## Chapter Two

# EVALUATION PROCESS

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## CHAPTER CONCLUSIONS

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.

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## VENDOR CONFERENCE

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On December 18, 2006, the Illinois Department of Revenue held a vendor conference for the solicitation of the Statewide beverage vending and pouring program. The purpose of the vendor conference was for the State to describe the opportunity, as well as answer questions and provide additional information related to the program.

Attending the vendor conference were representatives from State agencies, State universities, the Illinois Committee of Blind Vendors, and potential vendors from six different companies including both Coke and Pepsi. Representatives from three of the companies, including Pepsi, asked questions at the vendor conference. Coke representatives did not ask any questions.

### Timing of the Vendor Conference

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.

Additionally, the vendors may have had even less time than the eight working days to examine the RFP. After the RFP was released, the Department contacted vendors that would potentially be interested in submitting a proposal. These vendors included Coke, Pepsi, and Cadbury Schweppes. Documentation showed that these vendors were contacted and RFPs were electronically sent on December 11, 2006, which was seven calendar days and only five working days prior to the vendor conference.

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. As discussed in Chapter One, work on the RFP progressed over a two year period. Previous drafts of the Beverage Vending and Pouring RFP also 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.

When asked why Coke did not ask any questions regarding the solicitation during the vendor conference, a Coke official stated that there was not enough time between the posting of the RFP and the date of the vendor conference for Coke to thoroughly review the RFP and come up with questions.

Other RFPs at Revenue were reviewed to determine if they were structured and evaluated similarly to the beverage vending and pouring procurement. Of the nine RFPs reviewed, only three included a vendor conference. Of those three procurements, two vendor conferences were held seven working days after the issuance of the RFP, and the other vendor conference was held 14 working days after the issuance of the RFP.

<b>TIMING OF THE VENDOR CONFERENCE</b>	
<b>RECOMMENDATION NUMBER  2</b>	<i>The Department of Revenue should ensure that potential vendors have an adequate amount of time to review the Request for Proposals prior to the vendor conference.</i>
<b>ILLINOIS DEPARTMENT OF REVENUE'S RESPONSE</b>	Recommendation accepted. The Department will ensure that vendors are afforded a minimum of 10 working days to review RFP's prior to the vendor conference. The Department has included this item as part of its procurement checklist.

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## SUBMISSION OF QUESTIONS

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The RFP specified the process to be used in submitting questions about the procurement. The RFP stated that questions should be directed to the RFP contact and that questions received less than seven calendar days prior to the due date for offers may be answered at the discretion of the Department of Revenue. The due date for offers was February 23, 2007, making the due date for questions February 16, 2007. The RFP further stated that only written answers to questions will be binding on the State.

There was no documentation to indicate that either vendor submitted questions prior to the due date for offers. The only contact made by either vendor, prior to the due date for offers, was a phone conversation between a Coke official and a Revenue official on January 19, 2007. While no written documentation exists regarding the phone call, both parties agree that Coke called Revenue and expressed concerns about some of the RFP requirements. The Coke official also said that Coke was considering not bidding. The Revenue official encouraged Coke to submit a proposal and to note their concerns in the exceptions portion of the response. According to the Department, the Revenue official told Coke that their concerns would be addressed during the best and final offer phase of contract negotiation. Coke officials, however, were under the impression that they were to list in their proposal the items Coke was unable to satisfy and those items would be clarified at a later date.

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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.

### Technical Proposals

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. Exhibit 2-1 lists specific requirements that were not included in the technical proposals submitted by either Coke or Pepsi. Basic information such as a staffing plan and a list of product offerings was not included in either offer.

Exhibit 2-1 <b>TECHNICAL PROPOSAL REQUIRED INFORMATION NOT INCLUDED IN EITHER VENDOR'S OFFER</b>	
Requirement	RFP Verbiage
Technical Approach	<ul style="list-style-type: none"> <li>The Vendor must provide a detailed description of how the Vendor plans to approach each service requirement as expressed by the Agency/Buyer in Section 4 of the RFP, "Services Required from the Vendor."</li> </ul>
Revenue Growth Plan	<ul style="list-style-type: none"> <li>The Vendor shall provide a plan for growing current annual volumes and make projections related to gross and net sales and machine expansion.</li> </ul>
Reporting, Status and Monitoring Specifications	<ul style="list-style-type: none"> <li>Vendor is required to provide sample reports in its RFP submission.</li> </ul>
Staffing Specifications	<ul style="list-style-type: none"> <li>Outline a detailed staffing plan for all requirements necessary to successfully carry out this vending and pouring opportunity including commitment and resources made available to the State.</li> </ul>
Product Offerings	<ul style="list-style-type: none"> <li>The Vendor is required to list all product offerings that will be made available to the State as part of the vending and pouring program.</li> </ul>
Personnel	<ul style="list-style-type: none"> <li>The Vendor must provide resumes for all key personnel, including the project manager, who will be involved in providing the services contemplated by this RFP.</li> </ul>
Source: OAG comparison of Coke's and Pepsi's technical proposals to the RFP requirements.	

For example, the RFP provided a listing of services required from the vendor. These service requirements were described in detail covering 22 pages of the RFP. (See Appendix E) Under the technical approach section of the technical proposal, the vendors were to provide a detailed description of how they planned to approach **each** service requirement. The RFP further specified that "Offers must be fully responsive to each service requirement." These service requirements included such items as facility maintenance, equipment maintenance, service and repair, and hours of operation.

**Neither offer** provided the required description of how they would approach each service requirement. Appendix E-1 and E-2 contain Coke's and Pepsi's responses, from their technical proposals, to the technical approach section of the RFP.

