

A LIMITED SCOPE PERFORMANCE REVIEW OF MADISON COUNTY CONTRACTS WITH RUDY WARNOCK: PART 1



STACEY E. PICKERING
STATE AUDITOR

A report from the Performance Audit Division

#123

October 28, 2010

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STATE OF MISSISSIPPI
OFFICE OF THE STATE AUDITOR
STACEY E. PICKERING
STATE AUDITOR

October 27, 2010

Mr. Tim Johnson
President, Madison County Board of Supervisors
125 West North Street
P.O. Box 608
Canton, MS 39046

Mr. Johnson,

I present to you my Performance Audit Division's report #123, entitled "*A Limited Scope Performance Review of Madison County Contracts with Rudy Warnock: Part 1.*" Understanding Madison County's ongoing political environment and my desire not to be drawn into the many conflicts present there, I am pleased to say that my staff has produced a report for your consideration that provides a third-party, objective review of the Board's actions based on government performance auditing standards.

The analysis, conclusions, and recommendations within this report are provided to encourage you and the rest of the Board to consider the importance of strong internal controls and contract management. Such controls will almost always alleviate rumors and insinuations of wrongdoing because they can provide proof and justification of the Board's actions. Without strong, uniform, consistent controls in place, the Board is open to a higher level of risk for fraud, waste, and abuse. I believe that many of the issues we have raised in this report are underlying causes of at least some of the allegations that are frequently brought up in both the Board room and in the media.

Before a Board member may take office he or she must take a Constitutional oath of office that requires them, in part, to "...faithfully discharge the duties of the office upon which [they are] about to enter." Reasonably, this is expected to mean both the spirit and letter of the oath. Therefore, a board may delegate certain responsibilities, yet it may never completely delegate its duties as stewards of public funds. Further, the Board speaks only through its minutes. For a formal procedure to exist, it must first in some way have been spread upon the Board minutes.

With regard to the scope of this project (County contracts with Warnock) my staff, through analysis and interviews, has determined that the Board did not exercise sufficient oversight and management of contracts and payments. In many cases, it appears as if the Board delegated responsibilities without

overseeing, reviewing, or questioning contract terms or payments. They did not require sufficient documentation for experienced auditors in my agency to be able to verify the validity of selected claims. Additionally, and regardless of their intent, the Board actually failed to pass a reasonable motion requiring all professional services contractors to provide itemized billing statements "to allow comparison with contractual terms and conditions." In the case of this review, the County was not always able to provide our auditors or investigators with a clear trail of documentation showing they were able to verify claims. OSA found invoices with errors that appear to have been approved and paid with no notation on them regarding corrections.

OSA found that the Board failed to enact a process to ensure that contracts were valid and unexpired before requesting or assigning work under those contracts. Board approved contract language often allowed the engineer the opportunity to charge for duplicative services from one project to another. Also, these same contracts allowed the engineer the opportunity to charge excessive fees for reimbursable services such as mileage fees plus daily vehicle use fees at the same time.

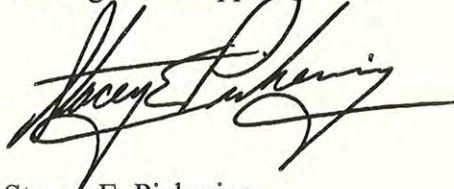
Generally, OSA also found the approved contracts were, and are, not protective of the taxpayers or the Board's interest because they contain errors, contradictory language, and missing information. Board members and County staff were unaware that at least two contracts (one in 2005 and one in 2008) with Warnock were either expired or which had no term of service, yet the Board repeatedly approved work under these contracts.

As with all of OSA's audit reports, the goal of this report has been to aid the current Board, administration, and citizens of Madison County in understanding where weaknesses exist with their controls over contract management and where improvements can be made. I am encouraged that you have at least taken a few of our recommendations seriously.

I chose to begin this project by examining Board contract and management issues in an effort to give you an opportunity to understand where the County needs to strengthen its oversight, processes and controls. If it is determined that this agency needs to take any further action with regard to these matters, we will not hesitate to do so.

Please do not hesitate to call me if I can be of further assistance. As we continue our work on the financial review, my staff may again try to determine if the Board maintains certain types of supporting documents. I hope that you will continue to be cooperative and provide the requested information where such information exists.

Serving Mississippi together,

A handwritten signature in black ink, appearing to read "Stacey E. Pickering", written over a horizontal line.

Stacey E. Pickering

Mississippi State Auditor



**Office of the State Auditor
Stacey E. Pickering**

Performance Audit Division Report #123

***A LIMITED SCOPE PERFORMANCE REVIEW OF MADISON COUNTY CONTRACTS
WITH RUDY WARNOCK: PART 1
October 28, 2010***

Executive Summary

In March, 2010, the Mississippi Office of the State Auditor (OSA) received several requests to review the Madison County Board of Supervisors' (Board) road construction contracts with Rudy Warnock (Warnock) of Warnock and Associates. OSA acknowledges that these concerns were also made public by the local media and were directly related to projects with the county engineer, Warnock, and his company. These public concerns center around the Board's approval of certain road design and construction contracts, how those contracts were managed and executed, and the actual costs associated with these contracts.

Under OSA's authority in §7-7-211(e) of Mississippi Code Annotated (1972), and in response to those requests, in April, 2010, OSA began a limited scope performance review of certain Madison County (County) projects. This review has been divided into two parts—a contractual analysis (included in this report) and a financial analysis (to be provided in a second report). Opinions, conclusions, findings, and recommendations in this report are based solely on principles and standards of government performance auditing.

This report examines the effectiveness of the Madison County Board of Supervisors' contract management and oversight related to its agreements with Rudy Warnock. Recommendations made in this report are specifically related to the selected contracts and projects with Warnock, but many could be applied more broadly to all professional service contracts in a board's efforts to strengthen management and controls.

In essence this review relates to what are commonly known by auditors as internal controls as they should apply to the selected contracts between the Board and Warnock. Adequate internal controls serve as a defense in safeguarding assets and preventing and detecting errors; fraud; violations of laws, regulations, and provisions of contracts and grants agreements; or abuse.

OSA defines "management" for the purposes of this project as the Board of Supervisors.

Internal control consists of five interrelated components: (1) control environment, (2) risk assessment, (3) control activities, (4) information and communication, and (5) monitoring. The objectives of internal control relate to financial reporting, operations, and compliance. One of OSA's objectives was to assess whether internal control, in the case of this Board, has been properly designed and implemented to protect the taxpayers of this County.

In performance audits, a deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, detect, or correct (1) impairments of effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations, on a timely basis. A deficiency in design exists when a control needed to meet the control objective is missing or when an existing control is not properly designed so that, even if the control operates as designed, the control objective is not met. A deficiency in operation exists when a properly designed control does not operate correctly, or when the person performing the control does not possess the necessary authority or qualifications to perform the control effectively.

Specifically in regard to this issue, OSA staff identified a number of contract related problems that create internal control weaknesses and that could lead to potential losses to the County. These issues included:

- the Board not requiring sufficient documentation supporting payment claims,
- seemingly poor contract construction (related to protecting the interests of the County and the taxpayers) approved by the Board,
- poor oversight and monitoring of contracts by the Board in light of voiced concerns by individual supervisors, and
- potentially duplicative payment terms allowed in contracts.



In its standard practice of assuring appropriate evidence is used to support its assessments about the effectiveness of these internal controls, OSA reviewed primary and supporting documents provided by the County for 116 construction projects with Warnock. These projects amounted to more than \$6.5 million in County expenditures during the period of time covered in this review (fiscal years 2004-2010). Of those 116 projects reviewed, OSA also closely examined 22 Board contracts with Warnock and all available supporting Board minutes, payment documentation, and other available, related information.

Of the contracts reviewed:

- 22 were properly spread upon the Board minutes
- 8 lacked an effective date
- 9 included titles and/or headings that did not correspond with the actual work described or the effective dates of the contract
- 10 included, for multiple services, flat rate/lump sum payments in addition to percentage payments and additional reimbursable payments which, when added together, resulted in more than 14% of the total estimated construction costs per project
- 18 provided reimbursement for expenses that might normally be considered overhead expenses covered in lump sum payments
- 14 showed missing, incomplete, or ambiguous scope of service terms
- 15 contained inapplicable terms and contract sections
- 6 lacked estimated construction cost totals, even though this amount is the basis of the percentage payments and even though there is a place in the contract designated specifically for such an amount
- 15 lacked the detailed estimated construction cost totals
- 10 allowed the engineer to charge the County both a fee for daily vehicle use and a daily mileage rate
- 19 allowed for potentially duplicative costs for services

Initially, OSA found that most of the agreements between Warnock and Madison County appeared to be in a standard format because they originated as a standard, construction related engineering contract form. However, upon review, OSA found no evidence that the Board or its officers had attempted to tailor most of these contracts to the specific needs of the project or to protect the County by removing unnecessary language and strengthening oversight and cost controls. In numerous instances, OSA identified sections marked (but not removed or deleted from the contracts) “not applicable” yet referenced by other “applicable” sections of the contracts.

Most of the contracts reviewed contained language stating that in order for the Board not to have to pay extra for design problems, they had to identify those problems themselves and make the engineer (who often was creating the design) aware of the problems. OSA has been unable to

identify any County official or Board members with the expertise to identify such design flaws.

Another OSA concern noted throughout most of the contracts include a clause allowing the engineer to hire any consultants or sub contractors he felt were necessary without notice to the Board; this same clause also affords the Board the right to object to any of his consultants or sub contractors as long as such objections are “substantive.” So far, OSA has identified at least two subcontractors of which the Board’s staff was not aware. When OSA requested the County’s records related to his subcontract work, the County did not provide any documentation related to these companies. Therefore in these instances OSA reasonably concludes that the County could not have made objection to Warnock’s subcontractors because they had no knowledge of them.

Another example of contractual problems is the clause pertaining to invoice documentation. Most of the contracts had a clause that allowed the engineer to turn in whatever he would normally turn in to a client for reimbursement. The Board did not negotiate guidelines into the contract for necessary information that could be used to verify invoice accuracy and validity. Instead, the contracts they approved allowed Warnock’s standard practices to dictate the level of assurance that could be provided to Board staff. As a result of the contractual weakness, the Board has virtually no additional documentation to validate invoices from the engineer.

The copies of signed, executed contracts provided to OSA by the County often included significant typographical errors, erroneous titles or subjects, missing information, and generally appeared to be more directed at protecting the engineer’s interests than that of the Madison County taxpayers.

Based on government auditing standards and OSA’s experience with such matters, OSA believes that the numerous weaknesses identified in the contracts raise the Board’s risk of various financial liabilities that could negatively impact both the County taxpayers and the Board of Supervisors. One best practice the Board should consider is require the Board Attorney to provide a summary explanation of key terms, expiration and other key dates, costs, use of certain language, etc. so that the Supervisors will be well-informed before they vote to accept a contract.

During its evaluation of invoices and contract terms, OSA was unable to find sufficient documentation (based on auditing standards) to verify the accuracy and validity of the invoices. Among the many tests, measures and standards of performance auditing, one standard that can generally be applied in any case is the measure of “what a reasonable and prudent individual would do.” In addition, OSA found errors on invoices submitted. In some cases, OSA found that certain invoices showed line-itemed sub contractor payments, even though the majority of the contracts stated



that for all service phases, the payments were inclusive, not only of profit, labor, and overhead, but also that these fees paid to the engineer were inclusive of his consultants and sub contractors.. In these few instances found by OSA, additional documentation, such as sub-contractor invoices, was indeed attached to the main invoice. This was not the case in most of the invoices reviewed.

In researching this issue and through its review of Board minutes between 2004 and 2010, OSA determined two critical points in time that could have made a significant improvement in the oversight of payments made by the Board to Warnock. OSA found that twice the Board was presented with, yet failed to pass, a motion to require additional documentation to verify claims validity. The motion itself seemed to OSA to put the board on sufficient notice that there were indeed potential issues arising from this issue and that erring on the side of caution in the area of internal control may have been a prudent response. Also, in addressing the issue of such documentation and invoices, Mississippi Code section 19-13-31 delineates the responsibilities of a board with regard to approving claims and places responsibility on a board to have processes in place to verify the validity of such a claim.

In addition to changes that could have been made to contract terms, the Madison Board seemingly had two opportunities to make a change in its oversight of invoice payments and tighten control over the claims verification process. In June, 2005, a legitimate motion was made and seconded by two Board members to require documentation to verify the validity of payment requests (claims) from all professional service contracts. The Board failed to pass the motion. Then, a similar motion in June, 2009, also failed to pass with a majority of the Board's support. However, this motion directly related to the invoices and contracts with Warnock. In both years, when two Board members made and seconded a motion to require additional documentation for personal service contract invoices prior to paying a claim, the matter failed to pass by a vote of a majority of Board members.

OSA found that because of the presence of these two separate motions, the Madison County Board of Supervisors should have been aware that some of their members feared that additional documentation was needed to uphold their responsibility under the claims law. However, by not passing the motions, the Board appears to have believed that additional documentation for claims against personal service contracts was unnecessary. Because the primary responsibility of claims payments rests with the Board, it would not be unreasonable for members of the Board to request additional information before approving (voting to pay) a claim, even though a competent professional currently manages payments. OSA finds that the type of information that was requested can be actually necessary, basic information.

OSA asserts that the Board seemingly had knowledge of

this potential problem (because a motion was made) and that then it had the opportunity to correct the problem. However, in spite of such concerns by individual Board members, the Board as a group took no action at the time. The result of this inaction has at least, in part, culminated in this and the next report from OSA. The State Auditor, in this case, is without statutory authority to impose such a claims oversight system upon the Board.

Since OSA brought this issue to the attention of the Board, its Attorney, and Clerk, they appear to have begun to work together to take corrective action related to at least a few of these issues. At a special meeting that was held on September 30, 2010, the Board unanimously voted to pass a motion and require the County staff to obtain sufficient documentation in order to verify claims. In addition, the Board made clear in a motion on the minutes that it was not their intention to limit the documentation that was collected, but rather such inaction was a response to their belief that the professional staff had all of the documentation needed to properly safeguard County funds. Since OSA identified the weaknesses in the Board's processes, the Board's staff has been in contact with OSA staff in order to gain further understanding of certain types of documentation and contract management that OSA recommends should be standard practice in these types of contracts in government.

Contract terms and contract construction were also identified by OSA as potential issues of concern. In its interviews with Board members, the County Administrator (during April, 2010), and other staff, OSA found that, in some cases, none of these officials were aware of the terms and conditions of various contracts. Two examples are the Madison County contracts for general services of 2005 and 2008. In two separate places, the eight page 2005 agreement states that it is only in effect for the term of the 2005 calendar year. OSA, in furthering its review of this issue, found no record in the Board minutes where a new contract was issued in the years 2006 or 2007, nor did it find that there was any indication of a renewal after 2005. Because the Board can only act through its official minutes, OSA has concluded that, in the years 2006 and 2007, the Board failed to enact a contract for the County's general engineering services, while continuing to pay \$3,000 in monthly retainer fees, hourly fees, and beginning in September, 2006, additional fees beyond the 2005 contract scope. In sum, OSA asserts that all of these payments were approved under an expired contract.

While another general services contract was issued in 2008, it appeared to have no time or term limit indicated other than an effective date. There was no mention in this contract, or in Board minutes, of any particular length of time for the contract to be effective. OSA has found no indication that a new general services contract was issued in the year 2009 or 2010; nor was there any indication of renewal in the Board minutes. These are serious concerns to OSA because the Board continues to pay monthly retainer



fees and reference general service agreements where none appear to exist. In essence, the Board has been operating without following the laws requiring that they take no official actions (contracting for general services) without first spreading them upon their Board minutes.

However, since OSA brought the 2008 General Services contract problem to the attention of the Board, they have taken action to correct the lack of service term through a *nunc pro tunc* order and to clarify that it was their original intention to create contracts for a term consistent with the term of the Board.

In other Board contracts with Warnock OSA found that there was missing, duplicative, ambiguous, or incorrect terms listed. In a related finding, OSA determined that, while it appears not uncommon for an engineer to receive as much as 14% of estimated actual construction costs for a project, in reviewing available documents, it appeared to OSA that the total payments to Warnock were actually higher than this percentage. In addition to the various methods of compensation that were used in contracts (lump sum, percentage of completion, etc.) reimbursable expenses—many of which could normally be considered overhead—were also allowed.

For the purpose of clarity, OSA has identified several ways various parts of such contracts may be paid. For example, in the selected contracts, environmental design services were generally paid with a flat fee. Both design phase services and construction phase services were generally paid separately: a percentage of the estimated total project cost, with each phase billed separately. Finally, each contract generally allowed for some additional charges such as reimbursable expenses not included in the other areas. In summary, for multiple services, flat rate/lump sum payments in addition to percentage payments and additional reimbursable payments which, when added together, resulted in more than 14% of the total estimated construction costs per project.

In addition, OSA found that in many of these contracts (especially those prior to the year 2008), Warnock was allowed both a vehicle use fee and vehicle mileage fee. For example, his 2008 general services agreement allowed for a \$2.50 per hour vehicle use fee as well as a mileage rate of up to \$0.45 per mile. Other contracts also allowed the mileage rate plus a duplicative \$100 per day vehicle use fee.

(Whether or not these duplicative fees were actually billed is discussed in the follow-up report related to finances.)

OSA had some difficulty, initially, identifying in Board minutes which contract for certain construction projects governed which payments. Part of this difficulty was that a number of the contracts had very similar names and Board minutes may or may not have clearly identified them.

This project is not intended to offer any broad implications about the way Madison County, any other county, or any other local or State government entity conducts its business outside of the limited scope of this review. However, some of these issues may be systemic, while others may be isolated problems related to the selected contracts. In either case, OSA recommends that the Madison County Board review and improve their oversight and management controls. This report does not attempt to offer any legal opinion regarding the contracts it reviewed or make any determination related to the County's other contracts, obligations, management, payments, etc.; nor does it make implications about Warnock's contracts with any other government or non-government entities.

Even though this report and the next are of a very limited scope, OSA hopes that not only Madison County, but all government entities throughout the State, may benefit from the recommendations related to strengthening contractual procedures. Government has a fiduciary responsibility to protect the citizens' tax dollars and spend those funds effectively and wisely. While much of the work of government is done through contracts with the private sector, OSA has found over the years that government does not generally employ enough staff with sufficient training and understanding of contract construction, management, or oversight to implement such effectiveness. While vendors are necessary to carry out certain government functions, government must take adequate steps to ensure the adequacy of its role as the steward of taxpayer funds. With this fundamental concept as the role of the Office of the State Auditor, that is, to effectuate positive change in governmental financial procedures, the Auditor's Limited Scope Review of Madison County should address and help implement more positive procedures, more solid internal controls, and, therefore, more prudent spending of taxpayer dollars.



