

LEGISLATIVE AUDIT COMMISSION



Management Audit
State's Multi-Year Beverage
Vending and Pouring Contract

March 2009

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**Management Audit
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RECOMMENDATIONS – 11

Implemented - 11

Background

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.

Report Conclusions

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.

Auditors 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

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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.

Because of these deficiencies and others the auditors were unable to conclude whether the procurement was in the State's best interest.

RECOMMENDATIONS

1. **The Department of Revenue (DOR) 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.**

Findings: 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

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August 15, 2008. Based on the signature dates in the contract, the contract should have commenced on June 6, 2008, not August 15, 2008.

DOR Response: 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.

Updated Response: Recommendation Implemented. Please see the following to document implementation: Attachments 1 Notice to Senior Managers; Attachment 1.A Sample notice to Program Areas/Buyers regarding contract start date.

See Attachment 2 to support that State Beverage Contract commenced after Revenue's Director signed the contract on August 15, 2008.

2. 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.

Findings: 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 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.

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.

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DOR Response: 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.

Updated Response: Recommendation Implemented. The Department's Procurement Manual states that if a Vendor Conference is scheduled, the conference should follow the following guidelines:

- (ii) The timing of the conference should allow vendors enough time to review the solicitation documents and adequate time to revise their bids or proposals before the due date."

This language is consistent with the Procurement rules that require that a pre-bid conference should be held long enough after the IFB or RFP has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparation of bids.

The Department also allows a min. of 10-days between the solicitation publication date and a pre-bid conference consistent with NASPO best practice

- 3. 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.**

Findings: 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.

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

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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 5th of the 9 members and in scoring Pepsi's proposal, he ranked 9th of the 9 members.

DOR Response: 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.

Updated Response: Recommendation Implemented. Procurement ensures that a transcript of pre-bid conferences is prepared and published on the IPB shortly after the pre-bid conference. The Procurement Manual provides "The vendors' conference should answer the most basic questions. Other, more complex questions will be posted on the Illinois Procurement Bulletin website within a day or two of the vendors' conference, and all attendees will be encouraged to check the website for the answers. The transcript to the vendor's conference will also be posted to the IPB."

Vendors and IDOR staff sign-in both at pre-bid conferences and subsequent vendor's meetings/presentations (See Sample Vendor/IDOR Staff Sign-In Sheet – Attachment 3).

Copies of vendor presentations and meetings notes are maintained in the Procurement file. Procurement and/or the Project Manager will transmit vendor presentations or other necessary information to Evaluation Team members who are unable to attend any vendor presentations (See also "Best Practices Tips" – Attachment 4).

- 4. 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.**

Findings: The Department of Revenue developed an evaluation scoring tool to score the technical proposals. (Appendix C in Management Audit Report, p. 57) The scoring tool contained detailed subcategories for the three general categories established in the RFP. The scoring tool was developed prior to the due date for offers and reflected the rankings set forth in the RFP. However, auditors 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

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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%, or five of eight partially or completely referenced an incorrect section of the RFP.

In one instance, the section referenced in the RFP did not exist. In another instance, the RFP section referenced in the scoring tool did not correlate with the correct section in the RFP.

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%) for technical approach. Neither vendor provided a revenue growth plan with its technical proposal. Both Coke and Pepsi received a wide range of scores from the evaluation team members for the revenue growth category. The range for Coke was 0-75, and the range for Pepsi was 20-75.

When questioned about the weight given to the revenue growth subcategory in the scoring tool, Revenue officials stated that 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

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consideration in choosing the winning bidder. Also, the importance of revenue growth was clearly stated in bold in the RFP.

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, the auditors 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.

DOR Response: Recommendation accepted. As a result of this recommendation, the Department has included this item as part of its procurement checklist.

Updated Response: Recommendation Implemented. The Scoring Tool is based on the RFP specification and the evaluation factors are listed in the solicitation. Reference: CMS Template Solicitation document.