Instead of describing how they would approach each service requirement, Coke's technical approach section of its technical proposal listed requirements it was unable to satisfy. Coke's entire technical approach section consisted of the following:

*We are unable to satisfy all the requirements of Section 4 of the RFP. The following are examples:*

- increase the number of vendors and gross sales*
- staffing specifications*
- vending operations*
- venter full service procedures*
- vending equipment amenities*
- debit card technology*
- service and repair*
- equipment maintenance and replacement*
- non-vended capital equipment*
- facility maintenance*
- facility sanitation*
- personnel, employment practices and staff*
- permitted beverage exceptions*

*Other*

- license fees for vending machines by village, city, county*

Pepsi's technical approach section also lacked detail on how it would approach each service requirement. Pepsi's entire technical approach section consisted of the following:

*PepsiAmericas operates a state of the art full service and third party vendor operation. This operation manages over 78,000 vendors and supports these with over 11,000 MEM employees who maintain and service these machines.*

*Our proposal will comply will [sic] all elements of the RFP except those identified in Exhibit 2.*

*See exhibit 3 for the vending implementation plan for the conversion and management of vending business.*

The "Exhibit 2" referred to in Pepsi's proposal was a three-page listing of RFP or contract sections where Pepsi had potential legal concerns. The "Exhibit 3" referred to in Pepsi's proposal was a two-page listing of steps Pepsi would take upon being awarded the contract. Neither of these exhibits described how Pepsi would approach each service requirement listed in the RFP.

## VENDOR PRESENTATIONS

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. Revenue officials stated that questions were submitted in advance to elicit further information and any information provided was to be considered in evaluating the proposals. Since one team member did not attend the presentations or receive any of the materials from the presentations, he was not able to consider any additional information that might have been presented. A review of that evaluation team member's scoring tool showed that he ranked both proposals relatively low compared to other team members. In scoring Coke's proposal, he ranked 5<sup>th</sup> of the 9 members and in scoring Pepsi's proposal, he ranked 9<sup>th</sup> of the 9 members.

<b>VENDOR PRESENTATIONS</b>	
<b>RECOMMENDATION NUMBER  3</b>	<i>The Department of Revenue should maintain adequate documentation of vendor presentations including a record of who attended the presentations and the discussions that took place. If evaluation team members are unable to attend the vendor presentations, the Department should ensure that the evaluation team members receive the necessary information for scoring the proposals.</i>
<b>ILLINOIS DEPARTMENT OF REVENUE'S RESPONSE</b>	Recommendation accepted. During the course of this audit, the Department instituted measures to ensure compliance with this recommendation for creating and maintaining adequate documentation of vendor presentations. In addition, in the event that evaluation team members are unable to attend any vendor presentations, IDOR will ensure that those evaluation team members receive any necessary information.

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## EVALUATION OF PROPOSALS

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As noted in Chapter One, an evaluation committee was established to evaluate the responses to the RFP. The following sections discuss the evaluation of the proposals.

### Evaluation Scoring Tool

The Department of Revenue developed an evaluation scoring tool to score the technical proposals. (See Appendix C) The scoring tool contained detailed subcategories for the three general categories established in the RFP. For example, the technical approach category, which was worth 200 points, was broken down into eight subcategories with point values assigned to each subcategory. The scoring tool was developed prior to the due date for offers and reflected the rankings set forth in the RFP. However, we noted some issues with the scoring tool.

### Scoring Tool Errors

The evaluation tool included a column titled “evaluator considerations in arriving at score.” These evaluator considerations gave evaluation team members a basis for how to score each subcategory. Some evaluator considerations noted a question that referred to the RFP in general while others noted a question that referred to a specific section of the RFP. For those evaluator considerations that referenced a specific section in the RFP, 63 percent (5 of 8) partially or completely referenced an incorrect section of the RFP.

In one instance, the section referenced in the RFP did not exist. The evaluator consideration “Will personnel have training as described in Section 4.20.6?” is referenced under the *Staff background/experience* subcategory of the scoring tool. However, the RFP does not contain Section 4.20.6. In another instance, the RFP section referenced in the scoring tool did not correlate with the correct section in the RFP. The evaluator consideration “Did the Vendor bid on marketing as described in 4.4 and is the marketing plan consistent with the State’s goals?” is referenced under the *Vending and Pouring* subcategory of the scoring tool. However, Section 4.4 of the RFP discusses blind vendors, not marketing.

### Revenue Growth Subcategory

One goal of the beverage vending and pouring program was to increase commission revenue for the State and generate additional funding for State programs. Revenue would be the primary focus of the price proposals. However, a revenue growth plan was also required to be submitted with the technical proposals. The RFP did not specify the point value to be assigned for a revenue growth plan or for the other specific requirements of the technical proposal. The following is the section from the RFP that details how the technical proposals would be scored.

**6.3.2 Evaluation of Vendor’s Ability to Perform Contract Requirements:**  
 The State will utilize a 500 “responsive” point ranking system to evaluate Vendor’s ability to perform contract requirements as indicated below. Vendor offers that do not attain a minimum of 350 responsiveness points will be rejected.

- Technical approach (200 points) Ability to perform all services e.g., provide for the entire State, maintain equipment, supplying required products in a timely manner, commitment of resources and staff all based on information included in the vendor’s offer.
- Vendor Background and Experience (200 points)
- Product Selection (100 points)

For technical approach, the RFP states that this is the ability to perform all services and then lists examples. Revenue growth was not mentioned as an example. However, in the scoring tool, the revenue growth subcategory accounted for 75 of the 200 points (38 percent) for technical approach. Neither vendor provided a revenue growth plan with its technical proposal. As discussed later and as can be seen in Appendix D, both Coke and Pepsi received a wide range of scores from the evaluation team members for the revenue growth category.