Page(s)	Findings and Recommendations OSA Findings are in BLUE, OSA Recommendations are in RED
Standard A1.06	<i>According to generally accepted standards, those charged with governance have the duty to oversee the strategic direction of the entity and the obligations related to the accountability of the entity. This includes overseeing the financial reporting process, subject matter, or program under audit including related internal controls.</i>
6	<p>In 2004, the new Board hired its first County Administrator and Comptroller. In addition they had a new Board Attorney and other staff. OSA finds that the original intent of this new Board was to delegate certain responsibilities to a highly competent staff. According to the Board minutes, with regard to their County Administrator, they did assign him “all duties and responsibilities enumerated in §19-4-1 through §19-4-9...” However, OSA finds that without defining the responsibilities and parameters within which they would be allowed to operate, in hiring and delegating Board responsibilities to them, the Board may have placed too much reliance on the new officials’ understanding of their roles communicating all of their expectations clearly.</p> <p>OSA recommends that the Board should immediately review the responsibilities that they have delegated to their staff, including the County Administrator, the Board Attorney, the Comptroller, and the Clerk of the Board and determine what additional expectations they have related to their delegated duties. As of September 30, 2010, OSA finds the Board has begun taking these actions. *As of September 30, the Board has begun taking these actions.*</p>
10	<p>OSA did not find evidence that the Board has instructed its staff to develop a process to immediately inventory and evaluate a contract upon its execution.</p> <p>OSA recommends that the Board of Supervisors should consider requiring its Board Attorney, upon approving any contract for services, to work with the County Administrator to develop a system that acts as a “checklist” of contractual terms and conditions that can be used by Board staff and that would streamline and strengthen the claims verification process. This system should be made a part of internal policies and procedures.</p>
12	<p>While OSA acknowledges the Board, in both its January, 2004 and 2008 minutes properly delegated general duties and responsibilities under the law, OSA did not find evidence of any additional or specific responsibilities delegated by the Board to the County Administrator, such as instructing him to work closely with the Board Attorney to determine if the contracts properly protected the taxpayers’ interests. While the Board members may have shared the expectation that this would automatically happen, in the case of the selected contracts, OSA finds that there appeared to be numerous instances of a lack of both communication before and after the contracts were executed.</p> <p>With regard to this performance review, OSA recommends that the Board should specifically instruct the County Administrator to work with the Board Attorney and Clerk to ensure contracts are properly executed before they are filed in the Chancery Clerk's office for public review, and that they have, either through attachment or reference, such additional information that may allow the public to reasonably understand such agreements. Even before that, the Board should require the County Administrator, in conjunction with the Board Attorney to recommend changes and modifications to vendor contracts that create protections for the County and by extension, its taxpayers. Additionally, board members should never sign incomplete contracts.</p>



Page(s)	Findings and Recommendations OSA Findings are in BLUE, OSA Recommendations are in RED
Standard A.04	<i>According to generally accepted standards, control deficiencies can include: (1) Ineffective oversight by those charged with governance of the entity's financial reporting, performance reporting, or internal control, or an ineffective overall governance structure; (2) failure by management or those charged with governance to assess the effect of a significant deficiency previously communicated to them and either to correct it or to conclude that it will not be corrected; and/or (3) inadequate controls for the safeguarding of assets.</i>
13	<p>OSA finds that it is important to be able to verify invoices through additional documentation that links the invoice to not only the completed work, but to sufficient data elements that allow staff to track expenses and establish baseline data for future planning and budgeting. While the documentation does not have to be extensive, it should clearly be linked to the invoice that is provided.</p> <p>OSA recommends that the Board require sufficient documentation from the vendor with verification by the County Administrator and his staff, before any payments are made for these contracts. OSA reasonably concludes that a one-page invoice with no additional documentation may not be considered sufficient if it provides no chance for verification of the claim payment being requested. If there is information coming in to the County on a regular basis, but not attached to an invoice, the Board should consider whether such information could be regarded as sufficient documentation to help verify the accuracy of invoices.</p>
15	<p>The Board should always require the County Administrator, upon the passage of the contract, to have appropriate procedures in place to file the contract properly and oversee the contract. These procedures should include proper claim payment review. Of note, in contract management, making a checklist of all relevant terms and conditions will help reduce problems associated with payments, documentation, and deliverables. OSA was unable to determine from documents and interviews if Madison County employs any such regular review process for its contracts with Warnock.</p> <p>OSA recommends that if they do not have such contract review procedures in place, that the Board requires them to be developed and implemented immediately to better manage their contracts.</p>
16	<p>OSA finds that the State Board of Engineering regulations allow public entities to bid for engineering services-the entity must first select on the basis of qualifications and competence, one engineer or firm for negotiations before they can submit a price for services.</p> <p>OSA recommends that the County should at least consider using the bidding process in the future where competition exists, even for personal service engineering contracts. Even though current law does not require it, nothing prevents a board from using bidding for engineering personal services to get the best product for the best price.</p>
18	<p>OSA finds that, while the Board of Supervisors carries the ultimate responsibility of the actions of the county, each of the identified officers and representatives of the county also have legal obligations to perform certain functions as well. The courts have also said that anyone contracting with a county Board of Supervisors has the responsibility of ensuring that their contract(s) are properly executed and filed. Specifically, the Mississippi Supreme Court has stated, "We have held vendors responsible for assuring that their contracts with local government are lawfully made."</p> <p>OSA recommends that Madison County and Rudy Warnock review their contracts and implement any changes necessary to bring clarity and protection to all interested parties.</p>



Page(s)	Findings and Recommendations OSA Findings are in BLUE, OSA Recommendations are in RED
17, 18	OSA finds that, while in general a total of 14% (7% design phase and 7% construction phase fees) of estimated construction costs paid as engineering fees is not unusual for the type of road construction contracts that Warnock had with Madison County, these fees were usually only part of the total amount of compensation he received.
	Each of the contracts contained additional reimbursable expense provisions, some of which OSA finds would normally be considered overhead, such as phone and fax use as well as standard photocopying.
	OSA recommends that the Board instruct the Board Attorney and the County Administrator to work together to review contracts more carefully and remove or limit opportunities for duplicative or excessive payments before presenting them to the Board. Whether or not the engineer actually billed for the additional costs, by having them in the contract, the opportunity to have charged the County existed.
31	OSA finds that during a June 6, 2005, Board meeting and again during a June, 2009, Board meeting, similar motions were made and seconded to require that professionals submitting invoices to the County for payment provide itemized billing statements to allow comparison with contractual terms and conditions. However, the matter failed to garner a majority of the votes from the Board. OSA finds that the Board should have been aware of a potential problem related to a lack of documentation to verify expenditures and then should have taken corrective action in the management/payment of the invoices associated with its professional service providers.
	OSA recommends that the Board carefully consider the long term and/or legal implications of its motions, especially as they may relate to claims and payments.

Standard A.08	<i>According to generally accepted standards, certain conditions might indicate a heightened risk of loss or fraud, including but not limited to: (1) inadequate monitoring by management for compliance with policies, laws, and regulations; (2) management has a willingness to accept unusually high levels of risk in making significant decisions; (3) operating policies and procedures have not been developed or are outdated; and/or (4) key documentation is lacking or does not exist.</i>
16, 17	OSA finds that all 22 contracts had been spread on the minutes on the date they were signed. However, at least one contract that OSA reviewed was in the Board minutes on the date it was signed, but the year of its effective date was one year earlier.
	OSA finds that the Board signing contracts which allowed Warnock to charge both a mileage fee and a daily vehicle use fee within one contract could create excessive expenses for the County if the engineer bills both.
	OSA recommends that the County should review and renegotiate such items with the engineer to only pay the most reasonable cost. One method of compensation for vehicle usage could be to tie reimbursement to State allowable mileage rates in the contract. This would allow for uniformity and would guarantee a fair and equitable reimbursement. This method of reimbursement provides the County a better opportunity to track mileage expenses paid to contractors.



Page(s)	Findings and Recommendations OSA Findings are in BLUE, OSA Recommendations are in RED
20	In its review, OSA found that in several of the contracts between Warnock and Madison County, construction costs are allowed to be exceeded if notice to and approval from the Board were obtained first.
	OSA recommends where such a clause occurs in the contract, it also contains a clause that the Board requires sufficient documentation to clearly identify and understand the need to increase the total project amount.
20	In some of the contracts reviewed, OSA finds that Madison County frequently approved language limiting the engineer's liability to insurance limits. While this may be standard, OSA cautions the Board that when multiple contracts for multiple services on the same project are awarded to the same engineer, the Board should consider evaluating the total risk that may occur and design the contract to protect the taxpayer.
	OSA recommends that the county at least consider strengthening its position related to potential liability of design and construction contracts.
22	OSA finds that the 2005 General Services contract expired after the 2005 calendar year. OSA finds no evidence of such a contract after December 31, 2005.
	OSA recommends that the Board, through its County Administrator, take steps to review existing contracts for expiration dates and to immediately put in place controls to prevent Board approval of work or payments to a contractor in the absence of a valid written contract.
22, 23	OSA finds that in Board minutes from July 3, 2006, the Board unanimously authorized Warnock to "prepare, in geo-referenced digitized format, copies of all approved permits issued by Madison County pursuant to his general services contract with the County." However, the general services contract was expired at the time the motion was made, and therefore, not valid.
	OSA recommends the Board be more specific with its motions, so that its intent will always be clear. This includes specifics about services which will entail additional costs.
23	OSA finds that the 2005 general services contract between Madison County and Rudy Warnock expired on December 31, 2005 and subsequent Board minutes do not indicate any renewal, modification or replacement of the original contract, yet the minutes reflect payments to him based on the expired contract.
	OSA recommends that the Board and the Board Attorney more carefully review contract terms and Board minute motions in the future to ensure accuracy of interpretation and validity of claims. OSA also recommends that to comply with State law, the Board should not instruct contractors to hold invoices from one fiscal year until after a new fiscal year has begun.
24	OSA finds no evidence of a term of service or expiration date for the 2008 general services agreement in the contract or in Board minutes.
	OSA recommends that the Board immediately review all of its contracts with the County Engineer to determine if there are any other contracts that have no term of service/termination date, or which have expired, or which are about to expire, and take appropriate action, including putting a valid contract in place, ceasing current payments, requiring repayment where necessary, etc. *As of September 30, the Board has begun taking these actions.*



Page(s)	Findings and Recommendations OSA Findings are in BLUE, OSA Recommendations are in RED
24	<p>In the 2008 general services contract, OSA finds that typographical errors may have led to overpayments to Rudy Warnock. The mileage rate for the engineer's vehicle was written as "THIRTY-FOUR CENTS ONLY (\$0.485)" in the final signed copy provided to OSA by Madison County.</p> <p>OSA recommends that Madison County review its active and valid agreements with Warnock to identify and correct other related instances of conflicting, confusing, or ambiguous language.</p>
24, 25	<p>OSA finds that often, while the standard form was used, these contracts did not appear to have been carefully crafted or edited to protect Madison County taxpayers. Ambiguity and seemingly contradictory terms appear throughout a number of these contracts. Some executed copies of contracts provided to OSA were missing information, or contained obvious typographic errors that could potentially cause confusion in interpretations.</p> <p>OSA recommends that the Board Attorney and the Board of Supervisors exercise more care in reviewing, revising, and approving its contracts in the future.</p>
26	<p>First, OSA finds that documentation attached to the contract had not been reviewed for accuracy. Second, OSA finds that the deletions made in the November, 2004, contract did not occur in all subsequent contracts.</p> <p>OSA recommends that the Board require procedures to ensure that attachments to official document (such as contracts) are accurate and appropriate. OSA recommends if the Board identifies inappropriate contract elements that they want eliminated, that the staff be instructed to ensure those elements do not reappear in succeeding contracts.</p>
26	<p>OSA finds that in some instances, the title of the contract was different from the scope/objective of the contract, which in turn varied from the description of services/deliverables noted in the appendix of the contract.</p> <p>OSA recommends that Madison County ensure that any contract they approve in the future actually reflect the correct title, scope of work to be performed, and the description of the various deliverables related to the title and scope of work. All of the sections should reflect the same services to be performed by the engineer. Further, OSA recommends the County should ensure the removal of all inapplicable terms that may cause conflicts, ambiguity, or contradictions.</p>
26, 27	<p>A number of the contracts reviewed either had missing terms or a blank line where a term should have been. For example, in the contracts titled, Design and Construction Phase Services for Parkplace Boulevard, and Design and Construction Phase Services on 2007 Canton Overlay Project, and Environmental Clearance, Route Location, Design Engineering, and Construction Engineering Services of Sowell Road Extension, OSA finds that the effective dates were blank. In one contract, Parking Lot Agreement, it appears that Mr. Warnock did not sign the contract.</p> <p>OSA recommends that Madison County immediately review its contracts with Warnock and take action to correct identified problems such as missing or incomplete information, blanks where information such as costs or dates should be, etc., in order to strengthen the contracts and increase the protection to the County.</p>
27, 28	<p>Generally, OSA finds that many of the Warnock contracts provided compensation which resulted in more than about 14-15% of total construction costs. While these percentages are not the highest that Madison County paid for construction and design related engineering services, they are above the average.</p>



Page(s)	Findings and Recommendations
	OSA Findings are in BLUE, OSA Recommendations are in RED
29	OSA finds that in many of the contracts reviewed, the actual payment clauses state that the fees-regardless of whether they are lump sum or percentage of total construction costs-are inclusive of any consultants (subcontractors) and of "labor, overhead, and profit." Therefore, OSA would expect to find no line itemed charges for subcontractors or other included charges unless they were part of additional services approved by the Board.
	OSA recommends that Madison County review these contractual issues to determine how best to protect their fiduciary interest from duplicative payments or over payments and, if they occurred, determine what actions should be taken regarding recovery of overpaid amounts.
	In the contract " <i>Environmental Clearance, Route Location, Design Engineering, and Construction Engineering Services of Sowell Road Extension</i> ," OSA finds the effective date of the contract and the date the contract was signed differs by a year.
29	OSA finds that in many of the selected contracts, terms are incorrect, missing, incomplete, duplicative, inapplicable, or contradictory.
	OSA recommends that the Board, should ensure that all terms and provisions are clearly, accurately, and explicitly stated in all its contracts and that unnecessary sections are removed. OSA also recommends that the Board immediately review all contract terms for overlapping and conflicting language between contracts as well as within contracts.
29	OSA finds no evidence of a general services contract for the years 2006 and 2007, or for 2009 and 2010, yet, in approving other projects, there is Board reference in the minutes that there was a general services contract in those years.
	As previously stated, OSA recommends that the Board immediately review all of its contracts with the County Engineer to determine if there are any other contracts that have no term of service/termination date, or which have expired, or which are about to expire and take appropriate action to remedy the issue before assigning additional duties under such contracts.
29	During its review of contract activity in Board minutes, OSA also found that many of the contracts had similar names for projects. These similar names caused some confusion at times.
	OSA recommends that the Board consider using a numerical identifying system as well as the common title system for identifying the Warnock contracts to aid in the differentiation between similarly named contracts. Such an action would increase the accountability and transparency to the public.
32, 33	OSA finds that this is the first time Warnock and Associates billed Madison County for utility permit application management that, had there been a general services contract in place, would have been included under that contract. Board minutes from July 3, 2006, authorized Warnock to begin to digitize the approved utility permits. Not only is the invoice dated prior to October 1, the attached memo clearly states that it is for prior year expenses. OSA found no evidence that the claim was allowed to be paid in the new fiscal year.
	OSA is concerned by the memo addressing the holdover of payments and recommends that the County not hold over charges beyond a fiscal year, as doing so may violate State law.



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**Office of the State Auditor
Stacey E. Pickering**

Performance Audit Division Report #123

***A LIMITED SCOPE PERFORMANCE REVIEW OF MADISON COUNTY CONTRACTS
WITH RUDY WARNOCK: PART 1
October 28, 2010***

Purpose/Objective

This limited scope performance review is to determine the level of efficiency and effectiveness of the construction, management, oversight, and payments relating to Madison County contracts...

Performance reviews are defined as engagements that provide assurance or conclusions based on an evaluation of sufficient, appropriate evidence against stated criteria, such as specific requirements, measures, or defined business practices. Performance reviews provide objective analysis so that management and those charged with governance and oversight can use the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.

The overall objective of this project was to review and analyze selected engineering and construction contracts between the Madison County Board of Supervisors and Rudy Warnock (Warnock and Associates) and, where appropriate, develop recommendations for improvement. Assessments were conducted using best practices, industry standards, and through reviews of financial transactions and Board activities. Objectives for the review of County administration included the following:

- How do the County's contracts compare with industry standard contracts?
- How effective are the County's channels of communication amongst the Board of Supervisors and other County departments/officials in relation to oversight of the contracts reviewed?
- How well does the County comply with State statutes, rules, and regulations regarding the selected engineering contracts?
- How well constructed were the selected contracts compared to an industry standard contract?¹

The purpose of this limited scope performance review is to determine the level of efficiency and effectiveness of the construction, management, oversight, and payments relating to Madison County contracts between the Board of Supervisors and Rudy Warnock (Warnock and Associates) between 2004 and 2010.

¹ Such as the one presented by the Engineers Joint Contract Document Committee of the National Society of Professional Engineers.



Scope

The scope is limited to 116 road construction projects. Of those, OSA selected 22 contracts for more detailed review.

The scope of this project is strictly limited to review and assessment of areas related to various contracts between Madison County and Rudy Warnock (Warnock and Associates) in his capacity as county engineer and related to his other construction or other engineering services rendered between 2004 and 2010 to the County. It has also attempted to include all of his sub contractors utilized on the various projects. This report makes no determination related to the County's other contracts, obligations, management, payments, etc.; nor does it offer any opinion related to Rudy Warnock's other contracts with other counties and various entities. This project is not intended to make any implications about the way Madison County, any other county, or any other local or State of Mississippi governmental entity conducts its business outside of the limited scope of this review. However, it is hoped that not only Madison County, but all government entities throughout the State may benefit from the recommendations related to strengthening contractual procedures.

This performance review encompassed the analysis of a substantial population of invoices and related documentation associated with 116 road construction projects. Of those, OSA also selected 22 contracts and amendments for additional review. This report encompasses the first phase of the overall project. The second phase will provide a report that describes the financial analysis undertaken by OSA staff. This performance review included detailed analysis of the road construction and engineering contracts and subcontracts, the detailed review of Board meeting minutes from 2004 to early 2010, and interviews with relevant personnel. This contract review portion of the project focused on several areas including:

Interviews consisted of questions related to the actual road contracts, the formulation and review of such contracts, and the payment of such contracts.

- the type of contract (i.e. general engineering services, roadway design, road construction, or environmental studies);
- the sufficiency and presence of the requisite terms;
- the duration of contracts;
- the duplication of services; and
- whether any litigation ensued from such road construction and design projects (OSA found none).

The financial portion of this assessment, still underway at this time, entails a review, compilation, and tabulation of the various invoices submitted and payments made regarding the road construction and engineering contracts and subcontracts, notation of missing invoices or other documentation, and a review of Board meeting minutes related to these contracts.

Another component of this part of this review encompasses an assessment of the personnel involved in the formulation, administration, and management of the road construction and engineering contracts for the County. Interviews were conducted with several key personnel directly involved with these contracts. These interviews consisted of questions related to the actual road contracts, the formulation and review of such contracts, and the payment of such contracts. Appendix A lists the various questions asked of the essential County officials.



Methodology

Work on this project occurred between April and September 2010...review included contracts, statutes, regulations, case law, Attorney General's opinions, invoices, claims dockets, payment records, budget documents, and other information...OSA also interviewed key individuals.

The work on the first phase of this project was undertaken between April, 2010, and September, 2010. The OSA project team requested relevant documents from Madison County and then reviewed contracts, compared selected contracts with engineering contract standards, and reviewed relevant statutes, regulations, case law, and Attorney General Opinions. Staff also interviewed key County and engineering personnel. Analysis of documents included significant and detailed review work related to six years of Board of Supervisors' minutes, and all claims made and paid related to the selected contracts between Madison County and Rudy Warnock (and Warnock and Associates). OSA reviewed invoices, supporting documentation (where it existed), claims dockets, payment records, budget documents, and other relevant financial and management records to determine the accuracy, validity, efficiency, and effectiveness of the Board of Supervisor's management and oversight of the selected contracts between Madison County and Rudy Warnock.

OSA performed various audit procedures to determine whether the County complied with state laws and regulations and its own policies and procedures. In addition to the numerous other contracts and subcontracts (used to establish best practices), the work on this project included 22 contracts and amendments between Madison County Board of Supervisors and Rudy Warnock of Warnock and Associates, which encompassed an estimated \$6,442,095.14 in total expenditures by the County at the time of review.



Introduction

In March, 2010, the Mississippi Office of the State Auditor (OSA) received several requests to review the Madison County Board of Supervisors' (Board) road construction contracts with Rudy Warnock (Warnock) of Warnock and Associates. Pursuant to §7-7-211(e), and in response to those requests, on April 19, 2010, the Office of the State Auditor (OSA), Performance Audit Division began a performance review of Madison County's (County) road construction/engineering contracts with Warnock to determine if the formulation, administration, and management of these contracts were in conformity with industry standards and commonly accepted practices. OSA has also tried to determine best practices and methods that could better protect the taxpayer dollar by assuring strong contract construction and oversight. Additionally, a financial performance review of a sample of these contract projects is underway and will be published upon completion.

OSA acknowledges that these concerns were also made public by the local media and were directly related to projects with the county engineer, Rudy Warnock, and his company Warnock and Associates. The public concerns were related to road design and construction contracts with the Madison County Board of Supervisors, how these contracts were managed and executed, and the actual expenditure of funds associated with these contracts.

The scope of this project is limited to only the selected contracts entered between the Madison County Board of Supervisors and Warnock between 2004 and 2010. The findings and recommendations that follow are offered to provide more efficient and effective means of administration and management of public-private contracts, especially as they relate to the selected projects and contracts under review. Even with such a limited scope, OSA anticipates that such recommendations can serve as a model for other counties in the State to replicate as they also seek to construct and manage contracts.