Primary evaluation factors and their relative weighting are identified in the RFP. Subfactor weighting is made available for inspection at the bid opening. According to the Administrative Code, all price sub factors and their relative ranking are shown in the Request for Proposals.

5. The Department of Revenue should document evaluation committee meetings including dates, who attended, and what was discussed.

Findings: 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. 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.

DOR Response: Recommendation accepted. As a result of this recommendation, the Department has included this item as part of its procurement checklist.

Updated Response: Recommendation Implemented. The SPO sends Evaluation Team Members a copy of the CMS Evaluation Guidelines. In addition to sending the CMS Evaluation Guidelines, the SPO sends the "Best Practices Tips" to the Project Managers, which include guidance on committee meeting documentation.

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The Project Manager documents evaluation committee meetings including dates, who attended, and what was discussed. Procurement includes in its files the required sign-in sheet; a brief summary of the meeting. See “Best Practices Tips for Project Managers”.

6. The Department of Revenue should follow CMS Guidelines and ensure that:

- **Major differences in scores are discussed to determine if an error was made or an evaluator missed or misinterpreted a vendor’s proposal;**
- **Evaluation tools are fully completed with no elements left blank; and**
- **Ratings points are supported with thorough and appropriate comments.**

Findings: 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. 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.

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.

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.

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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. According to CMS Guidelines, evaluations which are not accompanied by thorough supporting comments should be returned to the evaluator for further consideration. At a later date, the Department provided handwritten scoring instruments with notes for one additional evaluator.

DOR Response: 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.

Updated Response: Recommendation Implemented. The SPO sent Evaluation Team Members a copy of the CMS Evaluation Guidelines. The SPO requires each evaluation team member to provide Procurements with his/her original signed evaluation sheets and comments on their evaluation score(s). Major differences in scores are reviewed with the evaluator/PM. Procurement verifies that the evaluation sheets reviewed are complete and the ratings points are supported with thorough and appropriate comments.

7. The Department of Revenue should ensure that:

- **The reference questionnaire encompasses all of the elements included on the evaluation tool;**
- **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**
- **References are fully documented in the procurement file including the reference questionnaires and how scores are formulated.**

Findings: 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.

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During the review of references, auditors 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.

One of the five reference elements on the evaluation tool did not correlate with any of the questions on the reference questionnaire. 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.

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. 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.

Reference Documentation and Scoring

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

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.

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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
Total Score	75	64	55	55	50
Source: Department of Revenue reference scoring sheets.					

Auditors 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. 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.

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.

DOR Response: Recommendation accepted. As a result of this recommendation, the Department has included these items as part of its procurement checklist.

Updated Response: Recommendation Implemented. The SPO provides the Project Manager with the CMS Template Reference Questionnaire. The PM revises the Reference Questionnaire as needed to support the specific solicitation. A sub-committee of the Evaluation Team is established by the PM to conduct reference checks. If references are to be 'scored', the reference score for each vendor is provided to each evaluation team member to include the resulting score in their evaluation sheet. If references are not "scored"; the sub-committee sends a copy of his/her notes to Procurement to include in the file. The SPO Procurement requires each member of the reference evaluation sub-committee to submit his/her original signed reference evaluation

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sheet and provide comments on their reference evaluation score(s) to Procurement for its files.

See also "Best Practices Tips".