When questioned about the weight given to the revenue growth subcategory in the scoring tool, Revenue officials stated, “The driving consideration behind the statewide beverage contract was to increase revenue from beverage sales at State facilities. This was widely reported in the media and was emphasized in the bidders’ conference, so the vendors were very aware going in that potential for revenue growth would be a very important consideration in choosing the winning bidder. Also, the importance of revenue growth was clearly stated in the RFP on page 19, section 4.5, Revenue Growth Plan, **in bold.**”

The transcript from the vendor conference does not indicate that revenue growth was discussed. While increasing revenue was a goal of the Statewide beverage contract, we question whether a revenue growth plan should have been weighted so heavily in the technical evaluation when increased revenue would already be the primary focus of the price proposals.

<b>EVALUATION SCORING TOOL</b>	
<b>RECOMMENDATION NUMBER</b>  <b>4</b>	<i>The Department of Revenue should ensure that scoring tools include correct references when referring to specific sections of the RFP. If subcategories are used in the scoring tools, point values assigned to those subcategories should be appropriate based on language in the RFP.</i>
<b>ILLINOIS DEPARTMENT OF REVENUE’S RESPONSE</b>	Recommendation accepted. As a result of this recommendation, the Department has included this item as part of its procurement checklist.

### Evaluation Committee Meetings

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. *Issues in Public Purchasing* (p.43), published by the National Association of State Procurement Officials, notes responsibilities of an evaluation committee include keeping “...accurate records of all meetings, conferences and negotiations.”

There also was no record of who attended the meetings so it is unclear if all of the members of the evaluation committee participated. As noted previously under vendor presentations, evaluation guidelines issued by CMS state that “...committee members must attend all meetings of the committee...” The guidelines note that attendance at all meetings is crucial to the quality of the evaluation process.

<b>DOCUMENTING EVALUATION COMMITTEE MEETINGS</b>	
<b>RECOMMENDATION NUMBER  5</b>	<i>The Department of Revenue should document evaluation committee meetings including dates, who attended, and what was discussed.</i>
<b>ILLINOIS DEPARTMENT OF REVENUE’S RESPONSE</b>	Recommendation accepted. As a result of this recommendation, the Department has included this item as part of its procurement checklist.

### Scoring the Proposals

After the vendor presentations, the evaluation team scored the technical proposals. The nine evaluation team members scored the proposals individually except for the references subcategory where a uniform score was calculated and inserted into each individual’s scoring tool. (References are discussed in more detail in a later section.) The evaluators forwarded the completed scoring tools to the project coordinator. The completed scoring tools were dated between March 27 and April 10, 2007. Issues with scoring are discussed below.

### Scoring Disparities

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. Exhibit 2-2 shows the lowest score received compared to the highest score received for the individual subcategories on the evaluation instruments for both Coke and Pepsi. 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.

Exhibit 2-2 EVALUATION TEAM SCORING COMPARISON – LOWEST SCORE VS. HIGHEST SCORE							
Evaluation Category	Total Possible Points	Pepsi			Coke		
		Lowest Score	Highest Score	% Difference	Lowest Score	Highest Score	% Difference
<b>Vendor Background and Experience</b>							
Company background/experience	65	49	65	25%	39	65	40%
Staff background/experience	60	10	60	83%	15	60	75%
References <sup>1</sup>	75	55	55	0%	50	50	0%
Total score for section <sup>2</sup>	<u>200</u>	121	180	33%	106	175	39%
<b>Technical Approach</b>							
Understanding scope of services	15	8	15	47%	5	13	62%
Quality of summary	5	2	5	60%	1	5	80%
Vending & pouring	55	34	55	38%	20	52	62%
Revenue growth	75	20	75	73%	0	75	100%
Reporting	10	5	10	50%	7	10	30%
Vending operations & procedures	15	7	15	53%	3	15	80%
Debit card technology	10	0	8	100%	0	10	100%
Facilities, sanitation, maintenance	15	0	15	100%	2	15	87%
Total score for section <sup>2</sup>	<u>200</u>	94	180	48%	50	172	71%
<b>Product Selection</b>							
Product selection	<u>100</u>	65	100	35%	50	100	50%
Total overall score <sup>2</sup>	<u>500</u>	298	453	34%	206	435	53%
Notes: <sup>1</sup> For references a single score was developed and inserted for all nine evaluators. <sup>2</sup> Total points may not add due to the highest and/or lowest scores for individual subcategories coming from different evaluators.							
Source: OAG analysis of scoring tools.							

Exhibit 2-2 also shows the percentage difference between the low and high scores. For Coke, all subcategories, except references, varied by at least 30 percent. (For references a single score was calculated and inserted for all nine evaluators.) For 6 of the 12 subcategories, the scores varied by at least 75 percent. Scores for Pepsi also showed variances although the differences were not as dramatic as Coke’s scores. For Pepsi, 3 of the 12 subcategories varied by

at least 75 percent. Appendix D contains the evaluation scores for each member of the evaluation team.

Although there were major differences in evaluator scores, the evaluation team did not meet to discuss these disparities. We examined other RFPs at Revenue to determine if differences in scoring were discussed. In one instance, a scoring disparity was noted and it appeared that scores were changed following a discussion.

### **Other Scoring Issues**

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

When asked about the blanks left on their evaluations, neither evaluator could remember for certain why they left the elements blank. One of the evaluators specifically noted, "I believe I didn't feel I could adequately evaluate their growth plan submittal to the State's revenue objectives." The other evaluator stated it was left blank because he probably couldn't answer the questions. The evaluator, however, was unsure and noted that one element left blank related to debit card technology and he knew from experience that both vendors comply with debit card technology. The Department of Revenue did not question the evaluators about the blanks and calculated a zero for all blanks even if evaluators may not have intended to leave the elements blank.

### **Lack of Notes Accompanying Scoring Instruments**

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.