During the initial phase of this assessment, OSA evaluated the road construction and engineering contracts between Madison County and Rudy Warnock dating back to calendar year 2004 to ascertain the completeness, uniformity, and accuracy of the contractual terms. OSA evaluated the contracts with Warnock in an attempt to make determinations about whether they were compliant with industry standards and the customary practices and procedures associated with such road construction and engineering contracts by assessing and reviewing:

- a standard (generally accepted) engineering contract for road and infrastructure construction;²
- similar road design and construction contracts from other counties;
- the various road construction/road engineering contracts between Madison County and Rudy Warnock (Warnock and Associates, LLP);
- the apparent formulation and structure of the contracts;
- the apparent administration and oversight of the contracts;
- the documentation related to work performed under the contracts; and
- the management and oversight of the contracts, payments, etc.

A second objective of the assessment is to review the expenditures of Madison County relative to these contracts. This information is necessary to be able to determine if the County is in compliance with laws, rules, and regulations and if all payments appeared to be proper. In work conducted on this project, OSA sought to determine if sufficient internal controls were in place in Madison County for administration, oversight, and management of these road construction/road engineering contracts.

OSA evaluated contracts in an attempt to make determinations about whether they were compliant with industry standards and the customary practices and procedures engineering contracts.

² Such as the one presented by the Engineers Joint Contract Document Committee of the National Society of Professional Engineers.



Adequate internal controls serve as a defense in safeguarding assets and preventing and detecting errors; fraud; violations of laws, regulations, and provisions of contracts and grants agreements; or abuse.

Auditing Standards.³ Adequate internal controls serve as a defense in safeguarding assets and preventing and detecting errors; fraud; violations of laws, regulations, and provisions of contracts and grants agreements; or abuse. Internal control consists of five interrelated components, which are (1) control environment, (2) risk assessment, (3) control activities, (4) information and communication, and (5) monitoring. The objectives of internal control relate to (1) financial reporting, (2) operations, and (3) compliance. OSA has as one of its objectives to assess whether internal control, in the case of this Board, has been properly designed and implemented to protect the taxpayers of this County.

In performance audits, a deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, detect, or correct (1) impairments of effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations, on a timely basis. A deficiency in design exists when (a) a control necessary to meet the control objective is missing or (b) an existing control is not properly designed so that, even if the control operates as designed, the control objective is not met. A deficiency in operation exists when a properly designed control does not operate as designed, or when the person performing the control does not possess the necessary authority or qualifications to perform the control effectively.

In this review, OSA applied performance auditing principles and procedures related to assessing the risk of abuse of taxpayers' dollars as well. Abuse generally involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances. Abuse also includes misuse of authority or position for personal financial interests or those of an immediate or close family member or business associate. Abuse does not necessarily involve fraud, violation of laws, regulations, or provisions of a contract or grant agreement.

Some examples of deficiencies in internal control and the risk of fraud, abuse, and include:

- Insufficient control consciousness within the organization, for example the tone at the top and the control environment;
- Ineffective oversight by those charged with governance of the entity's financial reporting, performance reporting, or internal control, or an ineffective overall governance structure;
- Failure by management or those charged with governance to assess the effect of a significant deficiency previously communicated to them and either to correct it or to conclude that it will not be corrected;
- Inadequate monitoring by management for compliance with policies, laws, and regulations;
- Lack of communication and/or support for ethical standards by management;
- Management's willingness to accept unusually high levels of risk in making significant decisions;
- Operating policies and procedures have not been developed or are outdated;
- Key documentation is lacking or does not exist;
- Improper payments; and
- Unusual patterns and trends in contracting, procurement, acquisition, and other activities of the entity or program under audit;

After the 2004 elections, the majority of the Board expressed a desire to change the way it operated and conducted County business.

2004 Elections. According to interviews with Supervisors and other County officials when several new Supervisors were elected in 2004, there was a desire amongst the majority of the newly elected Board of Supervisors to change the way it operated and conducted County business. Previously, the Chancery Clerk acted as the County Administrator, comptroller, etc. The Board recognized that Madison County had become a more urban

³ Government Accountability Office. Government Auditing Standards, July 2007 Revision.



One of the concepts of the newly adopted 90-day plan was to completely discard any vestiges of the old beat system—hiring professionals was one way to achieve that goal.

State law provides almost no clear mandates for the majority of professional appointees other than those duties which the Board votes to require them to perform.

county and they saw the subsequent need to modernize their approach to management. Very early in its new administration, the Board voted to appoint professional officers in an attempt to update the County's operations. In addition, the Board adopted a ninety-day plan of action which included working together, reviewing contracts, reviewing, modifying and creating relevant policies and procedures; and generally trying to operate the County in a more private sector, business like way.⁴ However, while it appears from both interviews and Board minutes that the Board acted in a team-like manner for the first several months, but had failed to maintain that mindset. The team approach has not been reestablished under the new Board, either.

One of the concepts of the ninety-day plan was that the Board should completely discard the vestiges of the old beat system and move solidly into the unit system (under which it operates). Hiring professionals to be neutral administrators was one way of achieving this goal. In 2004, the new Board hired its first County Administrator and Comptroller. In addition they had a new Board Attorney and other staff. OSA finds that the original intent of this new Board was to delegate certain responsibilities to a highly competent staff. According to the Board minutes, with regard to their County Administrator, they did assign him "all duties and responsibilities enumerated in §19-4-1 through §19-4-9..." However, OSA finds that without defining the responsibilities and parameters within which they would be allowed to operate, in hiring and delegating Board responsibilities to them, the Board may have placed too much reliance on the new officials' understanding of their roles. Other than those duties which the Board provides in orders through their minutes to require them to perform, State law provides almost no clear mandates for the majority of these professional appointees. It is one reason there is such a variety of skill sets amongst County Administrators State-wide. Without that specific Board direction, the new staff was technically limited in the actions, recommendations, etc., that they should undertake. In addition, OSA finds that the Board's expectations of these appointees may have been unrealistic without actually requiring them to take necessary action in certain circumstances. This may have been merely a lack of understanding on the part of the new Board members. However, even though they are certainly allowed to delegate a number of responsibilities, it is still incumbent on the Board to understand *what* they are approving and *what* they are paying and have a high level of assurance that their staff has all the information it needs. OSA recommends that the Board should immediately review the responsibilities that they have delegated to their staff, including the County Administrator, the Board Attorney, the Comptroller, and the Clerk of the Board and determine what additional expectations they have related to their delegated duties. As of September 30, 2010, OSA finds the Board has begun taking these actions.

In interviews related to this performance review, each member of the Board expressed the same desire—to be responsive to their citizens and make sure Madison is the best run county in the State. To actually do this, the Board should rely on the experienced professionals they have hired, but retain enough skepticism to review documents before signing them, voting for claims and making themselves officially liable for these activities.

It is also important to note that the majority of the Board sees Warnock as responsive and involved. They are also satisfied with the final products created under Warnock's contracts. In interviews, they stated that they do not believe their contracts with are excessive based on the product they received. The majority of the Board believes Warnock is an effective county engineer.

⁴ Madison County Board of Supervisors. Power Point Presentation, Ninety Day Plan (Madison County, MS, January 2004), (Copy on file in the Madison County Board of Supervisors' Clerk's Office)



Background

This section is intended to provide basic information that has relevance to the topic of this report and is not intended to be a comprehensive treatise of County government in Mississippi.

Madison County

Madison County, with a 2009 estimated population of 93,097, is located above the capitol city of Jackson along the I-55 corridor. Madison is a rapidly growing county, which had a population of 74,674 in the 2000 census and had the highest per capita income in the State (\$23,469) at the time.⁵ It has a varied economy including manufacturing, retail and agriculture. The last posted audit for Madison County (fiscal year ending September 30, 2008) showed \$85,161,944 in total Government Fund revenues and \$61,179,965 in all Government Funds expenditures. The County also issued \$36,551,383 in long-term debt. Of the major Government funds, the General Fund showed \$22,935,539 in revenues and \$32,450,974 in expenditures (with \$7,890,466 in other financing sources and uses). The County Wide Road Maintenance Fund had \$4,581,215 in revenues and \$4,517,088 in expenditures (with \$340,000 in other financing sources and uses). The Road and Bridge Capital Project Fund had \$752,547 in revenues, \$4,688,979 in expenditures, and \$12,625,000 in other financing sources and uses. The Reunion Parkway Interchange Fund had \$138,377 in revenues, \$1,394,502 in expenditures, and \$17,500,000 in other financing sources and uses. The fund balance increased \$16,243,875 due to unexpended long term debt proceeds.⁶

In FY 2008, Madison's audit showed \$85,161,944 in revenues and \$61,179,965 in expenditures.

County Government, Generally

Under the Mississippi Constitution, a county has five locally elected members that are collectively known as a board of supervisors:

*Each county shall be divided into five districts, a resident freeholder of each district shall be selected, in the manner prescribed by law, and the five so chosen shall constitute the board of supervisors of the county, a majority of whom may transact business.*⁷

To be responsive to citizen needs, the Board should rely on the experienced professionals they have hired, but retain enough skepticism to review documents before signing them and making themselves officially liable for any activity.

The five-member county board, which all Mississippi Constitutions have placed in the judicial branch of government, also exercises executive and legislative powers. The Mississippi Supreme Court has ruled that the county board of supervisors is not limited to judicial functions. The Court has recognized that boards of supervisors also have duties and functions that are partly executive, legislative, and judicial in nature.

Under what is commonly known as Dillon's Rule,⁸ counties derive all of their powers from State Constitution and State law. However, in 1989, after the State Legislature passed a "home rule" statute, county authority was broadened to allow most activities not expressly forbidden by State law. Among their many responsibilities, and most would say their most well-known activities, boards of supervisors are responsible for maintaining roadways in their respective counties. Throughout the Mississippi Code of 1972 are statutes providing for the authority of and restrictions for county boards of supervisors. However, Title 19 of the Code

⁵ U.S. Census, 2000 Census data set, Madison Mississippi, quickfacts: <http://quickfacts.census.gov/qfd/states/28/28089.html>

⁶ Windham and Lacey, PLLC. *Madison County, Mississippi, Audited Financial Statements and Special Reports For the Year Ended September 30, 2008.*

⁷ Miss. Const. art. VI, § 170.

⁸ The theory of state preeminence over local governments was originally expressed by Iowa Judge John Forrest Dillon and became known as Dillon's Rule in an 1868 case: "Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so may it destroy. If it may destroy, it may abridge and control." *Clinton v Cedar Rapids and the Missouri River Railroad*, (24 Iowa 455; 1868). The U. S. Supreme Court cited Dillon's *Municipal Corporations* (1872) and fully adopted his belief of state power over local government in *Merrill v. Monticello*, 138 U.S. 673 (1891), *reaff'd*. *Hunter v. Pittsburgh*, 207 U.S. 161 (1907), which upheld a state's power to consolidate two local governments against the wishes of the majority of the residents.



Supervisors have the primary responsibility to be good stewards of the taxpayers' money. They are responsible for the reasonable and efficient use of the revenue that they collect to care for the needs of the county.

specifically addresses counties and county officers. Further, Title 17 of the Code addresses local government generally—provisions common to counties and municipalities.

Home rule is defined in Miss. Code Ann. §19-3-40 (1972) as the authority of a county to regulate its own affairs. In Mississippi, home rule powers are given through legislative action instead of through the State Constitution. Therefore, the home rule statute must be applied on a case-by-case basis when compared to other statutes in the Mississippi Code. With regard to engineers, various statutes provide the authority and the terms under which a county board of supervisors may hire an engineer. Each set of statutes has its own interpretations as seen in Attorney General Opinions.

County boards of supervisors have numerous other administrative powers, which include budgeting for county operations; approval of expenditures and appropriation of county funds; approving surety bonds of county officials and employees; contracting for professional services; providing insurance and workers compensation for county employees; employing a Board Attorney, a County Administrator, and a county engineer, to name a few. Under Miss. Code Ann. §17-1-1 et seq. and §19-5-9, they have the authority to enact and enforce (in unincorporated areas) land use, zoning, building, subdivision, and related regulations. The boards also have authority to provide public facilities for the county through various means of acquisition. Again, perhaps the most obvious product of their authority is the roads and bridges they maintain throughout the county.

The County Board of Supervisors

Counties are divided into five districts (“beats” for the purposes of elections) based on Census populations and subsequent redistricting. Every four years, qualified electors living in a county elect a five member board of supervisors. There are no term limits. Both the 1890 Constitution and the Mississippi Code of 1972 define qualifications for board members. They must be a resident of the county^{9,10} and a qualified elector.¹¹ Further, as with other public officers, the supervisor must not be responsible for any unaccounted for public funds, not have been convicted of bribery, perjury, or other infamous crimes, be able to devote time to the performance of the duties of the office, and not hold any office of honor or profit, or act for any foreign government or the United States government.¹² Once elected, a supervisor must post a surety bond and take an oath of office before exercising the power and authority of the office, or be guilty of a misdemeanor. The annual salary of a supervisor is fixed by State law¹³ and is based upon the total assessed valuation of the county for the preceding taxable year.

Supervisors can officially act only as a group (the board) and their actions and decisions must be properly reported on their board minutes for accountability purposes.

Supervisors have the primary responsibility to be good stewards of the taxpayers' money. They are responsible for the reasonable and efficient use of the revenue that they collect to care for the needs of the county. They can officially act only as a group (the board) and their actions and decisions must be properly reported on their board minutes for accountability purposes. They are responsible for hiring sufficient qualified professional staff. While they are allowed to delegate certain responsibilities, they are also ultimately responsible for their actions or inactions.

Board Meetings

Regular board meetings are held beginning on the first Monday of each month. They may be recessed or adjourned with proper notice to any date and time the board determines by placing an order on its minutes designating specific items of business for consideration. Only such previously designated items can be acted upon at an adjourned meeting. Special meetings (again, with proper notice), may be called by the president of the board (or in his

⁹ Miss. Const. art. VI, §176; and Miss. Code Ann. §19-3-3 (1972).

¹⁰ The Constitution requires potential supervisors to be property owners; however, in 1985, in *Williams v. Adams County Board of Election Commissioners*, 608 F Supp. 599 (1985), the Court ruled this was unconstitutional.

¹¹ Miss. Const. art. XII, §250.

¹² Miss. Const. art. IV, §§43, 44; and Miss. Code Ann. §§1-3-19 and 1-3-37 (1972).

¹³ Miss. Code Ann. §25-3-13, (1972).



Supervisors are responsible for hiring sufficient, qualified professional staff.

While they are allowed to delegate certain responsibilities, they are also ultimately responsible for their actions or inactions.

The Clerk of the Board must “keep and preserve a complete and correct record of all the proceedings and orders of the board.”

The Clerk is also responsible for preparing the claims docket...and for recording those present and absent from meetings, an important duty because the board acts only through what is recorded in its minutes.

absence the vice-president of the board) or any three members of the board. Such a meeting may only transact business related to the specific items placed on a notice for the special meeting. For any meeting, three members of the board constitute a quorum for the purposes of transacting county business. Locations may vary, but again, only with proper notice beforehand.

The Sheriff (or a deputy sheriff) is required to attend all meetings of the board to execute its process and orders. If a quorum is not present then the Sheriff may adjourn the meeting until such time as a quorum may be present. Among their many duties and responsibilities, Article 6, §170 of the Mississippi Constitution requires that the **Chancery Clerk** (an elected position) also serve as **Clerk for the Board** of Supervisors (Clerk). The Clerk or a deputy chancery clerk must attend meetings of the board to “keep and preserve a complete and correct record of all the proceedings and orders of the board.” The Clerk is also responsible for preparing the claims docket and helping prepare the annual budget. The claims docket is a list of all claims or financial demands against the county in the order in which they are received.¹⁴ Another duty of the Clerk of the Board is to record on the minutes the names of present and absent board members. This is an important duty since the board of supervisors speaks and acts only through what is recorded in its minutes. In addition, the powers of the board must be exercised by them as a group speaking through its minutes. Individual members of the board cannot bind the county in any action. The board cannot act without a quorum, either.

Claims

Title 19, Chapter 13 of the Mississippi Code details county responsibilities related to receiving and paying claims. Section 23 states that for any “just claim” the claim must be properly dated and itemized, and “shall be accompanied by any evidence of performance or delivery as required by Section 19-13-25.” It further allows that a claimant may appear before the board and submit further evidence of their claim(s).

The Clerk of the Board, who by law must keep the docket of all claims, is required by State law to mark “filed” on any claim against the county and record it in the claims docket to be presented to the board on a monthly basis. State law also requires that the president of the board (or under certain circumstances, the vice president of the board) review all claims entered on the claims document at the end of each day and sign the claims docket. If the board finds that a claim is not legal and cannot be made legal by amendment at the board meeting, then it has to be rejected or disallowed.¹⁵ All other claims are to be reviewed and if found proper with “due proof,” shall be paid. If a board member believes a claim is not lawful, the board member may vote against paying the claim and also limit his liability where a claim was improperly paid.¹⁶ Disallowed claims can be held until they are either amended or sufficient documentation is provided, although a claimant has the ability to take the county to court to get paid as well.

Related to payment of claims, the county’s budget books shall be closed to new business after September 30, of each year by law.¹⁷ In addition, all disbursements (payments) made on or after October 1, except for those related to unfinished construction work, shall be charged against the current budget. State law also states that when the delay in presentation of any such claim is caused by a willful act of a member of the board of supervisors or other official of the county, each supervisor or other official shall be liable on his official bond to the claimant for the amount owed.¹⁸ County boards are only supposed to pay claims within the fiscal year that they occur and can only pay them with such budgeted funds.

¹⁴ Miss. Code Ann. §19-13-27 (1972).

¹⁵ Miss. Code Ann. §19-13-31 (1972).

¹⁶ Miss. Code Ann. §19-13-39 (1972).

¹⁷ A county’s fiscal year runs from October 1 through September 30.

¹⁸ Miss. Code Ann. §19-11-25 (1972).



Claims must be properly dated and itemized, and “be accompanied by any evidence of performance or delivery...”

The county’s budget books must be closed to new business after September 30 of each year...

Payments made on or after October 1 must be charged against the current budget. When the delay in presentation of any such claim is caused by a willful act of a member of the board of supervisors or other official of the county, they shall be liable on their official bond...

When the board approves the terms of the negotiations and the contract...then the board should state in the minutes the purpose of negotiations, with whom or what, and any known terms.

OSA regularly conducts training for local government officials. In training related to budgets and claims, the rule of thumb for minimum qualifications for a valid claim includes:

1. Does the county owe this claim? What evidence is there (contracts, documents, certifications, etc.)?
2. Who contracted the claim/bill?
3. Were the services received? What documentation provides support for the claim?
4. Were purchase, contracting, and claims laws followed?
5. Is the payment within the budget/contractual allowances?

Contractual oversight and management skills are often missing in all levels of government. In that Madison County is no different than many other government entities. With regard to contracts, especially those which may have originated with a vendor, many assumptions may be made by the public sector that can lead to errors in oversight, such as “the attorney approved it,” “the staff have all of the information they need,” etc. Yet often, government employees are not trained to create and manage contracts, or contract management may be only one of a tremendous number of other duties and responsibilities. Too often, the government sector relies on the private sector for contracts.

Government relies on these contracts because they often lack the expertise internally to create their own. However, government entities, including Boards of Supervisors have a responsibility to be good stewards of taxpayer funds. Creating a means to regularly ensure that the contract is being followed, deliverables are proper and timely, charges are correct and valid, total contractual limits are not exceeded, expiration dates are noted, etc., not only strengthens the accountability process and raises the knowledge level of the staff regarding such contracts, it allows for better future planning. OSA did not find evidence that the Board instructed its staff to develop a process to immediately inventory and evaluate a contract upon its execution. OSA recommends that the Board of Supervisors should consider requiring its Board Attorney, upon approving any contract for services, to work with the County Administrator to develop a system that acts as a “checklist” of contractual terms and conditions that can be used by Board staff and that would streamline and strengthen the claims verification process. This system should be made a part of internal policies and procedures.