- 8. 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.**

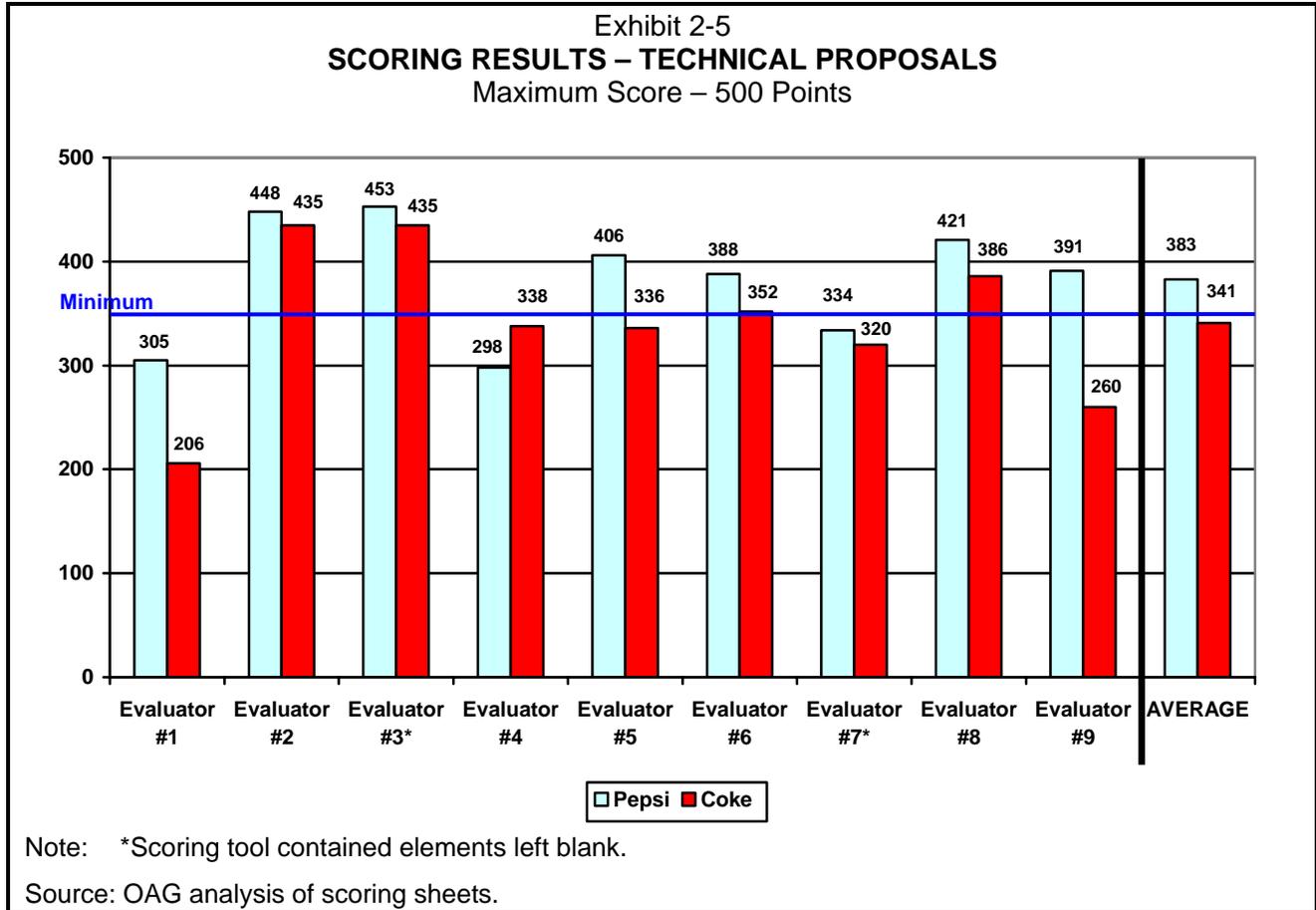
Findings: The scoring of technical proposals was completed April 16, 2007. The results were compiled including the reference scores. Exhibit 2-5 shows the compiled scores from the nine evaluators and the average scores for both Coke and Pepsi. Pepsi's average score was 383 while Coke's average score 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. 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.

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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 situation was not explained to Coke until nearly five months later when Coke’s protest was denied.

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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. 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.

Auditors 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.

DOR Response: Recommendation accepted. Procurement staff will take proactive steps to ensure technical proposals meet minimum point requirements before releasing pricing information.