No additional notes from evaluators were found in the procurement file. At a later date, the Department provided handwritten scoring instruments with notes for one additional evaluator. However, the notes were not originally in the procurement file and the handwritten scores for one of the subcategories did not agree with the scores that were subsequently submitted by that evaluator.

<b>SCORING ISSUES</b>	
<b>RECOMMENDATION NUMBER</b>  <b>6</b>	<p><i>The Department of Revenue should follow CMS Guidelines and ensure that:</i></p> <ul style="list-style-type: none"> <li>• <i>Major differences in scores are discussed to determine if an error was made or an evaluator missed or misinterpreted a vendor's proposal;</i></li> <li>• <i>Evaluation tools are fully completed with no elements left blank; and</i></li> <li>• <i>Ratings points are supported with thorough and appropriate comments.</i></li> </ul>
<b>ILLINOIS DEPARTMENT OF REVENUE'S RESPONSE</b>	<p>Recommendation accepted. The Department will ensure that CMS guidelines are followed. Major differences in scores will be discussed with the evaluator/evaluation team. Evaluation tools will be checked to ensure that they are fully completed and the ratings points are supported with thorough and appropriate comments.</p>

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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. Three references from each vendor were selected to be called. 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. The only scoring tools that were not dated were the scoring tools from the two Department of Revenue officials that conducted the reference checks. The project coordinator and the other Revenue official that conducted the reference checks had the technical scores from the other evaluation team members prior to formulating the scores for references.

During our review of references, we noted issues with the process used and with the documentation of references.

### **Reference Questionnaire**

Scoring for references was based on responses to the reference interviews. A reference questionnaire was developed to be used when conducting the reference interviews. The questionnaire contained 15 questions and, according to the Department, was developed based on input from the evaluation team. 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. Exhibit 2-3 shows the five evaluator considerations for the reference subfactor on the evaluation scoring tool. The fourth element listed relates to the vendor’s staff to be used on the State’s engagement. Based on the reference questionnaire, references were not asked if the vendor’s same people were used at the reference location.

Exhibit 2-3 <b>REFERENCE SUBFACTOR IN EVALUATION SCORING TOOL</b>	
<b>Evaluator Considerations in Arriving at Score</b>	<b>Points</b>
<b>1.</b> How does the size of the reference compare to the State?	<b>10</b>
<b>2.</b> Are the services the client requires similar to those required by this RFP? Were they pleased with the services received?	<b>10</b>
<b>3.</b> Did the client require and receive similar staff skills?	<b>10</b>
<b>4.</b> How many of the Vendor’s same key people that were used at the reference will be used on the State’s engagement?	<b>10</b>
<b>5.</b> 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.	<b>35</b>
<b>Total</b>	<b>75</b>
Source: Evaluation scoring tool.	

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.

The CMS template also contains a section where the reference is asked to rate the vendor on a scale of 0 – 10 on a series of questions. These resulting scores for all of the references contacted are totaled and averaged and then inserted into the fifth element, reference quality, listed in Exhibit 2-3. However, Revenue did not ask the references to rate the vendors on a scale of 0 – 10 for selected questions as recommended by CMS. Instead, the two Revenue officials decided upon and inserted the score.

We reviewed nine other procurements at Revenue and compared the process used when conducting reference checks. For four of the procurements sampled, Revenue used a similar evaluation scoring tool that included a comparable section for references. These four procurements followed the CMS template and references were asked to rate the vendor on a

scale of 0 – 10 on a series of questions. The scores were then averaged and inserted into the scoring instruments for each evaluation team member.

### **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.** Exhibit 2-4 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.

Exhibit 2-4 SCORING FOR REFERENCES – ORIGINAL VS. REVISED					
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.

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. The first set of scores was one of the evaluator's initial reference scores and the second set of scores was the overall lower consensus scores. 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.

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.

It was also not clear from the scoring instrument whether a uniform score was to be inserted for the entire 75 points possible for the reference section. One score for references was inserted for all 75 points possible; however, only the 5<sup>th</sup> element dealing with reference quality (see Exhibit 2-4), which was worth 35 points, indicated that a uniform score would be used. One

of the evaluators actually scored the other four elements on his evaluation instrument leaving the 5<sup>th</sup> blank. This evaluator noted that it was his understanding that he needed to score those four elements individually. Those scores were disregarded when the uniform score was inserted.

As noted previously, four other procurements at Revenue used a similar evaluation tool. In these four instances a uniform score was inserted for reference quality. In addition, for three of the procurements, the evaluators scored the other reference elements individually thus arriving at different reference scores.

<b>REFERENCES</b>	
<b>RECOMMENDATION NUMBER</b>  <b>7</b>	<p><i>The Department of Revenue should ensure that:</i></p> <ul style="list-style-type: none"> <li>• <i>The reference questionnaire encompasses all of the elements included on the evaluation tool;</i></li> <li>• <i>References are asked to rate the vendor (when using the subfactor number five used in this scoring tool) and the resulting scores are inserted for all evaluators; and</i></li> <li>• <i>References are fully documented in the procurement file including the reference questionnaires and how scores are formulated.</i></li> </ul>
<b>ILLINOIS DEPARTMENT OF REVENUE'S RESPONSE</b>	<p>Recommendation accepted. As a result of this recommendation, the Department has included these items as part of its procurement checklist.</p>