Board Minutes

The minutes of each day’s proceedings must either be read and signed by the president (or vice president if the president is absent or disabled) on or before the first Monday of the month following the day of adjournment of any “term” of the board of supervisors or be adopted and approved by the board as the first order of business on the first day of the next monthly meeting of the board.¹⁹ Mississippi’s Open Meetings Act provides with respect to minutes of meetings of public bodies the following:

*Minutes shall be kept of all meetings of a public body, whether in open or executive session, showing the members present and absent; the date, time, and place of the meeting; an accurate recording of any final actions taken at such meeting; and a record, by individual member, of any votes taken; and any other information that the public body requests be included or reflected in the minutes. The minutes shall be recorded within a reasonable time not to exceed thirty (30) days after recess or adjournment and shall be open to public inspection during regular business hours...*²⁰

Minutes must be kept of all meetings of a public body and after they are officially recorded and signed, they must be open to public inspection during regular business hours;

¹⁹ Miss. Code Ann. §19-3-27 (1972).

²⁰ Miss. Code Ann. §25-41-11 (1972).



minutes of a meeting conducted by teleconference or video means are subject to the requirements as well...²¹

Contracts in the Board Minutes

With regard to presenting terms of a contract to the public, the Attorney General has stated that “[w]hen the board either finally approves the terms of the negotiations and the contract...then the board should state in the minutes the purpose of negotiations, with whom or what, and any known terms.”²² Also, the Attorney General has said:

...it is not necessary to spread the entire contract on the minutes. As long as the terms and conditions of the contract are clear, the contract is enforceable. The Court has held that a contract with a public board may be enforced if enough of the terms and conditions of the contract are contained in the minutes for determination of liabilities and obligations of the contracting parties...Thompson v. Jones County Community Hospital, 352 So.2d 795 (Miss.1977).²³

Responsibilities of the Board Attorney

The board is authorized to employ counsel to assist it in the conduct of meetings and to provide legal counsel related to county and board matters.²⁴ The board may employ either an attorney or a firm of attorneys (but not both at the same time) to represent the board as its regular attorney or attorneys. The salary or compensation paid the attorney or firm of attorneys must not exceed the maximum annual amount authorized by law for the salary of a supervisor in that county. However, other matters may provide for additional fees paid to the attorney.

Board Attorneys provide legal direction and advice designed to protect the Supervisor’s personal liability and to advise on a wide variety of issues facing county government. They are responsible for attending board meetings; reviewing and recommending contracts for services; drafting minutes and board orders; and obtaining Attorney General Opinions, and other similar duties. For many additional services, they can be paid reasonable compensation for work related to these various areas, including, but not limited to eminent domain proceedings, property title review, and criminal cases against a county officer for malfeasance or dereliction of duty in office. The board can also employ counsel for bond issuance, including drafting orders and resolutions, but in this case, attorneys’ fees are limited by State statute.

Responsibilities of the County Administrator

Madison County, which operates under the “unit system” of road administration, is required by Miss. Code Ann. §19-4-1 to employ a County Administrator. The board of supervisors may appoint the chancery clerk of the county as County Administrator if the chancery clerk agrees to serve as County Administrator, or the board may appoint as County Administrator some other person who has knowledgeable experience in any of the following fields: work projection, budget planning, accounting, purchasing, cost control, or personnel management. Subject to the board’s supervision, the primary responsibility of the County Administrator is to carry out all policies adopted by the board of supervisors. Further, they serve at the will and pleasure of the board of supervisors and are compensated by salary fixed by the board²⁵ and they may be removed from office by a majority vote of the board of supervisors. By statute, counties may share administrators, although Madison County does not. If the board appoints the Chancery Clerk as the County Administrator then they may approve additional compensation for the added responsibility.

Board Attorneys are responsible for attending board meetings; reviewing and recommending contracts for services; drafting minutes and board orders, as well as numerous other functions assigned by the Board...

They rely heavily on their Board Attorney to review and improve contracts for the protection of their citizens and the board itself.

The primary responsibility of the County Administrator is to carry out all policies adopted by the board.

²¹ Miss. Code Ann. §25-41-11 (1972).

²² Miss. Atty. Gen. Op. Hickman (March 4, 1982), available at <http://weblinks.westlaw.com/result/default.aspx?action>.

²³ Miss. Atty. Gen. Op. No. 96-0264 (May 10, 1993), available at <http://weblinks.westlaw.com/result/default.aspx?action>.

²⁴ Miss. Code Ann. §19-3-47 (1972).

²⁵ Miss. Code Ann. §19-4-3 (1972).



If the board prescribes them, some of the many duties and responsibilities of the County Administrator may include:

- Assisting with budget planning and preparation;
- Employing appropriate personnel to assist the board;
- Acting as a liaison to the board and work with various other divisions, agencies, etc.;
- General supervision over and administration of any and all zoning and building code ordinances;
- Meet with board members and report about the affairs of the county;
- Keeping board members abreast about the current and future financial condition of the county;
- Ensuring the orders, resolutions, and regulations of the board are properly and timely executed;
- Receiving, investigating, and reporting about inquiries and complaints from citizens of the county regarding its operation to the board and to the individual supervisor of the impacted district;
- Making inquiries of any entity using county funds appropriated by the board of supervisors regarding the proper use of those funds;
- Reviewing contracts for services;
- Doing any and all other administrative duties that the board could legally delegate.

All county expenditures come first from taxpayers, and a board's first responsibility is to its citizens... a county should be in control of its contracts and should not be controlled by them.

OSA believes it is important to emphasize that a County Administrator can only do what the board allows and/or requires of the position. While OSA acknowledges the Board, in both its January, 2004 and 2008 minutes properly delegated general duties and responsibilities under the law, OSA did not find evidence of any additional or specific responsibilities delegated by the Board to the County Administrator, such as instructing him to work closely with the Board Attorney to determine if the contracts properly protected the taxpayers' interests. While the Board members may have shared the expectation that this would automatically happen, in the case of the selected contracts, OSA finds that there appeared to be numerous instances of a lack of both communication before and after the contracts were executed. With regard to this performance review, OSA recommends that the Board should specifically instruct the County Administrator to work with the Board Attorney and Clerk to ensure contracts are properly executed before they are filed in the Chancery Clerk's office for public review, and that they have, either through attachment or reference, such additional information that may allow the public to reasonably understand such agreements. Even before that, the Board should require the County Administrator, in conjunction with the Board Attorney to recommend changes and modifications to vendor contracts that create protections for the County and by extension, its taxpayers. Additionally, board members should never sign incomplete contracts.

It is incumbent on a board of supervisors to be fair to the vendor and, at the same time, protect the county's revenues, its operations, and its citizens.

It is always important to remember that since all County expenditures come first from taxpayers, and the Board's first responsibility is to its citizens, the County should be in control of its contracts and should not be controlled by them. It is incumbent on the Board of Supervisors to be fair to the vendor and, at the same time, protect the County's revenues, its operations, and its citizens. The Board needs to have a system in place that verifies whether a personal services contract claim is valid and correct. This system should include input from the Board Attorney, the County Administrator, and others as necessary.

In Madison County, OSA staff saw several contracts in more recent years that showed signs of better management, where some of the more extreme charges were removed from contracts prior to their execution. Based on interviews and the records that they kept, OSA believes that Madison County staff is highly competent and qualified. However, there still appears to be a communication gap between various staff and the board. Additionally, the majority of those that were interviewed reported that Warnock has been responsive and timely in all of his communications with the Board.

Finally, it is incumbent on any board to require its County Administrator and his staff to



While documentation does not have to be extensive, it should clearly be linked to the invoice that is provided.

A one-page invoice with no additional documentation is not considered sufficient if it provides no chance for verification of the invoice payment being requested.

If there is information coming to the county on a regular basis, but not attached to an invoice, the county should consider whether such information could be regarded as sufficient documentation to help verify the accuracy of invoices.

have procedures and policies in place that provide an appropriate level of accountability regarding payments of contractual claims. It is important to note that any County Administrator acts only in the manner prescribed by a board and does not have many statutory responsibilities other than what the board authorizes on its minutes. One best practice that can be offered by OSA is for the board to require the County Administrator to have a checklist of terms and conditions created for each contract that will be used in the review of each request for payment or invoice. The Board Attorney can work with the County Administrator to create a checklist as soon as a contract is executed. It not only streamlines the accountability process and offers a higher level of assurance that no elements will be missed; it will also help the reviewer to “learn” the contracts over time. OSA finds that it is important to be able to verify invoices through additional documentation that links the invoice to not only the completed work, but to sufficient data elements that allow staff to track expenses and establish baseline data for future planning and budgeting. While the documentation does not have to be extensive, it should clearly be linked to the invoice that is provided. OSA recommends that the Board require sufficient documentation from the vendor with verification by the County Administrator and his staff, before any payments are made for these contracts. OSA reasonably concludes that a one-page invoice with no additional documentation may not be considered sufficient if it provides no chance for verification of the claim payment being requested. If there is information coming in to the county on a regular basis, but not attached to an invoice, the county should consider whether such information could be regarded as sufficient documentation to help verify the accuracy of invoices.

One example of such documentation that the county should have, yet was never mentioned in interviews or provided with payment and invoice documentation to OSA is payment applications (“pay apps”). These are certifications of completed work by the construction contractors to the engineer. After the engineer reviews and approves work completed by the construction contractor, the engineer then submits these pay apps to the county. The pay apps show the percentage completion of work as well as other useful information that could be considered sufficient documentation. Short summary reports to the county of work performed, such as timelines showing summaries of which employees worked on projects, how many hours they worked, what specialized equipment was used, etc., are other pieces of information that would be considered sufficient documentation, regardless of the type of payment terms that are involved. Sometimes simply requiring a reference to such documents on an invoice is sufficient to track and verify the accuracy and validity of payment claims. The referenced documents may be held by either the county or the contractor to be audited as necessary by the county.

The county has not only the right, but the obligation to be able to justify its payments using tax revenue from citizens. Since OSA brought this issue to the attention of the Board, Attorney, and Clerk, they have worked together and, at a special called meeting held on September 30, the Board unanimously voted to pass the motion and require the staff to obtain sufficient documentation to verify claims. In addition, they made clear in a motion on the minutes that it was never their intention to limit the documentation that was collected, but rather a response to their belief that the professional staff had all of the documentation needed. The Board’s intent in those votes was to not create additional burdens on the professional staff that they believed already had sufficient documentation. Since that time, the staff has been in contact with OSA staff to gain further understanding of certain types of documentation and contract management.

Responsibilities of the County Engineer

A board of supervisors has the authority, at their discretion, to contract with certain professionals (including engineers) when it spreads upon its minutes a finding that such services are necessary. The contract shall be approved by the attorney for the board and made a part of the minutes.²⁶ While a board has this authority, in most cases they can also

²⁶ Miss. Code Ann. §19-3-69 (1972).



The county engineer is responsible for:

- *preparing all plans and estimates for the construction of bridges and overseeing their construction,*
- *making all estimates and plans of work to be done in the construction and maintenance of roads and superintend the work,*
- *reviewing the report to the board of supervisors on the maintenance work that should be done to properly upkeep and maintain all roads and bridges in the county, and*
- *checking over and reporting to the board of supervisors on all estimates before payment by the board of supervisors of all work done on public roads.*

simply make a personal services contract with a consulting engineer or his firm—and in most cases, that is exactly what the board will do. Madison County does *not* have a full-time county engineer. They have chosen to use a consulting engineer, which requires them to provide a contract(s) for his services either by project or for a term. It should be noted that in almost all cases, the county road manager is not the county engineer either.

The county engineer is responsible for preparing all plans and estimates for the construction of bridges and oversee their construction, making all estimates and plans of work to be done in the construction and maintenance of roads and superintend the work, reviewing the report to the board of supervisors on the maintenance work that should be done to properly upkeep and maintain all roads and bridges in the county, and checking over and reporting to the board of supervisors on all estimates before payment by the board of supervisors of all work done on public roads.²⁷ Both the employment and work of the county engineer shall be under the control of the board of supervisors.²⁸ The compensation of the county engineer shall be determined by the board of supervisors. The manner of making such compensation shall be spread annually upon the minutes of the board.²⁹

Title 65 of the Mississippi Code of 1972, contains three chapters that address a county's authority or responsibility to hire an engineer. In order of text, Chapters 9, 17, and 18 all address the subject of the county engineer in one way or another.

Miss. Code Ann. §65-9-13 (1972) states:

Any county shall be entitled to receive state aid and to expend state aid monies in conjunction with monies furnished by said county on state aid roads in such county on projects approved for construction in such county, provided: (a) The state aid system in such county has been designated and approved as herein provided. (b) The county has employed a county engineer to act for and on behalf of the county as a whole, who shall be a registered professional engineer, and such other competent technical assistants as may from time to time be deemed necessary by the board of supervisors of said county. (c) An annual program shall have been filed by the county engineer with the division of state aid road construction and approved by the State Aid Engineer, and in accordance with the uniform design standards and specifications set up by the State Aid Engineer; such program may be modified or revised in whole or in part by the State Aid Engineer, with the agreement of the county involved. (d) Such county has complied with all rules and regulations promulgated by the State Aid Engineer.

Section 65-9-19, Mississippi Code Annotated of 1972, relates to county contracts for State Aid Road projects. It requires that these project “plans and specifications shall be initially prepared by the county engineer...” and that “[c]ontracts for the construction of state aid road projects shall be advertised and let by the board of supervisors...” In addition, it requires that

Before advertising for bids, detailed plans and specifications covering the work proposed to be done shall be prepared and filed in the chancery clerk's office of the interested county and in the office of the State Aid Engineer; and copies shall be subject to inspection by any party during all office hours, and shall be made available to all prospective bidders upon such reasonable terms and conditions as may be required by the State Aid Engineer.

Under Miss. Code Ann. §65-17-201 (1972), the boards of supervisors have the authority to employ, at their discretion, as county engineer, a civil engineer or person qualified to perform the duties of a county engineer, and any assistant engineers thought necessary. Any work or employment of a county engineer is under the control of the board. The board may

²⁷ Miss. Code Ann. §65-17-203 (1972).

²⁸ Miss. Code Ann. §65-17-207 (1972).

²⁹ Miss. Code Ann. §65-17-205 (1972).



The Local System Road Program (LSRP) is administered and funded by the State. At no time may the compensation to the engineer exceed 12% of the final construction cost.

also have the county engineer who serves as the State Aid Road engineer serve as the county road manager.³⁰ For counties such as Madison, which use the unit system, Miss. Code Ann. §65-17-201 (1972), also provides that the employment of a qualified engineer is mandatory on all projects for the construction or reconstruction of a bridge which will cost more than twenty-five thousand dollars (\$25,000.00) or for the construction or reconstruction of roads which will cost more than twenty-five thousand dollars (\$25,000.00) per mile. In this obligatory situation, the law allows that the work may be done by contract or otherwise and for “particular work, rather than for a term.”

Title 65, Chapter 18 of the Mississippi Code provides for the Local System Road Program (LSRP) that is administered and funded by the State. In order for a county to be eligible for funds under this program, the board of supervisors has to employ an engineer under the same provisions of Miss. Code Ann. §65-9-15 (1972). Also, through its official board minutes, the county must authorize the county engineer to perform the necessary services related to the LSRP. At no time may the compensation to the engineer exceed 12% of the final construction cost.³¹ The county engineer must make and approve plans for construction, reconstruction, and paving of a local system road, and then provide it to the board of supervisors, who, in turn, provide it to the State Aid Engineer for approval.³² As with contracts for State Aid Road projects, LSRP projects must be advertised for bid. Plans and specifications for the project must be prepared by the county engineer and filed in the chancery clerk’s office of the county and are subject to public inspection. Copies must also be made available to all prospective bidders.³³

Contract Analysis

A board should always try to have terms in a contract that are sufficient to effectively and efficiently carry out the needs of the county. These contracts should also protect the citizens who fund them through taxes.

By law, a board of supervisors has responsibility for the execution of contracts and can only act through their official minutes. A board should always try to have terms in a contract that are sufficient to effectively and efficiently carry out the needs of the county. Also, the Board Attorney is required by law to review and approve contracts and to present them to the board for their approval. The board must then place the approval of these contracts on its minutes. The contractor must ensure that his contracts are properly executed and filed with the Clerk of the Board as well. The Board should always require the County Administrator, upon the passage of the contract, to have appropriate procedures in place to file the contract properly and oversee the contract. These procedures should include proper claim payment review. Of note, in contract management, making a checklist of all relevant terms and conditions will help reduce problems associated with payments, documentation, and deliverables. OSA was unable to determine from documents and interviews if Madison County employs any such regular review process for its contracts with Warnock. OSA recommends that if they do not have such contract review procedures in place, that the Board requires them to be developed and implemented immediately to better manage their contracts.

A board of supervisors and its attorney should work to eliminate duplicative services when multiple county contracts are assigned to the same vendor.

Madison County and Warnock have multiple contracts concerning engineering services. In creating multiple contracts with the same entity, a board of supervisors and its attorney should work to eliminate duplicative services and strengthen the contract to always protect the county. Further, the board should always remember that any contract they enter into is for the benefit of the people, and that they should control the contractual process to ensure that they receive the best product for the lowest cost. The contractor is only hired to provide a requested service to the county. Risks of duplicate payments, ambiguous or missing terms, incomplete or non-existent deliverables, inapplicable or incorrect language, etc., can all cause

³⁰ Miss. Code Ann. §65-17-1(4) (1972).

³¹ Miss. Code Ann. §65-18-11(a) (1972).

³² Miss. Code Ann. §65-18-11(b) (1972).

³³ Miss. Code Ann. §65-18-15 (1972).



OSA compared the County contracts with Warnock to standard construction engineering contracts like those from the Engineers Joint Contract Document Committee of the National Society of Professional Engineers. The selected contracts were compared to road construction contracts in other counties also.

problems for the board of supervisors, the contractor and others and reflect badly on the management practices of the county.

Bid preparation and submission make for a critical stage in the road construction process. The county engineer and the board have a shared interest in obtaining the lowest bid from a competent and reliable contractor who will build the project envisioned on time and within budget. Under Mississippi law, a board of supervisors must award public jobs to the lowest responsible bidder.³⁴ The Mississippi Supreme Court has consistently held that the lowest responsible bidder is not necessarily synonymous with the lowest bidder.³⁵ In reviewing decisions not to award jobs to the lowest bidder, the Court has given the awarding body broad discretion, holding that if the discretion is honestly exercised, it will be upheld. The Mississippi Code does require that the awarding body place on its minutes "detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid" should the low bid not be accepted.³⁶

In bidding public projects, a board of supervisors as the governing authority should ensure that the plans and specifications are clear, concise, and adequate; that the submitted bids comply with the bid requirements; that the contractor has proof of a public bond on file in the chancery clerk's office; and that the bid process is competitive.³⁷ To do this, most counties rely heavily on their county engineer, who is usually also an independent contractor. OSA finds that the State Board of Engineering regulations also allow public entities to bid for engineering services—the entity must first select on the basis of qualifications and competence, one engineer or firm for negotiations before they can submit a price for services. Or, as long as all of the other qualifications in section 17.05.6 a-e of the State Board

regulations are met, the engineer can submit competitive price proposals as well.³⁸ However, to use a bidding process for engineering services, someone on the county staff must understand the type of service that is to be bid on and the county should have some baseline idea of potential costs after a design is chosen. As OSA previously noted, by gathering additional documentation with invoices, a county may be able to gather such baseline data for comparison and planning purposes. This would aid the County in its endeavor to protect the taxpayers' interests. OSA recommends that the County should at least consider using the bidding process in the future where competition exists, even for personal service engineering contracts. Even though current law does not require it, nothing prevents a board from using bidding for engineering personal services to get the best product for the best price.

OSA requested and received from Madison County 22 contracts and their amendments for review. In the review, OSA attempted to verify that each of the contracts was properly spread on the minutes. OSA finds that all 22 contracts had been spread on the minutes on the date they were signed. However, at least one contract that OSA reviewed was in the Board minutes on the date it was signed, but the year of its effective date was one year earlier. OSA has received no explanation about why the contract's effective date and execution date are a year apart.

OSA also compared the County contracts with Warnock to standard construction engineering contracts, like those from the Engineers Joint Contract Document Committee of the National Society of Professional Engineers. These and comparisons to other road construction contracts in other counties allowed OSA to see trends in the Madison contracts that created the potential

This is Appendix I to EXHIBIT C, consisting of 4 pages, referred to in part of the Agreement between Owner and Engineer for Professional Services dated _____, 2004.