Updated Response: Recommendation Implemented. The general practice of Procurement is to verify minimum point requirements are met.

Pricing proposals from Vendors are required to be separately sealed. They are not opened until the technical evaluations are completed; scored and verified. Vendors must meet any applicable minimum point requirements or numerical ranking as required by the solicitation. Once Procurement validates those vendors that have met the minimum technical requirements; the sealed pricing envelopes are thereafter opened for evaluation.

- 9. The Department of Revenue should include alternative evaluation language in all Requests for Proposals. The Department should also consider using minimum point requirement language that would ensure more than one vendor is considered for price evaluation.**

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

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Minimum Point Requirement

The auditors 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. Had the Beverage Vending and Pouring RFP contained this differing language, both vendors would have advanced to the pricing phase.

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. 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.

DOR Response: Recommendation accepted. The Department has taken steps to ensure that its RFP's are consistent with this recommendation.

Updated Response: Recommendation Implemented. This procedure has been followed. Vendors must meet any specified minimum point requirements or numerical ranking as required by the solicitation. The Department Procurement Manual provides that "...The scores will be submitted to the SPO for determination of the Competitive Range.The Buyer shall establish a Competitive Range....The Competitive Range shall be stated in the RFP."

Additionally, the Department utilizes the standard CMS Solicitation Template document which contains this language "We will determine how well Offers meet the Responsiveness requirements. We will rank Offers, without consideration of Price, from best to least qualified using a point ranking system (unless otherwise specified) as an aid in conducting the evaluation. Vendors who receive fewer than the minimum required points will not be considered for award.

10. 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.

Findings: On December 13, 2006, the Nedlog Company of Wheeling, IL 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 statutes as follows:

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“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 TIMELINE REGARDING NEDLOG’S PROTEST	
Date	Subject
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.	

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Revenue's Denial of the Protest

Between December 2006 and July 2007 there were e-mails among Department of Revenue staff and Department of Central Management Services 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.

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“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.”

DOR Response: 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.

Updated Response: Recommendation Implemented. 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.

11. The Department of Revenue should request vendors to clarify offers and provide missing information when appropriate.

Findings: 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

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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, page 103, of the Management Audit report.

Exhibit 3-2 UNANSWERED QUESTIONS LISTED IN COKE'S AUGUST 3, 2007, PROTEST LETTER
<p>The following is a direct excerpt from Coke's August 3, 2007, protest letter:</p> <p><i>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.</i></p> <ul style="list-style-type: none">• <i>RFP contents, responses, proposals become part of the contract?</i>• <i>The State will not be responsible for any loss of damage to our equipment?</i>• <i>Unlimited debit card technology and readers?</i>• <i>Repair service time commitments?</i>• <i>The State has the right to terminate with 15 days notice for any or no reason?</i>• <i>Beverage supplier to fund decorative motif, themed wraps and space alterations?</i>• <i>Installing electrical service?</i>• <i>Recycling policies and procedures?</i>• <i>Equipment maintenance and sanitation inspections three times a year?</i>• <i>HR concerns: staffing, uniforms?</i>• <i>All vendors ADA compliant?</i>• <i>Continuous replacement schedule for equipment?</i>• <i>License fees?</i>
Source: August 3, 2007, Coke protest letter.

The auditors 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. 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.

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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. 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. 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

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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.

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.

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 23rd and then allowed Coke additional time to cure any defects that plagued Coke’s February 23rd incomplete proposal.” However, **both** vendors’ proposals lacked key information that was required to be submitted.

Auditors 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.”

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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.

DOR Response: Recommendation accepted. As a result of this recommendation, the Department has included this item as part of its procurement checklist.

Updated Response: Recommendation Implemented. When necessary, the Department has requested Vendors to clarify their offers and provide missing information when appropriate and established a reasonable deadline for the Department's receipt of this information, consistent with the Procurement Rules.