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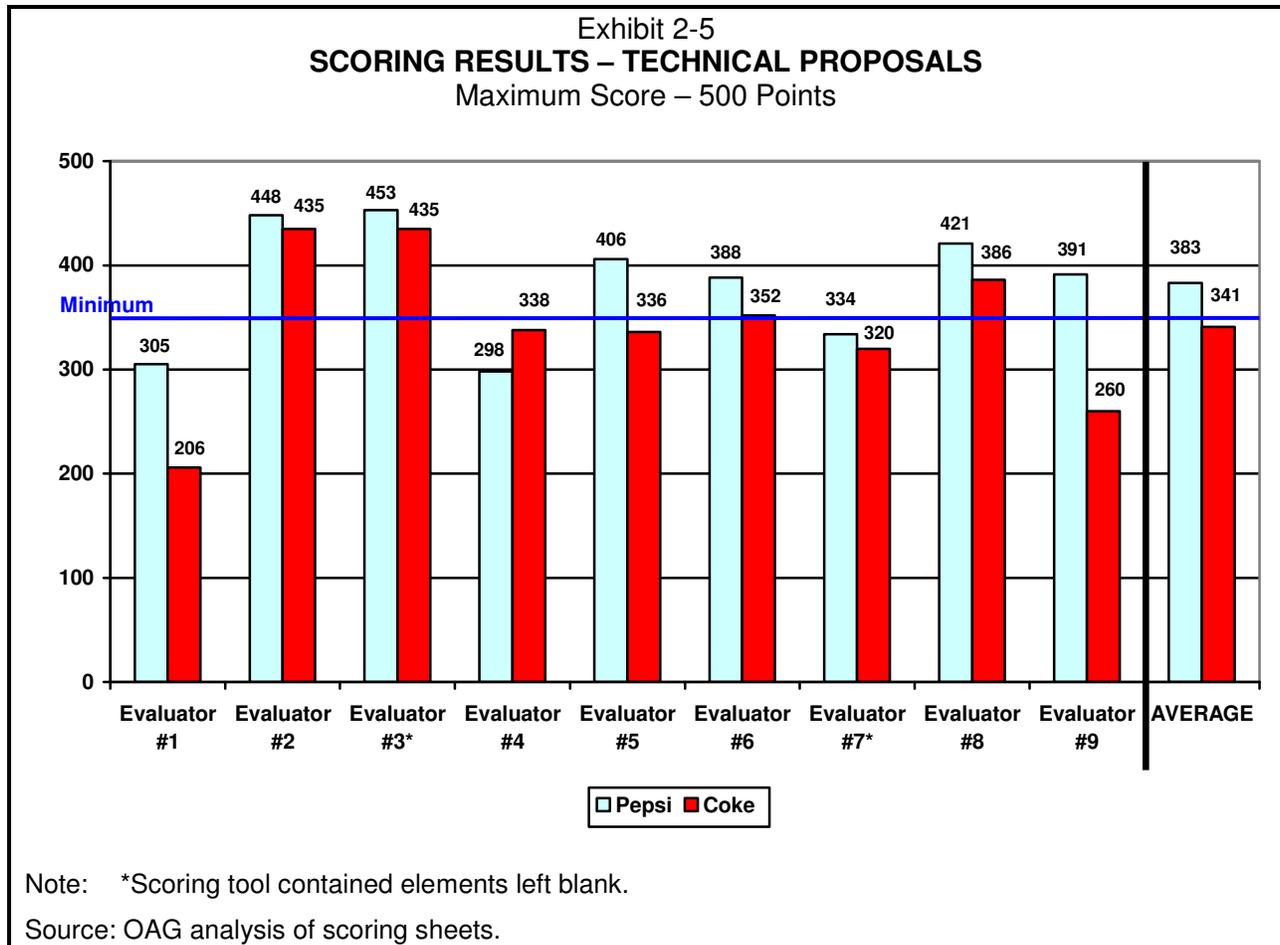
### **OPENING OF PRICE PROPOSALS**

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The scoring of technical proposals was completed April 16, 2007. The results were compiled including the reference scores. Exhibit 2-5 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 listed the next steps as:

1. *Ask you to complete the retail pricing sheet again (to follow). There were some mistakes in the template we sent you.*
2. *We will send you a redraft of the proposed contract and service level agreement that has been revised based on comments in your proposal and presentation.*



3. *We will also send you any volume data we have that will help better quantify the opportunity*
4. *After you receive and have had a chance to review, we'll probably have another call to get any further feedback or clarification.*
5. *We will return another draft to you, and at that time ask 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. There is no documentation to indicate exactly when Revenue became aware of this issue. 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.

After it was realized that Coke did not receive the 350 points needed, the project coordinator informed Revenue’s State Procurement Officer (SPO) of the situation. The SPO’s opinion was that since there were only two bidders, Coke should not be eliminated. However,

the SPO's opinion was overruled by Revenue's Legal Counsel who determined based on the express language in the RFP that Coke's proposal must be rejected. The State's Chief Procurement Officer, at CMS, agreed that Coke's proposal should be rejected.

After the April 30, 2007, conference call, a Coke official called Revenue on May 21, 2007, for an update and was told that Revenue was behind schedule, but Coke should hear from them in a week or two.

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 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.

On June 28, 2007, Coke emailed the Department of Revenue for an update on the procurement and did not receive a response. Revenue proceeded to negotiate best and final pricing with Pepsi. On Friday, July 27, 2007, Revenue announced the award of the contract to Pepsi. Coke did not learn that they were eliminated based on the technical scoring until October 26, 2007, when Revenue denied Coke's protest of the award.

### **350 Point Requirement**

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.

Some evaluation team members said that they were surprised when they learned Coke did not meet the minimum score. One member responded that had he been aware of the requirement, it would have changed his scoring because he would have made sure that both vendors received the 350 points necessary to advance. He said that both vendors were technically capable of providing the services. He further stated that both are international companies and there is nothing in the RFP they cannot do. Another evaluation team member stated that both vendors were technically competent and capable of fulfilling the contract.