Reimbursable Expense Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

Fax	\$ 0.25/page
8 1/2" Copies/Impressions	\$ 0.25/page
Blue Print Copies	\$ 0.50/copy
Reproducible Copies (Mylar)	\$ 1.00/sq. ft.
Reproducible Copies (Paper)	\$ 0.75/sq. ft.
Mileage (auto)	\$ 0.45/mile
Field Truck Daily Charge	\$ 100.00/day
Mileage (Field Truck)	\$ 0.55/mile
Field Survey Equipment	\$ 50.00/day
Confined Space Equipment	\$ N/A/day plus expenses
Resident Project Representative Equipment	\$ N/A/month
Computer CPU Charge	\$ 20.00/hour
Specialized Software	\$ 20.00/hour
Personal Computer Charge	\$ 20.00/hour
CAD Charge	\$ 20.00/hour
CAR Terminal Charge	\$ N/A/hour
VCR and Monitor Charge	\$ N/A/day, or \$ N/A/week, or \$ N/A/month
Video Camcorder	\$ N/A/day, plus \$ N/A/week
Electrical Meters Charge	\$ N/A/week, or \$ N/A/month
Pump Meter Charge	\$ N/A/week, or \$ N/A/month
Rain Gauge	\$ N/A/week, or \$ N/A/month
Sampler Charge	\$ N/A/week, or \$ N/A/month
Disinfectant System Tester Charge	\$ N/A/hour

for design and construction phase services on

**2007 CANTON OVERLAY PROJECT
MADISON COUNTY, MISSISSIPPI**

Health and Safety Level C	\$ N/A/day
Electronic Media Charge	\$ N/A/hour
Long Distance Phone Calls	at cost
Mobile Phone	\$ 50.00/day
Meals and Lodging	at cost

³⁴ *M.T. Reed Construction Co. v. Jackson Municipal Airport Authority*, 227 So. 2d 466 (Miss. 1969).

³⁵ *Ibid.*

³⁶ Miss. Code Ann. §37-7-13(d)(i) (1972).

³⁷ Mark J. Beyea, Dave Cash, Mark D. Herbert, Adam Stone, *Construction Contracting for Public Entities In Mississippi*, pp. 47-57, (Lorman Education Services, 2005).

³⁸ Mississippi Board of Licensure for Professional Engineers and Surveyors, March 1, 2010, Section 17.05.6, page 21



risk for error, overpayment, duplicative payments, etc. Items including inapplicable sections of contracts, missing terms, conflicting language, ambiguous language, etc., are all discussed in this section.

Elements within multiple Warnock contracts were compared for possible duplication of services. For example, of the contracts reviewed, eight allowed for a daily charge for mobile phone use as a reimbursable expense and not as overhead. Several of the contracts with the daily mobile phone charge allowance were in effect at the same time, which can produce a duplicative billing situation. In addition, two of these contracts allowed for a \$50/day mobile phone charge. Such charges for expenses normally considered to be overhead can become excessive. Ten of the contracts allowed for both a daily vehicle usage fee plus mileage reimbursement. The vehicle usage fees were generally \$100 and the mileage varied from \$0.35 to \$0.50 per mile. OSA finds that the Board signing contracts which allowed Warnock to charge both a mileage fee and a daily vehicle use fee within one contract could create excessive expenses for the County if the engineer bills both. OSA recommends that the County should review and renegotiate such items with the engineer to only pay the most reasonable cost. One method of compensation for vehicle usage could be to tie reimbursement to State allowable mileage rates in the contract. This would allow for uniformity and would guarantee a fair and equitable reimbursement. This method of reimbursement provides the County a better opportunity to track mileage expenses paid to contractors.

Although they are not the highest reimbursements paid to an engineer for services in Madison County, in its preliminary review of contract costs, including a review of an internal audit of engineering contracts conducted

by Madison County, OSA observed that several of the reviewed contracts may provide Warnock with total compensation greater than 14%. While in general, a total of 14% (7% design phase and 7% construction phase fees) of estimated construction costs paid as engineering fees may not be unusual for the type of road construction contracts that Warnock had with Madison County, these fees were usually only one part of the total amount of compensation he received.

Warnock received additional fees for costs for environmental design, additional services and reimbursable expenses that might increase the total compensation for an entire project. However, OSA acknowledges that comparing environmental costs from one project to another is at best, difficult and at worst, risky. Putting limits on environmental design costs can be problematic because these costs will vary based on many factors, conditions, and actual work. Considerations such as wetlands, soil types (Yazoo clay), discovery of endangered species, and other related factors are all part of what makes up the costs of environmental design and permitting. In the selected contracts, environmental phase services were generally a lump sum amount. The design phase services were generally paid as a percentage of the total project cost and the construction phase services were similarly paid as a percentage of the total project cost.

It is the Board of Supervisors' responsibility to try to negotiate the lowest price for the best services. That is not to say they are required to take the lowest bid or underpay, but that they are supposed to try to get the greatest value for their expenditure. This should include detailed documentation of costs for later cost comparisons. OSA understands that environmental engineering service costs vary, and are dependent on many factors. OSA makes no determination about what is, or is not, excessive, but rather simply states conclusions based on observations and analysis and recommends that the Board be aware of

In Warnock's contracts with Madison County, regardless of the type of payment—lump sum or percentage of total—all compensation in each of the contracts was stated to be inclusive of “profit, overhead, and labor” as well as payments to any subcontractors. However, each of the contracts contained additional reimbursable expense provisions, some of which OSA finds would normally be considered overhead, such as phone and fax use as well as standard photocopying. With this in mind, OSA expresses concern that in several

This is Appendix 1 to EXHIBIT C, consisting of 4 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated _____, 2006.

Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

Fax	\$ 0.25/page
8"x11" Copies/Impressions	\$ 0.25/page
Blue Print Copies	\$ 0.50/sq. ft.
Reproducible Copies (Mylar)	\$ 1.00/sq. ft.
Reproducible Copies (Paper)	\$ 0.25/sq. ft.
Mileage (auto)	\$ 0.40/mile
Field Truck Daily Charge	\$ 100.00/day
Mileage (Field Truck)	\$ 0.35/mile
Field Survey Equipment	\$ 30.00/day
Coastal Space Equipment	\$ N/A/day plus expenses
Resident Project Representative Equipment	\$ N/A/month
Computer CPU Charge	\$ 20.00/hour
Specialized Software	\$ 20.00/hour
Personal Computer Charge	\$ 20.00/hour
CAD Charge	\$ 20.00/hour
CAE Terminal Charge	\$ N/A/hour
VCR and Monitor Charge	\$ N/A/day, \$ N/A/week, or \$ N/A/month

for Environmental Clearance & Route
Location phase services on

CALHOUN STATION PARKWAY PHASE III
MADISON COUNTY, MISSISSIPPI

Soil Sampling	\$ N/A/sample
Groundwater Sampling	\$ N/A/sample
Health and Safety Level D	\$ N/A/day
Health and Safety Level C	\$ N/A/day
Electronic Media Charge	\$ N/A/hour
Long Distance Phone Calls	\$ N/A/day
Mobile Phone	\$ 50.00/day
Meals and Lodging	\$ N/A/day

In Warnock's contracts with Madison County, compensation in each of the contracts was stated to be inclusive of "profit, overhead, and labor" as well as inclusive of payments to any subcontractors. However, each of the contracts contained additional reimbursable expense provisions, some of which OSA finds would normally be considered overhead, such as phone and fax use as well as standard photocopying.



The Mississippi Supreme Court also holds vendors responsible for assuring that their contracts with local governments are lawfully made.

cases invoices were paid as part of a lump sum or percentage payments along with additional line-item payments for subcontractors. OSA recommends that the Board instruct the Board Attorney and the County Administrator to work together to review contracts more carefully and remove or limit opportunities for duplicative or excessive payments before presenting them to the Board. Whether or not the engineer actually billed for the additional costs, by having them in the contract, the opportunity to have charged the County existed. In fact, in the case of the county engineer, or any other contractor that the Board uses regularly, by creating a spreadsheet of potentially overlapping or duplicative billing opportunities when constructing a contract, these issues can be limited or even eliminated. Additionally, collecting details about contracts in such a way can also assist the county in the planning and budgeting process over the long term. Other general items of concern to OSA with regard to the contract construction are discussed in the following sections.

OSA finds that, while the Board of Supervisors carries the ultimate responsibility of the actions of the county, each of the identified officers and representatives of the county also have legal obligations to perform certain functions as well. Additionally, as representatives of the county they also have an inherent responsibility to be good stewards of the county's revenues.

Finally, it should be noted that the courts have also said that anyone contracting with a county board of supervisors has the responsibility of ensuring that their contract(s) are properly executed and filed. Specifically, the Mississippi Supreme Court has stated, "We have held vendors responsible for assuring that their contracts with local government are lawfully made."³⁹ To this end, OSA recommends that Madison County and Rudy Warnock review their contracts and implement any changes necessary to bring clarity and protection to all interested parties.

Standard Contract Terms

Construction contracts are usually provided by an engineer at the request of the owner. In this review, the owner is the Madison County Board of Supervisors and the engineer is Mr. Rudy Warnock. Under statute, the Board Attorney has to approve them and present them to the Board for a vote. The Board appeared to heavily rely on the Board Attorney regarding the construction of these contracts, which is neither unusual nor improper. However, after the contract has been approved and executed the Attorney generally has no additional obligations to manage or oversee the contract, unless the Board requests such additional work. It would be more proper that upon approval, the Attorney convey important information related to the contract to the County Administrator, so that appropriate files and checklists could be created.

In assessing these contractual agreements, OSA attempted to determine if the contracts fully and accurately set forth the rights and obligations of the respective parties. OSA found deficiencies in many of the contracts reviewed. In general, most of the contracts usually consisted of an agreement and various clauses with conditions of the contract. Such agreements generally describe the work to be performed, the contract completion date, the contract price, the payment requirements, i.e., progress payments along with final payment conditions, and a listing of the other contract components.

The general clauses or conditions usually pertain to the customary practices that relate to all such road construction contracts. An example of a general clause would be one that denotes how a change in the scope of work would be handled in the course of performance of the contract. Special clauses in these contracts should relate specifically to the contract and project. An example of a special clause would be how the various submittals of payments/invoices would be handled or how unusual weather conditions are to be addressed.

OSA staff expected to see plans that would have been provided to the Board showing the specifics of a project to include the location, specifications, and cost details pertaining to a specific contract. They, along with the contractual elements, would be the substance of the contract and could provide clarity for the Board. They provide details for the requirements of the materials, equipment, and workmanship for the project. Construction contracts related to design, environmental assessments, and actual construction phases may base fees on the

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³⁹ *Madison County and Tubb-Williams, Inc. v. Canton Farm Equipment, Inc.*, 608 So.2d 1240 (Miss 1992).



engineer's estimated construction costs. These estimated construction costs should be part of the contract.

The most important elements of these contracts should be:

OSA did not always find these four elements in the contracts that were reviewed. For the public's benefit, and for consistency, such documentation should either be a part of these contracts or should be referenced in the contracts.

- the scope of the engineer's design and/or construction administration responsibility
- the extent of the owner's input and control over the design and construction
- the engineer's fee and the basis for computing the fee
- the time within which the engineer's work is to be performed

OSA did not always find these four elements in the contracts that were reviewed. However, in interviews with staff and members of the Board, they indicated that Warnock could and did explain details to them regarding projects. Yet for the public's benefit, and for consistency, such documentation should either be a part of these contracts or should be referenced in the contracts. Unlike the private sector, government entities must always remember they serve their constituency—the public, who expect transparency and accountability. These elements are important since they serve as the means of balancing the technical risks of performance against the cost risks of performance.

The terms and conditions of the contract should provide involved parties with basic guidance for day-to-day administrative matters as well as alternative solutions to problems. In one treatise on construction law in Mississippi, the author noted that it is very important that the engineer fully discuss the details of the contract with the owner because the owner often does not understand the engineer's role at the time of the contract. In fact, the owner often does not understand or have the expertise in how the construction process works.⁴⁰ In Madison County, most of the contracts the Board has signed with Warnock require that the Madison County "shall be responsible for discovering deficiencies in the technical accuracy of engineer's services."⁴¹ This is just one example showing the need for specifics and communication between the county engineer and the Board. During interviews with the Board and County staff OSA found that the majority believed Warnock to be extremely responsive to their needs and concerns.

Engineer's Standard of Care Owed to Contract Owner

The engineer's standard of care owed to the Board is one that requires the engineer to exercise a degree of care, skill, and diligence normally exercised by other engineers under like circumstances within the area. This standard encompasses a duty to inform the owner and/or protect the owner from potential risks that may arise in the course of the construction. This duty may not end upon the completion of the plans and specifications for a project. In instances where the engineer assumes the role of agent for the owner, the duty of care extends to the administration of the contract from design to completion of the construction. The standard of care runs from preparing cost estimates to supervising/inspecting work, to reviewing shop drawings, to submittal of payments to the contractors.

Because the engineering profession is viewed as an inexact science where the professional is often called upon to exercise skilled judgment in an indeterminate area, the laws of this State have required the engineer to exercise that skill and judgment which can be reasonably expected of similarly situated professionals.⁴² This standard allows for certain differences in the performance of each engineer's work.

There are some instances where liability for damages may be imposed upon the engineer by the owner. These occur when (1) the actual construction costs exceed cost estimates

⁴⁰ David W. Mockbee, *Mississippi Construction Law*, p. 69, (2d ed., HLK GlobalCommunications 2005).

⁴¹ Any of the construction contracts that utilize section 6.01.B "Standards of Performance" in contracts such as the Agreement between Owner and Engineer for Professional Engineering Services by and between Madison County, Mississippi, as Owner & Warnock & Associates, LLC as engineer for design & construction phase services on Reunion Interchange Madison County, Mississippi, 4/21/2008.

⁴² David W. Mockbee, *Mississippi Construction Law*, p. 117, (2d ed., HLK GlobalCommunications 2005).



guaranteed by the engineer; (2) there are design omissions; (3) the plans and specifications prepared by the engineer are inadequate; (4) there has been inadequate observation of the work by the engineer; (5) there has been erroneous certification of payment; and (6) there has been erroneous approval of a contractor's shop drawings and submittals.⁴³ These instances must be built into the contracts.

Where the engineer knows that cost is important to the owner, the engineer has a duty to give the owner an estimate of the project cost based upon his design. If the engineer guarantees the construction cost and the actual costs exceed his estimate, then the engineer may be liable to the owner for breach of his contractual obligation or for negligent preparation of the cost estimate. In this situation the engineer may lose his right to recover payment for the services he rendered. However, some courts have ruled that an engineer may not always recover his fees if the actual costs substantially exceed estimated costs. In such cases, a jury decides if the cost is substantial or reasonable.⁴⁴ Again, however, this issue needs to be carefully crafted in the contract. In its review, OSA found that in several of the contracts between Warnock and Madison County, construction costs are allowed to be exceeded if notice to and approval from the Board were obtained first. OSA recommends where such a clause occurs in the contract, it also contains a clause that the Board requires sufficient documentation to clearly identify and understand the need to increase the total project amount.

Generally, liability for design omissions occur where the owner has to pay additional construction costs as a result of the design omission. The owner may be entitled to relief from the engineer for a design omission only when the owner suffers actual out-of-pocket expense which he would not have incurred but for the design professional's negligence. The engineer may incur liability to the owner for defective plans and specifications if the design professional guarantees the adequacy and sufficiency of the plans and specifications for their intended purpose or if he is negligent in their preparation. Absent these two instances, the design engineer is often not liable. In some of the contracts reviewed, OSA finds that Madison County approved language limiting the engineer's liability to insurance limits. While this may be standard, OSA cautions the Board that when multiple contracts for multiple services on the same project are awarded to the same engineer, the Board should consider evaluating the total risk that may occur and design the contract to protect the taxpayer. OSA recommends that the county at least consider strengthening its position related to potential liability of design and construction contracts.

Although some of the contract analysis and review elements will be discussed in detail in the second part of this report, OSA generally considered the following elements:

- the title of the contract (to understand the intent of the project),
- the effective date of the agreement,
- the date that the agreement was signed,
- who signed the contract,
- the scope/objective and terms of the contract,
- whether the project was State Aid Road, LSRP, ARRA, or other,
- the duration of the agreement,
- any amendments/addendums to the contract,
- the amount of each contract (where applicable)
- the amount expended in fulfillment of the contract, and
- current status of the project covered in the contract.

Of the 116 projects being analyzed, OSA reviewed 22 contracts between Madison County and Rudy Warnock. These included two general services contracts as well as numerous project related ones. Of those 22 contracts, OSA found that:

⁴³ Ibid. at 118-127.

⁴⁴ *Goodrich v. Lash*, 146 A.2d 169, 172 (Vt 1958).



- 22 were properly spread upon the Board minutes
- 8 lacked an effective date
- 9 included titles and/or headings that did not correspond with the actual work described or the effective dates of the contract
- 10 included, for multiple services, flat rate/lump sum payments in addition to percentage payments and additional reimbursable payments which, when added together, resulted in more than 14% of the total estimated construction costs per project
- 18 provided reimbursement for expenses that might normally be considered overhead expenses covered in lump sum payments
- 14 showed missing, incomplete, or ambiguous scope of service terms
- 15 contained inapplicable terms and contract sections
- 6 lacked estimated construction cost totals, even though this amount is the basis of the percentage payments and even though there is a place in the contract designated specifically for such an amount
- 15 lacked the detailed estimated construction cost totals
- 10 allowed the engineer to charge the County both a fee for daily vehicle use and a daily mileage rate
- 19 allowed for potentially duplicative costs for services

General Services Contracts 2005 and 2008

As addressed previously, a county board of supervisors has the authority under several State statutes to employ a county engineer. In 2005, Madison County signed a general services contract with Rudy Warnock of Warnock and Associates. This contract stated that he was the county engineer but that he was an independent contractor, not employed by the county.⁴⁵ The contract's general statements included performing

*certain professional engineering and land surveying services as may be identified...to serve as the County's professional engineer on the services...and to provide professional engineering consultation...engineer in charge of and directly responsible for the services rendered to the County...*⁴⁶

The contracts general statements also authorized

*certain general professional engineering and land surveying services for which the scope of work is not fully established or readily definable...a separate task order shall be prepared to authorize work for any professional services for which the scope of work is readily definable and for which a specific budget can be established...*⁴⁷

The 2005 contract contained six specific routine responsibilities of the engineer which would be covered by a \$3,000 per month retainer fee:

- Attending all called board meetings or other special meetings as requested by the board;
- Reviewing and making final approval of all Utility Permit applications, including presentation to the board for approval;
- Reviewing and making final approval of all preliminary plats, construction plans and filing plats, including presentation to the board for approval;
- Providing intermittent construction inspections of all subdivisions as needed, including residential, commercial and industrial, with understanding that the County will dedicate

⁴⁵ General Services Contract of 2005 between Madison County and Rudy Warnock, Engineer.

⁴⁶ Ibid.

⁴⁷ Ibid. at p. 1.



a regular full-time employee to the provision of daily inspections of all ongoing projects, and that he will contact the Engineer when needed for assistance or input;

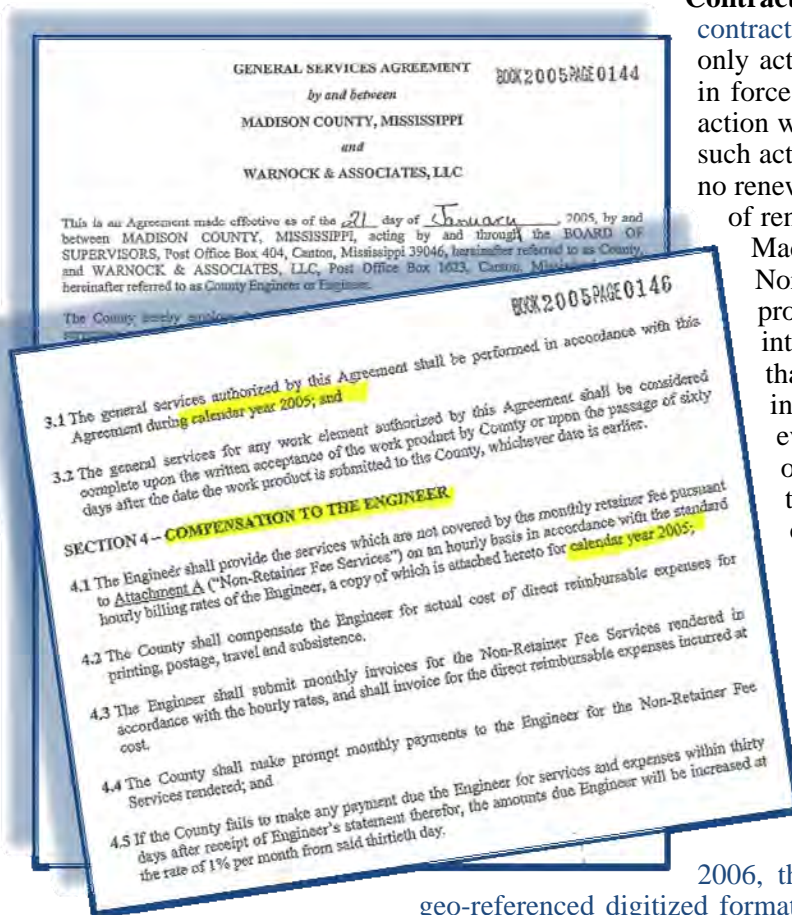
- Assisting the Road Department on as-needed basis with point specific concerns; and
- Responding to requests/complaints from citizens.