<b>OPENING PRICE PROPOSALS</b>	
<b>RECOMMENDATION NUMBER</b> <b>8</b>	<i>The Department of Revenue should not open price proposals from vendors, or begin discussions regarding pricing with vendors, whose technical proposals are rejected for failing to meet minimum point requirements.</i>
<b>ILLINOIS DEPARTMENT OF REVENUE'S RESPONSE</b>	Recommendation accepted. Procurement staff will take proactive steps to ensure technical proposals meet minimum point requirements before releasing pricing information.

## **EVALUATION LANGUAGE IN REQUEST FOR PROPOSALS**

As noted previously, Revenue’s Legal Counsel determined based on the express language in the RFP that Coke’s proposal must be rejected. We compared other RFPs at Revenue to the Beverage Vending and Pouring Program RFP to see if the RFPs contained similar language.

### **Minimum Point Requirement**

We examined nine other RFPs at Revenue to determine if they also contained minimum point requirements. Four of the nine RFPs reviewed also required a minimum point value to advance which is similar to the Beverage Vending and Pouring RFP. However, the remaining five RFPs did not contain a minimum point requirement. Instead, the RFPs specified that vendors who were not among the top scores (ranging from three to five) need not be considered. (See text box for an example.) Had the Beverage Vending and Pouring RFP contained this differing language, both vendors would have advanced to the pricing phase.

**Sample language used in place of minimum point requirement:**

“Vendors who are not among the top three scores need not be considered for site visits, price evaluation, and award.”

### **Alternative Evaluation Language**

All nine RFPs included alternative evaluation language. **The Beverage Vending and Pouring RFP did not.** Alternative evaluation language states that if a certain number of offers are received (for example three or fewer), offers may be evaluated using simple comparative analysis. (See text box for an example.) If the Beverage and Vending RFP had contained alternative evaluation language and the alternative evaluation was used, both vendors would have been eligible for consideration.

**Sample Alternative Evaluation Language:**

“If four or fewer Offers are received, the Offers may be evaluated using simple comparative analysis of the elements of responsiveness (and price where applicable) instead of any announced method of evaluation (such as points).”

<b>EVALUATION LANGUAGE IN REQUEST FOR PROPOSALS</b>	
<b>RECOMMENDATION NUMBER 9</b>	<i>The Department of Revenue should include alternative evaluation language in all Request for Proposals. The Department should also consider using minimum point requirement language that would ensure more than one vendor is considered for price evaluation.</i>
<b>ILLINOIS DEPARTMENT OF REVENUE'S RESPONSE</b>	Recommendation accepted. The Department has taken steps to ensure that its RFP's are consistent with this recommendation.

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### **PRICE NEGOTIATIONS WITH PEPSI**

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Once Coke was eliminated, the Department of Revenue negotiated best and final pricing with Pepsi. Exhibit 2-6 shows the difference between Pepsi's initial proposal and Pepsi's best and final offer. Pepsi increased its vending percentage commission (the percentage the vendor will pay to the State or university) from 30 percent to 45 percent for the State and to 50 percent for the universities. Pepsi's total projected annual revenue remained virtually the same at \$12.75 million. However, looking at the individual universities, projected revenue changed considerably. For example, projected annual revenue for the University of Illinois at Urbana-Champaign increased from \$1 million to over \$2.6 million. Conversely, projected annual revenue for the University of Illinois at Springfield decreased from \$1 million to \$260,688 and for Northeastern Illinois University decreased from \$1 million to \$173,792.

Although the total projected annual revenue stayed the same, because of the higher commission percentages, the projected commission payment for the first year increased substantially to nearly \$6 million. Of that \$6 million, Pepsi added a guaranteed annual vending commitment totaling \$1 million. Pepsi also increased its marketing commitment from \$340,000 to \$440,000 all of which will go to the universities.

Exhibit 2-6 <b>COMPARISON OF PEPSI'S INITIAL PRICE PROPOSAL TO BEST AND FINAL OFFER</b>		
	<b>Pepsi's Initial Proposal</b>	<b>Pepsi's Best and Final Offer</b>
Exclusive Beverage Program Licensing Fee	\$0	\$0
Guaranteed Annual Vending Commitment:		
-State		\$620,818
-University of Illinois at Urbana-Champaign		\$208,798
-University of Illinois at Chicago	\$0	\$136,307
-University of Illinois at Springfield		\$20,446
-Northeastern Illinois University		<u>\$13,631</u>
Total		\$1,000,000
Vending % Commission	30%	45% State 50% Universities
Projected Annual Revenue (first year):		
-State	\$7,200,000	\$7,915,423
-University of Illinois at Urbana-Champaign	\$1,000,000	\$2,662,173
-University of Illinois at Chicago	\$2,550,000	\$1,737,917
-University of Illinois at Springfield	\$1,000,000	\$260,688
-Northeastern Illinois University	<u>\$1,000,000</u>	<u>\$173,792</u>
Total	\$12,750,000	\$12,749,993
Projected Commission Payment (first year):		
-State	\$2,160,000	\$3,561,940
-University of Illinois at Urbana-Champaign	\$300,000	\$1,331,087
-University of Illinois at Chicago	\$765,000	\$868,959
-University of Illinois at Springfield	\$300,000	\$130,344
-Northeastern Illinois University	<u>\$300,000</u>	<u>\$86,896</u>
Total <sup>1</sup>	\$3,825,000	\$5,979,225 <sup>2</sup>
Marketing Support	\$340,000/year	\$440,000/year
Notes: <sup>1</sup> Totals may not add due to rounding.		
<sup>2</sup> Includes \$1 million guaranteed through the Guaranteed Annual Vending Commitment.		
Source: OAG analysis of Pepsi's price proposal and best and final offer documents.		

### Award Notice

On July 27, 2007, the beverage vending and pouring contract was awarded to Pepsi. The award notice listed the guaranteed annual vending commitment amounts as the amounts that would be received under the new contract. The notice also listed the marketing commitment to the universities. The award notice stated that the last component of the award consisted of revenue sharing. The State would receive 45 percent of the vendor's revenue from sales while the universities would receive a slightly higher amount of 50 percent of the vendor's revenue from sales.



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## Chapter Three

# PROTESTS

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### CHAPTER CONCLUSIONS

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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## 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. Specifically, Nedlog expressed concerns regarding the pricing specifications in the RFP:

- A license fee the selected vendor will pay at the initiation of the contract toward exclusively managing the beverage operations;
- An annual vending commitment the selected vendor will pay as an annual guarantee for vending commissions;
- The vending percentage commission the selected vendor will pay for vending sales; and
- The marketing commitment the vendor will pay on an annual basis for marketing benefits.

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.”

In a letter dated April 10, 2007, attorneys representing Nedlog wrote to the Department of Revenue’s General Counsel. The attorneys described in more detail the pricing arguments made in the December 13, 2006, protest letter and stated that, to date, Nedlog had not received a response. Exhibit 3-1 shows the timeline regarding Nedlog’s protest.

Exhibit 3-1 <b>TIMELINE REGARDING NEDLOG'S PROTEST</b>	
<b>Date</b>	<b>Subject</b>
December 6, 2006	Beverage Vending and Pouring Program RFP issued.
December 13, 2006	Nedlog files formal protest with the Department of Revenue.
December 2006	Discussions between Revenue and CMS regarding the protest.
April 10, 2007	Attorneys for Nedlog write to describe in more detail the pricing arguments made in the December 2006 protest letter and state they have not received a response.
July 2007	Further discussions between Revenue and CMS regarding the protest.
July 27, 2007	Beverage Vending and Pouring Program contract is awarded.
August 1, 2007	Attorneys for Nedlog notify the State that they have not received a response regarding their protest.
August 1, 2007	Revenue formally denies Nedlog's protest.
Source: OAG analysis of documents from the Department of Revenue's procurement file.	

### **Revenue's Denial of the Protest**

Between December 2006 and July 2007 there were e-mails amongst Department of Revenue staff and Department of Central Management Services (CMS) staff regarding the response to the Nedlog protest. There were discussions regarding who was responsible for formulating the response. A CMS legal opinion on the points raised by Nedlog was also mentioned.

The General Counsel for Revenue moved to CMS in March 2007 but continued to work on the response to the protest. A July 10, 2007, e-mail from the former General Counsel to Revenue's State Procurement Officer (SPO) noted that CMS legal staff decided to wait to respond to the protest until the contract award was ready. Further discussion in e-mails on July 20, 2007, noted that CMS legal staff had prepared the response but asked the SPO at Revenue to issue the response since Revenue issued the RFP. A Deputy General Counsel for CMS advised the Revenue SPO not to mention that the denial was based on a legal opinion "...or their next move will be a FOIA for the legal opinion and we will have to fight that fight."

The Revenue SPO was not comfortable about issuing the response to the protest stating "I do not necessarily disagree with your opinion, but I do not want to pass off your opinion as mine."

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. The former General Counsel for Revenue replied, "The SPO handling this contract has prepared a response...I saw a draft of the letter which addresses both issues raised by you and your client. I trust you'll receive the letter shortly."

That same day, over seven months after Nedlog’s protest, Revenue formally denied Nedlog’s protest. The denial letter stated that Nedlog made two claims in support of its protest and addressed these two claims.

*“First, you claim that 30 ILCS 500/20-50 prohibits the way the subject RFP was structured. We disagree with your interpretation of this statute and we further disagree that the structure we proposed is violative of the statute.”*

Contrary to the language in Revenue’s protest letter, Nedlog did not make two claims in support of its protest. Nedlog made one claim – that the RFP was in direct violation of the Illinois Procurement Code. Despite taking over seven months to respond, the protest letter did not provide any further detail explaining the reasoning behind the denial of Nedlog’s claim that the RFP was in direct violation of the Illinois Procurement Code.

Instead the denial letter focused on what it termed was Nedlog’s second claim in support of its protest.

*“You also claimed that by seeking a single, state-wide beverage vendor, the State of Illinois was excluding smaller vendors from participation in the contract.”*

Nowhere in Nedlog’s initial protest letter or in its April 10, 2007, follow-up does Nedlog make this claim. The closest to this statement is when Nedlog stated, “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 denial letter goes on to state that this second claim was denied for two reasons.

*“(1) Nothing in the RFP prohibited you or other potential vendors from entering into a joint venture for purposes of providing the requested services and products.”*

*“(2) The State of Illinois determined that it was in the best interest of the State to have a single, responsible vendor for both financial and management oversight reasons.”*

### **Procurement Rules**

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.

<b>PROTEST RESOLUTION</b>	
<b>RECOMMENDATION NUMBER  10</b>	<i>The Department of Revenue should comply with the Standard Procurement Rules and ensure that protests are resolved in a timely fashion. The Department should also ensure the central points of the protest are fully addressed.</i>
<b>ILLINOIS DEPARTMENT OF REVENUE'S RESPONSE</b>	Recommendation accepted. The Department has taken proactive steps to ensure that it complies with these recommendations. The Procurement Manual has been reviewed and updated; training is provided to Staff/Program Areas (as needed) on procurement rules. The Procurement Manual is readily available via the Department intranet site.

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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's August 3, 2007, Protest Letter**

Coke stated in the protest letter that they had previously requested critical information to clarify several definitions, phrases, terms, and commitments in the RFP. As shown in Exhibit 3-2, 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.