The 2005 contract also included three statements of work outside of the retainer fee:

- Performing and providing all other professional services not specifically in this agreement at an approved hourly rate;
- Engineering and surveying on special projects of a significant nature undertaken by the Road Department or by 6 month contractors where a scope of work is NOT readily definable;
- Engineering and surveying on special projects of a significant nature that are normally financed through CDBG, RDA, EDA, EDI, SRF, STP, TIF, PID, or other programs, for which a separate contract is warranted.⁴⁸

Contract Expiration. OSA finds that the 2005 General Services contract expired after the 2005 calendar year.⁴⁹ Since the Board can only act officially through its minutes, for this contract to have been in force after 2005, the Board would have had to take some official action with regard to renewal or modification of the contract. Absent such action, the contract expired at the end of 2005 because there was no renewal clause in the contract. OSA was unable to find any record of renewal or renegotiation of the 2005 general services contract in Madison County's official board minutes in either 2006 or 2007. Nor did OSA find any general services contracts among those provided by the County for the 2006 or 2007 calendar years. In interviews with County personnel, they stated that they assumed that the contract term was more than one year.⁵⁰ However, no indication that the terms of the contract had been reviewed was evident from interviews with Board members or other county officials, nor from the review of official minutes, other than that the county continued to pay the monthly retainer fee and create task orders throughout each year. In a few instances throughout 2006 and 2007, certain Board members recommended that Mr. Warnock undertake additional work as part of his general services contract,⁵¹ but OSA finds no evidence of such a contract after December 31, 2005. OSA recommends that the Board, through its County Administrator, take steps to review existing contracts for expiration dates and to immediately put in place controls to prevent Board approval of work or payments to a contractor in the absence of a valid written contract.

In addition, OSA finds that in Board minutes from July 3, 2006, the Board unanimously authorized Warnock to "prepare, in geo-referenced digitized format, copies of all approved permits issued by Madison County pursuant to his general services contract with the County." However, as stated earlier, OSA has determined that the general services contract was expired at the time the motion was made, and therefore, not valid. Even though it had been explained to OSA that the intent of the motion to allow Warnock to begin billing separately for this additional service, OSA believes the Board's motion did not make that clear. This lack of specificity in the motion



⁴⁸ Ibid. at Attachment A.

⁴⁹ Ibid. at p.3, Section 3.1 (Period of Service), and Section 4.1 (Compensation to the Engineer).

⁵⁰ Interview with Mark Houston, Former County Administrator (May 12, 2010).

⁵¹ Minutes of February 21, 2006 and January 16, 2007.



could easily have led to the confusion that occurred because: 1) the general services contract already included utility permit application work under the retainer fee (even though the contract was expired); and 2) there is no separate fee indicated in the motion. OSA recommends the Board be more specific with its motions, so that its intent will always be clear. This includes specifics about services which will entail additional costs.

The July 3, 2006, minutes authorized this new activity for which Warnock began billing the County immediately. Warnock received instruction from someone in the County to hold his invoices until after the new fiscal year began. State law does not allow for holding of claims from one fiscal year to the next. Related to payment of claims, the county's budget books must be closed to new business after September 30, of each year by law.⁵² In addition, all disbursements (payments) made on or after October 1, except for those related to unfinished construction work, must be charged against the current budget. State law also states that when the delay in presentation of any such claim is caused by a willful act of a member of the board of supervisors or other official of the county, each supervisor or other official shall be liable on his official bond to the claimant for the amount owed.⁵³ County boards are only supposed to pay claims within the fiscal year that they occur and can only pay them with such budgeted funds.

OSA finds that the 2005 general services contract between Madison County and Rudy Warnock expired on December 31, 2005, and subsequent Board minutes do not indicate any renewal, modification or replacement of the original contract, yet the minutes reflect payments to him based on the expired contract. OSA recommends that the Board and the Board Attorney more carefully review contract terms and Board minute motions in the future to ensure accuracy of interpretation and validity of claims. OSA also recommends that to comply with State law, the Board should not instruct contractors to hold invoices from one fiscal year until after a new fiscal year has begun.

A.2. Cost of specialized services (i.e., soil borings, testing, surveys, analyses, etc.) of other professional consultants employed by the ENGINEER, to provide such specialized services shall be charged at the actual cost billed the ENGINEER plus a fee of five percent (5%).

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In January, 2008, the Board of Supervisors once again approved a general services contract with Rudy Warnock. This new agreement had a number of differences from the previous one. Payments were designed differently. In the previous contract, the main emphasis and work revolved around the retainer fee, with

additional fees for services provided outside of the retainer fee services. The 2008 contract sets an hourly rate for all services, except those few included in the retainer fee of now \$5,000 per month. With the 2008 agreement, language in the contract stated that Warnock may mark up any of his subcontractors' bills that he submits to the Board by 5%. OSA finds that this seems to be unique to this contract as compared to his other contracts. This general services agreement seems to be a governing document to many of his other projects with the County. Therefore, OSA finds that it is possible the 5% markup may apply to any contracts, invoices, work orders, or agreements approved by the Board that are tied to the general services contract. Also, in the new general services agreement, the retainer fee services only include:

- Providing technical assistance to the Road Manager as necessary
- Attending all Board meetings
- Attending all meetings with the Supervisors and Department Heads as necessary
- Coordinating all meetings with developers prior to submission of plats, plans, etc.
- Reviewing all Preliminary Plats, Construction Drawings, and Final Plats

⁵² A county's fiscal year runs from October 1 through September 30.

⁵³ Miss. Code Ann. §19-11-25 (1972).



Of perhaps greater concern is the fact that no term of service is mentioned anywhere in the contract or in the Board minutes approving the contract. No length of term, no termination date, and no “auto-renewal” language was mentioned in the 2008 agreement. OSA searched board minutes from December, 2008, through March, 2010, and found no mention of another general services agreement being approved or of the renewal of the 2008 agreement. OSA finds no evidence of a term of service or expiration date for the 2008 general services agreement in the contract or in Board minutes. OSA recommends that the Board immediately review all of its contracts with the County Engineer to determine if there are any other contracts that have no term of service/termination date, or which have expired, or which are about to expire, and take appropriate action, including putting a valid contract in place, ceasing current payments, requiring repayment where necessary, etc. Since OSA brought this to the attention of the Board and its staff, they have taken certain actions to correct these contract findings. In a special called meeting on September 30, 2010, the Board issued a *nunc pro tunc* order clarifying their intent related to the terms of this and one other contract.

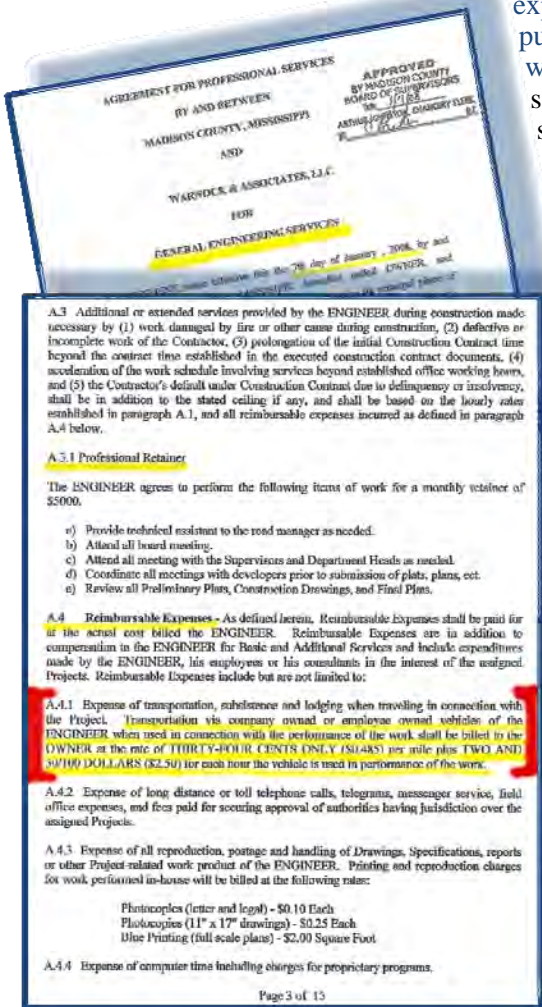
In the 2008 general services agreement, most of the contract reflects the standard engineering services contract language used for various other projects, which might cause confusion with other contracts due to the potentially conflicting language between overlapping contracts. In addition, the 2008 contract had at least one significant typographical error that could have resulted in overpayments by the Board. The mileage rate for the engineer’s vehicle was written as “THIRTY-FOUR CENTS ONLY (\$0.485)” in the final signed copy provided to OSA by Madison County. In the 2008 general services contract, OSA finds that typographical errors may have led to overpayments to Rudy Warnock. OSA recommends that Madison County review its active and valid agreements with Warnock to identify and correct other related instances of conflicting, confusing, or ambiguous language.

Terms That Differed From the Standards

In contrast to the general services contracts with Mr. Warnock, which appear to have been designed for terms of service and contained retainer fees and additional expenses for non-retainer items, other contracts between the County and Mr. Warnock seem to have been drafted on a per project basis using standard form contract language to define distinct services, such as the one presented by the Engineers Joint Contract Document Committee of the National Society of Professional Engineers, but with modifications. According to David W. Mockbee in his book, *Mississippi Construction Law*,⁵⁴ such a form agreement creates a comprehensive document which generally covers the main points of an owner-engineer agreement/contract. The use of a standard form agreement should clearly set out the rights and obligations of both parties. Mockbee purports that while the parties are not

required to use a standardized document and are free to make changes to any such document, the frequency with which this document is used and the thoroughness of these documents warrants careful consideration before discarding or making substantive changes to them.⁵⁵ That is not to say that they should not be carefully crafted documents that clearly define project parameters and protect both parties. The standard contract should not contain extraneous, unnecessary language just because it is a standard form. In fact, as the contracts reviewed by OSA show, inapplicable terms and sections can create ambiguity, confusion, and increase the possibilities of mistakes in billing.

In OSA’s contract analysis of the Madison County-Warnock agreements, the repetitive use of the standardized form agreement for the road construction and design work in Madison County proved problematic, as evidenced in the issues noted below. OSA finds that often,



⁵⁴ Mockbee at p. 118

⁵⁵ Ibid. at 67.



while the standard form was used, these contracts did not appear to have been carefully crafted or edited to protect Madison County taxpayers. Ambiguity and seemingly contradictory terms appear throughout a number of these contracts. Some executed copies of contracts provided to OSA were missing information, or contained obvious typographic errors that could potentially cause confusion in interpretations.⁵⁶ OSA recommends that the Board Attorney and the Board of Supervisors exercise more care in reviewing, revising, and approving its contracts in the future. Generally, these issues included the following:

1. Presence of contradictory/conflicting language
2. Presence of missing/incomplete terms
3. Presence of suspect terms
4. Problematic miscellaneous provisions

Each of these items is discussed in detail below, with illustrations from various contracts as examples.

Contradictory/Conflicting Language

The issue of contradictory language was prevalent in a number of the contracts reviewed. The contradictory language usually was found in the scope of the services or the preamble. OSA finds that in some instances, the title of the contract was different from the scope/objective of the contract that in turn varied from the description of services/deliverables noted in the appendix of the contract. Below are just a few examples that OSA encountered in its review:

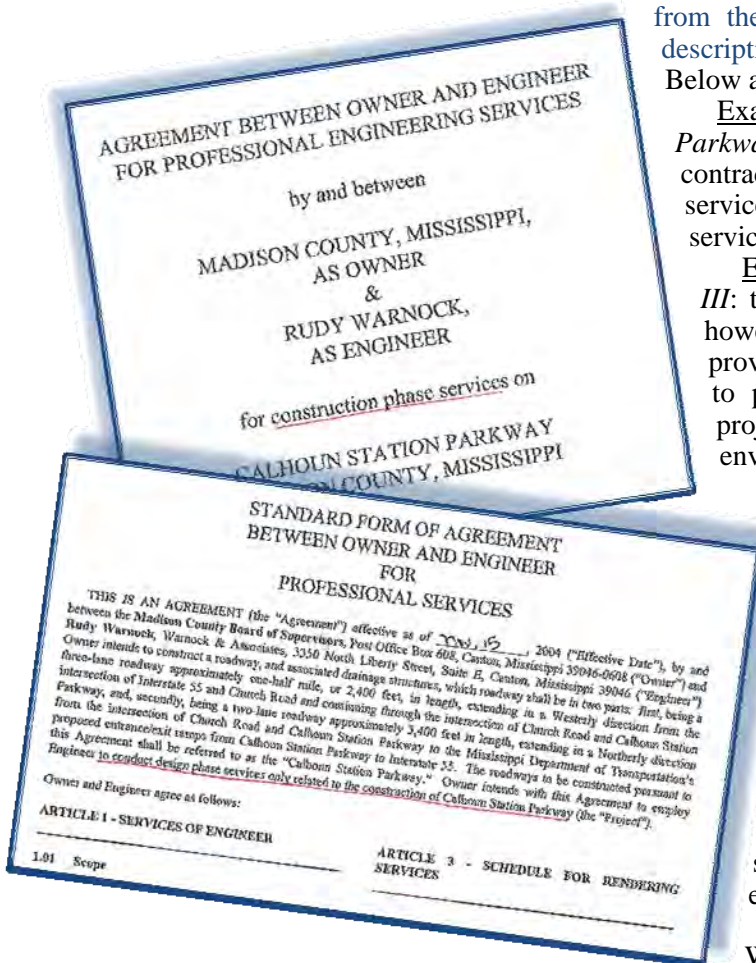
Example A: *Construction Phase Services of Calhoun Station Parkway*: the title notes that the contract is for construction while the contract preamble notes that the engineer is to conduct design phase services only. Exhibit A of the contract shows construction phase services.

Example B: *Design and Construction of Reunion Parkway Phase III*: the title notes that the agreement is for design and construction; however, the scope additionally denotes that the engineer shall also provide all environmental clearance documents in order for the client to proceed with the engineering design and construction of said project. The actual contract is for design, construction, and environmental services.

Example C: *Design and Construction Phase Services for Calhoun Station Parkway Phase II*: the title notes that the agreement is for design and construction; however, the scope additionally denotes that the engineer shall provide all environmental clearance documents in order for the client to proceed with the engineering design and construction of said project.

Example D: *Design Engineering and Construction Engineering Phase Services on 2007 Safetia-Lu Overlay Project*: the title of the contract is for design engineering and construction engineering services while the preamble notes that the engineer was also to conduct an environmental study and a route location survey, in addition to design engineering, and construction engineering services.

In approving the November 15, 2004, contract between Rudy Warnock and Madison County for construction phase services on Calhoun Station Parkway, a motion was made, seconded, and passed by the Board to delete a \$20/hour charge for the use of a computer CPU, the \$20/hour personal computer use charge, and the mobile phone charge of \$50/day. In addition, the original motion required the



⁵⁶ OSA does not have the authority, nor is it the intent of this report to make any assumptions or determinations about the legality or validity of any contracts mentioned. OSA staff has reviewed the contracts for uniformity, consistency, clarity, and correctness.



engineer's compensation for construction phase services be reduced. In the copy of the executed contract provided to OSA by Madison County, it appears that the deletions were made, but it appears no reduction in the compensation occurred even though attached to the executed contract were the minutes from the November 15, 2004, meeting. In discussions with the staff and further review of Board minutes, it was discovered that at the next meeting two weeks after the contract was approved by the Board, they reinstated the original 7.2% amount for construction phase services, and, therefore, the final contract as filed was correct; but incomplete documentation had merely been attached to the contract. OSA made to observations about this 2004 contract documentation. First, OSA finds that documentation attached to the contract had not been reviewed for accuracy. Second, OSA finds that the deletions made in the November, 2004, contract did not occur in all subsequent contracts. It was not until after 2008 that OSA began observing regular elimination of such charges. OSA was unable to determine a pattern or find any official reason why they were not made from that point forward. Many of the other contracts contained the same listings of potential charges with no reductions or eliminations. OSA believes that the non-uniform approach to certain payment terms and allowances may be an indication that written policies and procedures for contract management were not developed. OSA recommends that the Board require procedures to ensure that attachments to official document (such as contracts) are accurate and appropriate. OSA recommends if the Board identifies inappropriate contract elements that they want eliminated, that the staff be instructed to ensure those elements do not reappear in succeeding contracts.

The implications of contradictory language in a contract can lead to a breach of that contract by either party. When contracts are poorly written, it can lead to one party fully complying with the terms while the other party only partially performs; the contract being null and void due to there not being the requisite "meeting of the minds;" and/or a governmental unit's payment of services that were not necessarily performed. OSA finds that in some instances, the title of the contract was different from the scope/objective of the contract, which in turn varied from the description of services/deliverables noted in the appendix of the contract. OSA recommends that Madison County ensure that any contract they approve in the future actually reflect the correct title, scope of work to be performed, and the description of the various deliverables related to the title and scope of work. All of the sections should reflect the same services to be performed by the engineer. Further, OSA recommends the County should ensure the removal of all inapplicable terms that may cause conflicts, ambiguity, or contradictions.

Missing and/or Indefinite Contract Terms

A number of the contracts reviewed either had missing terms or a blank line where a term should have been. For example, in the contracts titled, *Design and Construction Phase Services for Parkplace Boulevard*, and *Design and Construction Phase Services on 2007 Canton Overlay Project*, and *Environmental Clearance, Route Location, Design Engineering, and Construction Engineering Services of Sowell Road Extension*, OSA finds that the effective dates were blank. In one contract, *Parking Lot Agreement*, it appears that Mr. Warnock did not sign the contract.

The estimated total construction cost fees for the 22 contracts OSA reviewed are in the millions. With this amount of money, it is imperative that Madison County insist that the requisite terms (effective dates, payment terms, sunset date, scope of work and signage) of all its contracts are explicitly stated. A tremendous exposure to risks and liabilities exists when the requisite terms of any contract are missing.

Currently, the contracts OSA has reviewed do not require sufficient documentation to validate costs, nor did the County have procedures in place to require sufficient documentation. Such requisite terms and the subsequent use of oversight controls should be included and utilized to protect taxpayers and the Board.

OSA has already concluded that most of the contracts that were reviewed are more protective of the engineer than they are of the County. An example of this can be observed in the clause found in all of the contracts using the previously mentioned standard form. It states the engineer will provide, with his invoices, only that documentation that he normally



supplies to others. Not only does this create the opportunity for non-uniform documentation from one engineer to the next (the Board is not in control of a uniform system of validation and must tailor its methods for each professional with which it contracts), it places the Board in a position that they may not be able to easily get enough information to validate a claim.

Each of the standard form contracts contains a place to provide the total estimated construction costs. This figure is important for the Board staff, because it provides them a contract management starting point from which they can design procedures to track payments and calculate total engineering fees from the payment terms located in other sections of the contracts. Exhibit C (attached to most of the selected contracts) ties engineering fees to the total estimated construction cost of the project. However, OSA finds that a

number of contracts contain no estimated construction cost or details of how that number might have been calculated. However, these contracts supply engineering fees based upon this cost amount. Instead, in the signed executed copy of the contract provided to OSA the amount shows “\$XX,XXX,XXX.XX.” The County argues that the information is available within the Road Plan that is approved annually by the Board. The contract has a place to fill in the amount and so it should either be filled in or not left blank, or the contract should correctly reference the Road Plan. While referencing the Road Plan is better than blanks

where the estimate should be, it does not increase the County’s accountability to its citizens and it does not specifically provide an amount in the contract to which other payment terms are tied. The Road plan is not part of the contract and OSA finds that it would be reasonable for the executed contracts to be complete. OSA recommends that Madison County immediately review its contracts with Warnock and take action to correct identified problems such as missing or incomplete information, blanks where information such as costs or dates should be, etc., in order to strengthen the contracts and increase the protection to the County.