Exhibit 3-2

**UNANSWERED QUESTIONS LISTED IN COKE’S AUGUST 3, 2007, PROTEST LETTER**

**The following is a direct excerpt from Coke’s August 3, 2007, protest letter:**

*The Coca-Cola Bottling Company of Chicago previously requested critical information to clarify several definitions, phrases, terms and commitments listed in the State of Illinois FY07 Beverage RFP #22011731. The items in question include the following and remain unanswered.*

- *RFP contents, responses, proposals become part of the contract?*
- *The State will not be responsible for any loss of damage to our equipment?*
- *Unlimited debit card technology and readers?*
- *Repair service time commitments?*
- *The State has the right to terminate with 15 days notice for any or no reason?*
- *Beverage supplier to fund decorative motif, themed wraps and space alterations?*
- *Installing electrical service?*
- *Recycling policies and procedures?*
- *Equipment maintenance and sanitation inspections three times a year?*
- *HR concerns: staffing, uniforms?*
- *All vendors ADA compliant?*
- *Continuous replacement schedule for equipment?*
- *License fees?*

Source: August 3, 2007, Coke protest letter.

We asked Coke when this list of items was submitted to Revenue as questions or as points that needed clarification. Coke officials responded that they were brought to Revenue’s attention in the technical proposal and during their vendor presentation. As discussed in Chapter Two, Coke’s technical approach section of its technical proposal listed requirements it was unable to satisfy. Some of the items on that list correspond to the items listed in Exhibit 3-2 but **most do not**. Also as discussed in Chapter Two, there is no documentation to indicate the discussions that took place during the vendor presentations. Therefore, it is unknown what specific questions were raised during the vendor presentations.

**Revenue’s September 9, 2007, Follow-Up Letter**

In a letter dated September 9, 2007, Revenue asked Coke to respond to three specific questions pertaining to the August 3, 2007, protest letter. Revenue asked the following:

1. Did you raise any questions regarding your need for additional information or clarification in writing to the Department prior to the February 23, 2007 proposal due date? If so, please provide a copy of any such communication including the date on which the communication was made.
2. Please confirm that your February 23, 2007 proposal was not a final offer?

3. Of the 13 bullet points on page 1 of your protest letter, are you claiming that all of these bullet points affected your pricing proposal or your technical proposal? Please specify how each bullet point affected either.

### **Coke's September 21, 2007, Letter**

Coke responded to that request in a letter dated September 21, 2007. In response to request number 1, Coke noted a January 19, 2007, phone conversation as the only contact prior to the due date for proposals. As discussed in Chapter Two, while no documentation exists regarding the phone call, both parties agree that a Coke official called a Revenue official and expressed concerns about some of the RFP requirements. The Coke official also said that Coke was considering not bidding. The Revenue official encouraged Coke to submit a proposal and to note their concerns in the exceptions portion of the response. According to Revenue, the Revenue official told Coke that their concerns would be addressed during the best and final offer phase of contract negotiation. Coke officials, however, were under the interpretation that they were to list in their proposal the items Coke was unable to satisfy and those items would be clarified at a later date.

In response to request number 2, Coke stated their proposal submitted on February 23, 2007, was not a final offer because Coke was unable to provide final pricing and technical information without clarification of the requirements in the RFP.

In responding to request number 3, Coke noted that the 13 items “affected both our pricing and technical proposals.” However, when Coke went on to describe how each item affected its proposals, the descriptions focused on how the items affected Coke’s pricing. It should be noted that when responding to these questions, Coke knew that they lost the bid but was unaware that its technical proposal had been rejected. It is reasonable that Coke would emphasize how each item affected pricing since Coke was under the impression that they would be allowed to submit a best and final offer but were then never asked to do so.

### **Revenue's October 26, 2007, Denial of Protest**

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, 2007, 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, as discussed in Chapter Two and shown in Exhibit 2-1, **both** vendors' proposals lacked key information that was required to be submitted.

We asked Revenue officials if they considered requesting written clarifications from the vendors regarding areas that were unclear. Revenue stated that they were under a tight timeframe to complete the procurement. Revenue felt that issues raised in the proposals could be handled during the best and final offer phase.

The RFP allowed Revenue to request clarification. The RFP specified that, "The State reserves the right at any time in the process to request vendors to clarify information provided in their offer, to request vendors to submit their best and final offer, and/or to reject all offers."

The Illinois Procurement Code (30 ILCS 500/20-15(f)) further states, "...discussions may be conducted ... for the purpose of clarifying and assuring full understanding of and

responsiveness to the solicitation requirements. ... Revisions may be permitted after submission and before award for the purpose of obtaining best and final offers.” This language in the Illinois Procurement Code is similar to language in the American Bar Association’s 2000 Model Procurement Code for State and Local Governments. This publication further states that this “...provides the procurement official an opportunity to make certain that offerors fully understand the solicitation requirements and provides offerors an opportunity to clarify proposals where necessary to assure responsiveness to the solicitation.”

Based on the offers submitted and the issues raised in those offers, the vendors may not have fully understood the solicitation requirements and were not fully responsive to the solicitation.

Regarding best and final offers, the Standard Procurement Rules (44 Ill. Adm. Code 1.2015(g)(4)) state, “The request for Best & Final offers may pertain to any aspect of the solicitation, including but not limited to qualifications, specifications, scope of work or price.”

Revenue officials stated that they did ask the vendors to clarify their offers during the vendor presentations. Prior to the vendor presentations, Revenue provided each vendor an agenda of topics the vendors were to address during the presentations. 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 vendor.

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.

<b>CLARIFYING OFFERS</b>	
<b>RECOMMENDATION NUMBER  11</b>	<i>The Department of Revenue should request vendors to clarify offers and provide missing information when appropriate.</i>
<b>ILLINOIS DEPARTMENT OF REVENUE’S RESPONSE</b>	Recommendation accepted. As a result of this recommendation, the Department has included this item as part of its procurement checklist.