Other Issues of Concern

A third issue noted in the contracts review concerned certain terms being present in the contractual agreements. Generally, OSA finds that a number of the Board’s contracts with Warnock provided compensation which resulted in more than about 14-15% of total construction costs. While these percentages are not the highest that Madison County has paid for construction and design related engineering services, they are above the average compared to Madison County’s own internal reports. Several of the newer contracts appear to have lower percentages for services and, therefore, may have lower potential engineering fees (based on those percentages) at the end of the projects.

OSA found that the environmental phase services of a project were often a lump sum payment, although there have been several contracts in 2010 that were a small percentage of the estimated total construction cost instead of a lump sum (0.5%, 1%, 3%, etc.). OSA also notes that in these newer contracts, it is apparent that Board Attorney has eliminated several of what OSA has considered questionable costs, such as per day cell phone reimbursement and the duplicative daily vehicle use fee and mileage fee issue. Additionally, some of these same, newer contracts appear to have reduced percentages for certain engineering design or construction services (4%, 6%, etc.).

In many of the reviewed contracts, the lump sum for environmental engineering services, the language varied from “an amount not less than,” to “an amount equal to,” or even the “equal to 7% of the actual Construction cost, but not less than \$1,967,000.00” language found in a 2008 contract. Design phase and construction phase services were a percentage (usually 7% each) of the total construction cost. These contracts also contained “reimbursable expenses” defined for various services within the contracts, but which were not included in the other services.



OSA does not express any opinion about whether one payment term is better than another, but rather recognizes the variety of terms of payment found in these otherwise standardized contracts. For each of the services (environmental, design, and construction) the actual payment clauses state that the fees—regardless of whether they are lump sum or percentage of total construction costs—are inclusive of any consultants (subcontractors) and of “labor, overhead, and profit.” Therefore, OSA would expect to find no line-itemed charges for subcontractors or other included charges unless they were part of additional services approved by the Board. If they were part of Board approved additional services, then OSA would reasonably expect that they would be marked as such on an invoice. Since several items on the reimbursable expense list are items that might be more properly considered overhead or labor, OSA recommends that the Board have staff review these contractual terms to determine how best to protect the County’s interest from duplicative payments or over payments and, if they occurred, determine what actions should be taken regarding recovery of overpaid amounts.

In the contract “*Environmental Clearance, Route Location, Design Engineering, and Construction Engineering Services of Sowell Road Extension*,” OSA finds that the effective date of the contract and the date the contract was signed differ by a year. The effective date on the form contract was the year 2006 while the agreement bears a signature date of 2007. The specific day portion of the effective date was left blank. Madison County has not yet provided additional information explaining this discrepancy.

One contract with several items of concern was the *General Engineering Services Contract of 2008* that was entered on January 7, 2008. Below are some of the examples found in the contract:

- The mileage rate for the engineer vehicle was written as “THIRTY-FOUR CENTS ONLY (\$0.485).”
- There was also a \$2.50 per hour vehicle usage fee in the performance of the engineer’s work in addition to the additional mileage fee above.
- There was a 5% markup allowed for any invoices from subcontractors received by Warnock and submitted by him to the Board (See page 22).
- There was a 30-day, with notice termination clause, but no term of service or individual project was specified.

It is important to note that just because these terms appeared in the contract, there is not much evidence showing that the allowable costs were actually billed or realized. The financial review will discuss this topic in more detail.

Another example of a contract that contained suspect terms was entitled *Design and Construction Engineering Services on Calhoun Station Parkway Phase III* Project in which an amendment was done. The addendum was for the redesign of the southern end of Calhoun Station Parkway Phase III and to amend the existing environmental permit with the Corp of Engineers. This was at the request of the Board of Supervisors and resulted in an additional lump sum of \$206,236.80 for the design services and \$79,560 for amending the environmental permit, but OSA was not provided sufficient documentation describing the need for the increases. That is not to say the information does not exist, but rather that the County has not produced it to OSA as their documentation. The only documentation OSA was provided was a two-page amendment form that just said the Supervisors wanted the redesign. The minutes do not address the need, nor does the amendment. Further, in reviewing the amendment, OSA noted that the original contract effective date is listed as February 19, 2008, the amendment was signed September 15, 2008, the expected completion date was April 1, 2009, and yet the effective date of the amendment was September 15, 2009.

In the same minutes, and in the same motion, another project titled the *Stribling Road Extension Project* had similar issues. The amendment just says the Board wanted the redesign and the minutes do not address the reason or need, either. This project redesign was listed in the amendment with a total cost increase of \$58,132.00 for design services and \$18,000 to amend the environmental permit.

In the July 17, 2006, contract titled, *Calhoun Station Parkway Phase III Environmental*



Clearance and Route Location Project, several sections of the contract note that certain annotated sections are not part of the contract while other sections, i.e., Madison County's responsibilities, are included in the contract. OSA questions why these sections appear in the contract if they are not part of the agreement. OSA finds that increased exposure to risks exists for all parties involved when such inapplicable terms or sections exist in contracts.

OSA finds that in many of the selected contracts, terms are incorrect, missing, incomplete, duplicative, inapplicable, or contradictory. OSA recommends that the Board should ensure that all terms and provisions are clearly, accurately, and explicitly stated in all its contracts and those unnecessary sections are removed.

Miscellaneous Issues

A fourth categorization of the issues relevant to this report consisted of miscellaneous concerns that are both management and contractual. First, the scope of services provided in the contracts was often very broad. For example, in some of the project specific contracts, the engineer was to conduct the environmental assessment on the project, design the project, and construct the project, while simultaneously performing the general engineering services under the retainer agreement with the county. This may or may not be a problem, but OSA recommends that the Board immediately review all contract terms for overlapping and conflicting language between multiple contracts as well as within contracts.

OSA finds no evidence of a general services contract for the years 2006 and 2007, or for 2009 and 2010, yet, in approving other projects, there are Board references to the expired contracts in the minutes that there was a general services contract in those years.⁵⁷ Additionally, in 2006 and 2007, during a time where there was no general services contract, Warnock charged Madison County \$36,100.00 for "utility permit oversight." While it was really to digitize the drawings for the utility permit application process (a service different and distinct from that covered under his retainer fee), and required specialized additional services, the Board minutes that authorized him to do the work under the general services contract did not specify payment amounts, limits, etc.

Additionally, the contract under which the Board authorized expenditures had expired almost eight months prior. As previously stated, OSA recommends that the Board immediately review all of its contracts with the County Engineer to determine if there are any other contracts that have no term of service/termination date, or which have expired, or which are about to expire and take appropriate action to remedy the issue before assigning additional duties under such contracts.

During its review of contract activity in Board minutes, OSA also found that many of the contracts had similar names for projects. These similar names caused some confusion at times. As an example, the Reunion Project, the Reunion Parkway Project, the Reunion Parkway Phase II Project, and the Reunion Parkway Phase III Project all have similar names. Such similar naming made it difficult, at times, to track the project with the accompanying invoices and annotations in the minutes. This problem was evident in that two contracts were issued for the design of Reunion Interchange. The details of the two contracts appear to be the same except that the latter contract included construction.⁵⁸ OSA recommends that the Board consider using a numerical identifying system as well as the common title system for identifying the Warnock contracts to aid in the differentiation between similarly named contracts. Such an action would increase the accountability and transparency to the public.

BOOK 2006 PAGE 0589

In re: Discussion Regarding Utility Companies Submitting Geo-referenced Digital Copies of Approved Permits

Following discussion, Mr. Douglas L. Jones did offer and Mr. Karl M. Banks did second a motion to authorize Warnock & Associates, Inc. to prepare, in geo-referenced digitized format, copies of all approved permits issued by Madison County pursuant to its general services contract with that county. The vision the motion being as follows:

Supervisor Douglas L. Jones	Aye
Supervisor Tim Johnson	Aye
Supervisor Andy Taggart	Aye
Supervisor Karl M. Banks	Aye
Supervisor Paul Griffin	Aye

The matter carried unanimously and Warnock and Associates was and is hereby so authorized.

SO ORDERED this 3rd day of July, 2006.

In re: Approval of Certain Budget Amendments

WHEREAS, County Comptroller Mark Houston did appear before the Board and presented certain budget amendments as reflected in Unit certain amendments attached hereto as Exhibit F, spread hereupon and incorporated herein by reference; and

WHEREAS, Mr. Houston did review each with the Board.

Following discussion, Mr. Andy Taggart did offer and Mr. Karl M. Banks did second a motion to approve said budget amendments. The vote on the matter being as follows:

Supervisor Douglas L. Jones	Aye
Supervisor Tim Johnson	Aye
Supervisor Andy Taggart	Aye
Supervisor Karl M. Banks	Aye
Supervisor Paul Griffin	Aye

The matter carried unanimously and said budget amendments were and are hereby approved.

SO ORDERED this 3rd day of July, 2006.

In re: Approval of Claims Docket for July 3, 2006

WHEREAS, the Board reviewed the claims docket for July 3, 2006; and

WHEREAS, the Claims Clerk did assure the Board of Supervisors that all claims had been properly documented and where necessary, purchase orders were obtained in advance as required by law; and

WHEREAS, the following is a summary of all claims and funds from which said claims are to be paid:

Fund	Claim Nos.	No. of Claims	Amount
201	2506 to 2702	197	417,381.86
012	100 to 207	13	24,578.82
051	1 to 2	2	223,565.07
068	17 to 18	2	39,467.34

President's Initials: *Tag*
 Date Signed: *7/19/06*
 For Searching Reference Only: Page 16 of 27 (7/19/06)

⁵⁷ Minutes of February 21, 2006 and January 16, 2007.

⁵⁸ Minutes of March 8, 2007 and April 21, 2008.



Most of the contracts reviewed contained language stating that in order for the Board not to have to pay extra for design problems, they had to identify those problems themselves and make the engineer (who often was creating the design) aware of the problems. OSA has been unable to identify any County official or Board members with the expertise to identify such design flaws.

Another OSA concern noted throughout most of the contracts includes a clause allowing the engineer to hire any consultants or sub contractors he felt were necessary without notice to the Board; this same clause also affords the Board the right to object to any of his consultants or sub contractors as long as such objections are "substantive." So far, OSA has identified at least two subcontractors of which the Board's staff was not aware. When OSA requested the County's records related to his subcontract work, the County did not provide any documentation related to these companies. Therefore in these instances OSA reasonably concludes that the County could not have made objection to Warnock's subcontractors because they had no knowledge of them.

Many of the reviewed contracts also contain a clause pertaining to invoice documentation. Most of the contracts had a clause that allowed the engineer to turn in whatever he would normally turn in to a client for reimbursement. The Board did not negotiate guidelines into the contract for necessary information that could be used to verify invoice accuracy and validity. Instead, the contracts they approved allowed Warnock's standard practices to dictate the level of assurance that could be provided to Board staff. As a result of the contractual weakness, the Board has virtually no additional documentation to validate invoices from the engineer.

The copies of signed, executed contracts provided to OSA by the County often included significant typographical errors, erroneous titles or subjects, missing information, and generally appeared to be more directed at protecting the engineer's interests than that of the Madison County taxpayers.

Based on government auditing standards and OSA's experience with such matters, OSA believes that the numerous weaknesses identified in the contracts raise the Board's risk of various financial liabilities that could negatively impact both the County taxpayers and the Board of Supervisors. During its evaluation of invoices and contract terms, OSA was unable to find sufficient documentation to verify the accuracy and validity of the invoices. In addition, OSA found errors on invoices submitted. In some cases, OSA found that certain invoices showed line-itemed sub contractor payments, even though the majority of the contracts stated that for all service phases, the payments were inclusive, not only of profit, labor, and overhead, but also these fees paid to the engineer were inclusive of his consultants and sub contractors. In these few instances found by OSA, additional documentation, such as sub-contractor invoices, was indeed attached to the main invoice. This was not the case in most of the invoices reviewed.

Through its review of Board minutes between 2004 and 2010, OSA has located two points in time that the Board members had an opportunity to make a change in the oversight of payments made by the Board. OSA found that twice the Board failed to pass a motion to require additional documentation from its professional services contractors before paying their bills. Mississippi Code section 19-13-31 clearly delineates the responsibilities of the Board with regard to approving claims and places responsibility on the Board to have processes in place to verify the validity of a claim.

In June 2005 the Madison Board had an opportunity to require additional documentation of invoice payments to be attached to payment requests (claims) when a motion to require additional documentation failed to garner a majority of votes. This 2005 motion was not specifically related to Warnock contracts. Then, a separate, yet similar motion in June 2009 also failed to pass with a majority of the Board's support—this motion appears to be directly related to the invoices and contracts with Warnock. In both years, when two Board members made and seconded the motion to require additional documentation for personal service contract invoices prior to paying a claim, the matter failed to pass by a vote of a majority of Board members.



In re: Requiring Professional Services Providers to Submit Detailed Billing Statement as a Condition of Payment of Invoices

During a period of new business, Mr. Andy Taggart did offer and Mr. Douglas L. Jones did second a motion to require that all professionals submitting invoices to the county for payment provide itemized billing statements in conjunction therewith so as to allow comparison with contractual terms and conditions. The vote on the matter being as follows:

Supervisor Douglas L. Jones	Aye
Supervisor Tim Johnson	No
Supervisor Andy Taggart	Aye
Supervisor Karl M. Banks	Not Present and Not Voting
Supervisor Paul Griffin	No

the matter failed to garner a majority of votes of the Board and therefore failed.

SO ORDERED this the 6th day of June, 2005.

Because of the presence of these two separate motions, the Madison County Board of Supervisors should have been aware that some of their members believed that additional documentation was needed to uphold their responsibility under the claims law. However, by not passing the motions, the Board seems to have believed that the documentation presented by the professionals with whom they had personal services contracts was sufficient. Because the primary responsibility of claims payments rests with the Board, it would not be unreasonable for a member of the Board to request additional information before approving (voting to pay) a claim, even though a competent professional manages payments. OSA finds that this type of additional information that was requested can be actually necessary, basic information.


OSA reasonable concludes that Board members should have had knowledge of this potential problem (because a motion was made) and the opportunity to correct a potential problem but took no action at that time. The result of that inaction has, at least in part, culminated in this and the next report from OSA. Unfortunately, in this case, the State Auditor is without statutory authority to impose such a claims oversight system on the Board. The statute clearly places this responsibility on the Board.

OSA finds that during a June 6, 2005, Board meeting and again during a June, 2009, Board meeting, similar motions were made and seconded to require that professionals submitting invoices to the County for payment provide itemized billing statements to allow comparison with contractual terms and conditions. However, the matter failed to garner a majority of the votes from the Board. OSA finds that the Board should have been aware of a potential problem related to a lack of documentation to verify expenditures and then should have taken corrective action in the management/payment of the invoices associated with its professional service providers. OSA recommends that the Board carefully consider the legal implications of its motions, especially as they may relate to claims and payments.

Since OSA brought this issue to the attention of the Board, the Board Attorney, and Clerk, they have worked together and, at a special called meeting held on September 30, 2010, the Board unanimously voted to pass a motion to require the staff to obtain sufficient documentation to verify claims. In addition, they made clear in a motion on the minutes that it was never their intention to limit the documentation that was collected, but rather a response to their belief that the professional staff had all of the documentation needed. Several supervisors said that the Board's intent in those original votes was to not create additional burdens on the professional staff that they believed already had sufficient documentation. Since that time, the staff has been in contact with OSA staff to gain further understanding of certain types of

documentation and contract management.

In reviewing Board minutes, it was apparent that there were some Supervisors with issues of concern in the contracts with Mr. Rudy Warnock/Warnock and Associates.⁵⁹ Motions to


WARNOCK & ASSOCIATES, LLC
ENGINEERING, SURVEYING & PLANNING

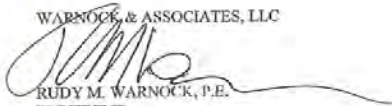
SEPTEMBER 27, 2006 INVOICE 10-01-06

MADISON COUNTY BOARD OF SUPERVISORS
P.O. BOX 608
CANTON, MS 39046

RE: CALHOUN STATION PARKWAY PHASE II
2006 CAPITAL OUTLAY PROJECT
JOB #: 6105.000

DESCRIPTION:
Engineering Design, Surveying, Right of Way Plats and Descriptions, and Construction Engineering for the construction of a 4 lane divided median roadway from Gluckstadt road to Church road connecting to Calhoun Station Parkway Phase I.

ENVIRONMENTAL ENGINEERING FEES.....	\$150,000.00
ENVIRONMENTAL ENGINEERING DUE (100%).....	\$125,250.00
DESIGN ENGINEERING FEES.....	\$146,356.00
DESIGN ENGINEERING FEES DUE (10%).....	\$14,635.60
PERVIOUS BILLING.....	\$140,659.60
TOTAL DUE.....	\$24,750.00

SINCERELY,

WARNOCK & ASSOCIATES, LLC
RUDY M. WARNOCK, P.E.
PRESIDENT

RECEIVED
CLAIM
SEP 28 2006
VENDOR # 13538
CLAIM # 302300991
24750.00

3360 N. LIBERTY ST., STE. E
CANTON, MS 39046
(601)-556-2250 PHONE
(601)-556-3590 FAX

625 LAKELAND EAST DR., STE. E
FLOWOOD, MS 39232
(601)-420-4884 PHONE
(601)-420-4184 FAX

www.warnockandassociates.com

⁵⁹ For example, see the minutes of November 15, 2004, February 20, 2007, and March 8, 2007.



exclude Warnock claims from payment votes were fairly regular (they would eventually pass with a 3-2 vote). Additionally, a number of concerns were raised by Board members about certain contracts or claims, but no action was taken.

Lack of sufficient documentation to link all claims and payments to valid and complete services creates a risk for errors and mistakes. If there is information coming in to the County on a regular basis, but not attached to an invoice, the County should consider whether such information could be regarded as sufficient documentation to help verify the accuracy of invoices. One example of such documentation that the county should have, yet was never mentioned in interviews or provided with payment and invoice documentation to OSA is payment applications ("pay apps"). These are certifications of completed work by the construction contractors to the engineer.

After the engineer reviews and approves work completed by the construction contractor, the engineer then submits these pay apps to the County. The pay apps show percentage completion of work as well as other useful information that could be considered sufficient documentation. Short summary reports to the county of work performed, such as which employees worked on projects, how many hours they worked, what specialized equipment was used, etc. are other pieces of information that would be considered sufficient documentation. Sometimes simply requiring a reference to such documents on an invoice is sufficient to track and verify the accuracy and validity of payment claims. The referenced documents may be held by either the county or the contractor.

Until the financial review is complete, OSA will not be able to determine whether or not there were any overpayments, duplicate payments, or otherwise ineligible warrants paid on the contracts that were selected for review.

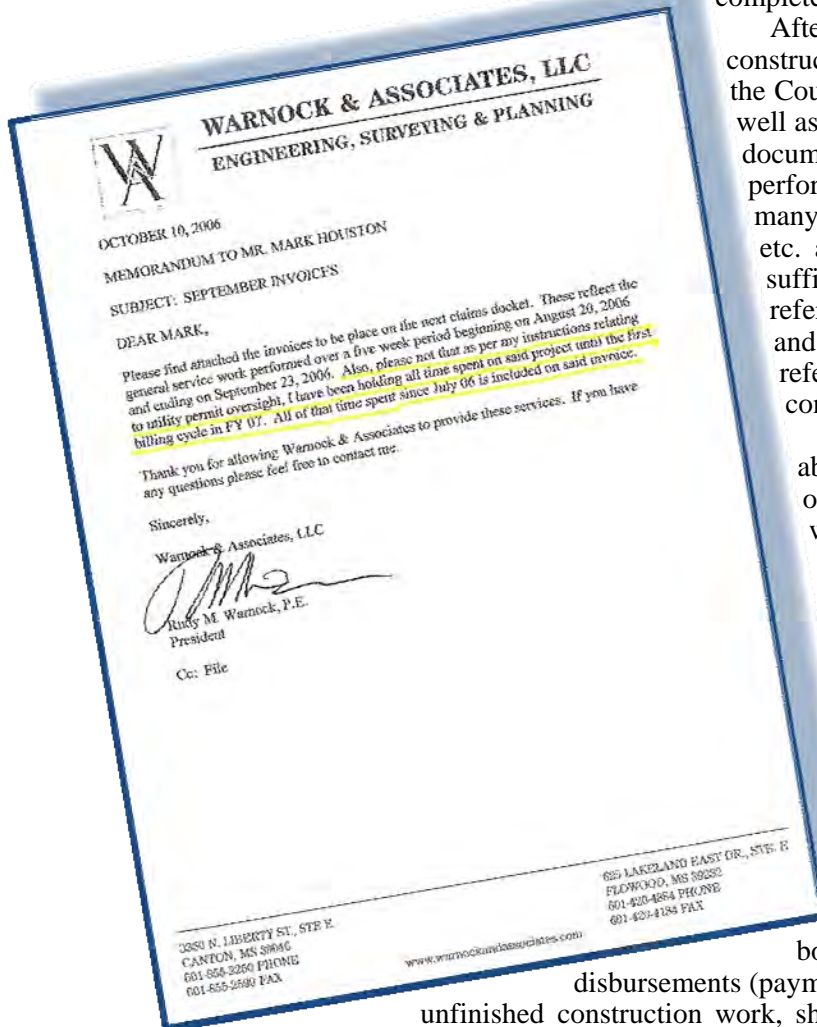
Finally, invoices submitted by Warnock and Associates to Madison County for September, 2006, contained a memorandum from Mr. Rudy Warnock to Mr. Mark Houston, dated October 10, 2006, that stated in part,

Also, please not(e) that as per my instructions relating to utility permit oversight, I have been holding all time spent on said project until the first billing cycle in FY 07. All that time spent since July 06 is included on said invoice...

In a county, all appropriations of funds from one fiscal year lapse at the end of that fiscal year⁶⁰ and all books shall close September 30, by law. In addition, all

disbursements (payments) made on or after October 1, except for those related to unfinished construction work, shall be charged against the current budget. State law also states that when the delay in presentation of any such claim is caused by a willful act of a member of the board of supervisors or other official of the county, each supervisor or other official shall be liable on his official bond to the claimant for the amount owed.⁶¹

The invoice is dated September 29, 2006, in the amount of \$7,640. OSA finds that this is the first time Warnock and Associates billed Madison County for utility permit application management that, had there been a general services contract in place, would have been included under that contract. Board minutes from July 3, 2006, authorized Warnock to begin to digitize the approved utility permits. Not only is the invoice dated prior to October 1, 2006, the attached memo clearly states that it is for expenses incurred in the prior year. OSA



⁶⁰ A county's fiscal year runs from October 1 through September 30.

⁶¹ Miss. Code Ann. §19-11-25 (1972).



found no evidence that the claim was allowed to be paid in the new fiscal year. OSA is concerned by the memo addressing the holdover of payments and recommends that the County not hold over charges beyond a fiscal year, as doing so may violate State law.

It should be noted that OSA noticed a trend in the most recent contracts where a number of certain “reimbursable” expenses had been removed. We commend the Board and its staff for taking such action on these details that can drive the cost of services up unnecessarily.

Conclusion

It is incumbent upon the Madison County Board of Supervisors through their actions, and the actions of their officers and representatives to do their utmost to be good stewards of the money they have at their disposal.

Throughout the last five months, OSA has researched and evaluated the management and oversight of the Madison County Board of Supervisors with regard to its contracts with Rudy Warnock in his capacity as County Engineer. In various areas of this report, OSA has provided recommendations to correct findings related to contract issues. During this process, as OSA has made the Board and its staff aware of certain contract deficiencies and weaknesses, as well as possible violations of State law, OSA has noted that they have been responsive by taking immediate corrective action. Since providing the draft of this report to the Board of Supervisors and its staff, the Board has met and corrected several findings. On September 30, 2010, the Board voted unanimously to *nunc pro tunc* the 2008 general services contract that had no term of service. They noted their intent was to have made the contract for the entire term of the Board. They also voted unanimously to clarify that they did not intend to restrict the type of information that could be requested from contractors and used for verifying claims for payments. Finally, they negated the votes from 2005 and 2009 to now allow County staff to request additional documentation as they deem necessary to verify claims.

It is incumbent upon the Madison County Board of Supervisors through their actions, and the actions of their officers and representatives to do their utmost to be good stewards of the money they have at their disposal. Careful crafting of contracts that are designed to serve the needs of the citizens is also important to ultimately ensuring the County receives a good value for the dollars spent. OSA has made numerous recommendations in this report. Not only do we hope that Madison County will consider some of them as ways to strengthen their own controls, but OSA stands ready to assist them in any way we can to better manage their contracts and revenues.

OSA attempted to answer a number of questions with this report:

- How do the County’s contracts compare with industry standard contracts? Most of the contracts for road construction are very similar in form and substance to a form contract that was designed by the Engineers Joint Contract Document Committee of the National Society of Professional Engineers.
- How effective are the County’s channels of communication amongst the Board of Supervisors and other County departments/officials in relation to oversight of the contracts reviewed? While they seemed to believe that their communication was reliable—and amongst the staff it generally was, OSA finds weaknesses due to numerous assumptions of responsibility that were being made by all parties and a very strong reliance on the Board Attorney after contracts were executed.
- How well does the County comply with State statutes, rules, and regulations regarding the selected engineering contracts? OSA did find several instances where State law may have been violated due to Board decisions (though these laws are very broad and loosely defined, with no penalties associated). Specifically, potential violations of the Claims law (which has been corrected) and potential violations of State laws governing budgeting (§19-11-25, Mississippi Code of 1972) where someone instructed Warnock to hold over a payment from one fiscal year to the next. OSA was unable to



definitively determine whether or not the claims were presented to the Board and then the vendor was instructed to hold them or if the vendor was told to hold them prior to their original presentation to the Board. Finally, the Board allowed contracts to expire and continued to assign work under these expired contracts.

- How well constructed were the selected contracts compared to an industry standard contract?⁶² While the majority of contracts reviewed were, on the surface, replicas of such a form contract, OSA found that by leaving in non-applicable terms and conditions, failing to complete certain areas where information might be required, typographical errors, etc., in those areas that were customized, and a lack of attention to details of what was allowed to be billed what scope of work was included, etc. the County agreed to weak contracts that not only do not strongly protect the taxpayers of the County, but that could have allowed for duplicate payments, overpayments, and liability risks. Regardless of whether these weaknesses were actualized, the risk remains, due to the contract construction.

The remaining issues with contracts and payments will be addressed in the next report to be issued about contracts between Madison County and Rudy Warnock. Thus far, in the limited scope review of the contracts between Madison County and Rudy Warnock, OSA has determined that there are a number of deficiencies in most of the contracts that were analyzed. In addition, OSA has found no evidence of actual valid contracts in place for certain years and in those contracts that are still valid, OSA has determined that almost all have questionable terms and conditions to varying degrees.

Any other issues not covered or finalized in this report may be addressed in the follow-up financial analysis report. This next report will focus primarily on the financial review of payments from the County to Rudy Warnock and from Rudy Warnock to his subcontractors and consultants for selected contracts.

⁶² Such as the one presented by the Engineers Joint Contract Document Committee of the National Society of Professional Engineers.



Appendix A:

Interview Questions



Questions for the Madison County Board of Supervisors and Other Madison County Officers and Employees

1. What is the procedure/process for review of contracts by the Board of Supervisors?
2. As a Supervisor, who do you rely on for advice about the contracts you are signing/taking responsibility for?
3. Who do you believe has the responsibility for a contract within the county?
4. Do the supervisors read every contract? Any contracts?
5. Has there been any litigation over the last (5) years relative to the performance, interpretation, or modification of any road construction/road design contracts entered by the Board?
6. Most of the road construction/road engineering contracts with Warnock and Associates require a "Notice of Acceptability." Did you see such notice on all the completed contracts with Warnock and Associates?
7. How would you describe the work relationship between Madison County Board of Supervisors and Mr. Rudy Warnock, i.e., contract employee, civil service employee, contractor, or sub-contractor?
8. How would you describe the relationship between Warnock & Associates, LLP and the Madison County Board of Supervisors? Is it similar to the relationship you have with other contractors or different? If different, why?
9. Who on the Madison County Board of Supervisors is responsible for reviewing and recommending for approval the invoices to be paid?
10. Do you ever review invoices and supporting documentation prior to their approval?
11. Do you believe there is sufficient documentation with each bill that comes in to give you a level of assurance that they are correct? Why or why not?



Questions for the Madison County Engineer Rudy Warnock

1. What method of compensation was utilized in road construction/road engineering contracts with Madison County Board of Supervisors?
 - a. Lump sum payment
 - b. Standard hourly rates
 - c. Percentage of construction costs
 - d. Direct labor costs times a factor
 - e. Direct labor costs plus overhead plus a fixed fee
 - f. Salary costs times a factor
2. Were Resident Project Representatives used on all projects?
 - a. If they were used, how were they paid? (See a-f above)
3. How were you compensated for additional services?
 - a. Standard hourly rates
 - b. Direct labor costs times a factor
 - c. Salary costs time a factor
4. Why is the contract language in your contracts with Madison County identical, almost verbatim, to model contract form that is available via Engineers Joint Contract Document Committee, EJCDC, of the National Society of Professional Engineers, until we get to the compensation section? In the compensation section of the contracts the language then omits sections and phrases that are in the model contract.
5. Where is the notice of acceptability of work on all completed projects done or reviewed by Warnock?
6. How would you characterize the work relationship between Mr. Warnock and Madison County i.e. contract employee, county contractor, actual county employee?
7. How would you characterize the contractual relationship between Madison County and Warnock and Associates, PLLC ?
8. What specific duties/examples of work exist in the “permit oversight” function of the Madison County Engineer?



Questions for other Counties

1. How are road construction/road engineering contracts handled in your county?
2. Can you give me an estimate of the amount of dollars spent on road construction, design, or environmental assessments of future roadways in your County in the last three (3) fiscal years?
3. Is your County engineer a contract employee, a regular government service employee, or an independent contractor?
4. How would you categorize the majority of road construction work in your County, i.e. interchange, new road construction, overlay of existing roads, etc?

Questions for Former Madison County Board Attorney Edward Brunini

1. Describe how the process of road design, road construction, and/or road engineering services was handled during your tenure as Madison County Board Attorney.
2. Relative to the general services contracts of 2005 and 2008 between Madison County Board of Supervisors and Mr. Rudy Warnock, were these contracts for term of the board members?
3. Were these contracts strictly for the year in which they were signed?
4. Were any general services contractual agreements done in 2006, 2007, 2009, and 2010?
5. Can you recall if any annotation was put in the board minutes relative to these general service contracts being for term of the board?
6. Contractually, how were utility permit oversight services to be handled by Mr. Warnock?
7. How were the contracts for road work formulated i.e. was a "canned form" used and the essential terms added or were the contracts customized for each road project?
8. How much oversight was given to the road contracts by the Madison County Board members? How much oversight was given by you in the capacity of Board Attorney?
9. Did you perceive a conflict of interest with the Madison County Road Engineer's company conducting a majority of the road construction work in the county?
10. How was the selection of the county road engineer handled during your tenure with the board e.g. was the process ever a competitive bid process, was a position vacancy announcement done, was an ad place in area print media and trade publications, etc.?



Appendix B:
List of Contracts and Projects Under Review

**Project Name***shaded items are contract review items*

Calhoun Station Parkway Place (Design only)
Calhoun Station Parkway Phase (Construction only)
General Services Retainer
Debris Removal from Hurricane Katrina
Calhoun Station Parkway Phase II (Design & Construction)
Parkplace Boulevard (Design & Construction)
Reunion Parkway Phase III (Design & Construction)
Calhoun Station Parkway Phase III (Environmental Clearance)
Gluckstadt Widening Project (Design & Construction)
2007 Canton Overlay Project
Sowell Road Extension
2007 SAFETEA-LU Overlay
Stribling Road Extension
General Services Retainer
Calhoun Station Parkway Phase III (Design & Construction)
Reunion Interchange Design
Stribling Road Extension Phase II (Environmental, Design, and Construction phase)
Hoy Road Reconstruction
Yandell Road Reconstruction (Environmental, Design, and Construction phase)
Sowell Road Phase II (Environmental Engineering, Design, and Construction phase)
Parking Lot Agreement
Reunion Interchange Construction
Tredwell Drive Cul-de-sac
Twin Harbour Drainage Project
Utility Permit Oversight (Job #6107)
Vision Road Plan & DC Trip (Job #6097)
Waldrop Lane Drainage Easement (Job #1144)
Way Road Right-of-Way
West Sowell Road Extension (Job #6067)
Whisper Lake Drainage
Windance Subdivision Drainage Project
Yandell Road Surveying
2009 ARRA Project (Design Engineering - Yandell Road)
50 Mile Reseal Project (Job #6060)
06 Bike Trails Applications (T.E.P.)
Reunion Parkway Interchange 2006 Capital Outlay Project (Job #6111)
2006 Capital Outlay Project (Gluckstadt Road/Catlett Rd/I-55 N) Job #6103



Project Name
<i>shaded items are contract review items</i>
2006 Capital Outlay Project (Church to I-55 N) Job #6103
2006 Capital Outlay Project (Parkplace Boulevard) Job #6106
2007 Capital Outlay Project (Stribling Road Extension) Job #6067
2008 Debris Management Plan
BR-0045(22) BO Society Ridge & Stout Road Bridges
Anandale Street Repair Study (Job #6090)
Anandale Hydraulic Study
Arrington Drive Reconstruction (Job #6096)
Ashbrooke Drainage Evaluation
Arrington Subdivision Drainage Recommendation (Job #6096)
Ashton Park Wall Construction
Bilbrew Road Reconstruction (Job #6111)
Bozeman Road Stripping Redesign
Bozeman Road Slide Reconstruction
Bozeman Road Right-of-Way Determination
Bridge Maintenance Project (Job #6068)
Brown Drive Row Survey (Job #6095)
Cedar Hill Road Drainage Improvements (Job #6100)
Chancery Building Expansion Survey (Job #6126)
Corrections Drive Relocation (Job #6063)
Cotton Blossom Road Extension (Job #6093)
County Flood Survey
County Flooding (Countryside Place Drive)
Deerfield Drainage (Job #6049)
Devlin Springs Pond Analysis (Job #6071)
Elizabeth Lane Hydraulic Review (Job #6047)
Endris Road Bridge Replacement (Job #6096)
Fairview Baptist Church Survey (Job #6088)
Farmhaven Fire District (Job #6130)
GASB No. 34 Compliance
Gluckstadt Road Emergency Bridge Repair
Gluckstadt Elementary Turn Lanes (Job #6101)
Gluckstadt Road (I-55 to Weisenberger Road) Job #1148
Gluckstadt 5-Lane Project (Job #6047)
Gray Hill Road Row Survey
Harvey Crossing Ditch Improvements
Hwy 51 Permit (Gerald Barber)

**Project Name***shaded items are contract review items*

Horseshoe Lane Drainage Evaluation
John Pace Survey (Job #6061)
Kirkwood Cemetery (Job #6080)
Lake Caroline Blvd
Lake Caroline Fire Station (Job #6083)
Lost Rabbit Construction Oversight (Job #6129)
McClelland Ridgecrest Bridge (Job #6048)
Madison County Jail Site Alta Survey
Madison County Surface Mining Permit
Magnolia Heights Drainage Improvements (Job #6047)
MCEDA Ditch Project
Moss Road Drainage Improvements
North Livingston Road Construction State Aid Project (SAP-45(52))
Northshore Way Drainage Improvements
NRCS Channel Stabilization Project (Job #6050)
Old Canton Road Bridge Reconstruction (Job #6034)
Old Highway 51 Bridge Analysis (Job #6095)
Old Rice Road Hill
Old Rice Road Hill Reconstruction
Old Yazoo City Reconstruction Surveys (Job #6107)
Old Yazoo City Road Bridges BR-0045(21)B Job #6035
Parkway North Construction Oversight (Job #6092)
Parkway South Construction Oversight (Job #6082)
Phase II Stormwater Compliance (Job #1103)
Phillips Road Improvements (Job #1123)
Pinetree Lane Road Survey (Job #6075)
Richton Road Alignment
Ratliff Ferry Fire District Survey (Job #6130)
Regional Flood Plan
Riley Williamson Road Survey (Job #6098)
Ross Road Survey
Simpson Road Bridge (Job #6072)
State Aid Bridge Inspections (Job #6062)
Storage Building Foundation Design (Job #6095)
Stump Bridge Road (Job #6070)
Sundown Drainage Improvements
Sutherland Road



Project Name	
shaded items are contract review items	
Tisdale Road Hydraulic Analysis	
Tisdale Road Construction (Job #6094)	
Tisdale Road Improvements (Job #1113)	
Travis Rogers Road Legals (Job #6096)	





Appendix C:
Formal Response of the Madison County Board of Supervisors⁶³

⁶³ Due to margin adjustments for printing purposes, the page numbers attached as Exhibit A of Appendix C may not match the final copy, also a technical adjustment was made to the wording of one recommendation since the final draft was transmitted to Madison County.



MADISON COUNTY BOARD OF SUPERVISORS

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Canton, Mississippi 39046
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October 25, 2010

Via Hand-Delivery

Honorable Stacey Pickering
State Auditor
501 N. West Street
8th Floor, Woolfolk Building
Jackson, MS 39201

RE: Performance Review of Selected Madison County Contracts: Part 1

Dear Auditor Pickering:

As President of the Madison County Board of Supervisors, I want to respond to your office's Performance Review of Selected Madison County Contracts ("Review"). I appreciate the opportunity to review the numerous drafts of the Review and to respond and clarify the issues raised in the various drafts of the Review.

To put things in perspective, we are aware that your office has broad power to investigate all aspects of the financial affairs of the various levels of government, including Boards of Supervisors of the counties in the state. Your powers include the ability to launch civil or criminal investigations, but you have specifically stated to us that you chose not to conduct either, and you currently do not contemplate any civil or criminal action against Madison County, its Board of Supervisors or any employees.

While we found some of the suggestions in the Review to be helpful and instructive, we disagree with many of the assessments in the review. Further, although the Review raises some interesting points and makes certain recommendations, the Board will consider your guidance with the aim of improving the handling of claims. However, most of the findings and recommendations are not mandated by law. As the Review states, you lack the authority to mandate such requirements. But we will consider them in the spirit that they are offered and determine if they will improve our current procedures.

We also appreciate the recognition that many of the issues raised by the Review already have been addressed. In short, most of the issues cited occurred between 2004 and 2008 and have been addressed by the Board. We agree that we have a staff of outstanding professionals and

John Bell Crosby, *District One*
Tim Johnson, *District Two*
D. I. Smith, *District Three*

Karl M. Banks, Sr., *District Four*
Paul Griffin, *District Five*
Arthur Johnston, *Chancery Clerk*

Brad Sellers, *County Administrator*
Quandice Green, *Comptroller*
Cynthia Parker, *Board Secretary*

where we can make improvements, we certainly will do so. Our Board wants to move forward in a positive manner in our future interaction with you and your office. During this Review, we have opened our doors to your office and worked diligently with you and your staff. Before addressing some of the particulars of the Review, a few items need to be addressed in a broader context.

Origination of Madison County's Engineering Contracts

The origin of Madison County's contracts with Warnock & Associates are clear despite the inference in the report that the contract originated with the vendor (Warnock). Some people in Madison County, perhaps driven by political or other motives, have questioned the origin of the contracts and inferred that Warnock wrote the contracts in a way to benefit himself to the detriment of Madison County and its taxpayers. This is demonstrably false.

These are the facts. Madison County hired Ed Brunini of the Brunini Law firm as Board Attorney in January 2004. One of Brunini's early tasks was to revamp all of Madison County's contracts with existing vendors. Brunini began this process in February 2004, a time during which Warnock was not the County Engineer. The Brunini firm spent a significant amount of time developing the contracts that it put forth as a "solid form" for all future engineering contracts. (Brunini letter provided to your office dated April 1, 2004). By our own accounting, Madison County spent over \$20,000.00 in legal fees to develop this contract and relied on the recommendation of the Brunini firm in adopting the form presented by the Brunini firm. The Brunini engineering contracts were first used with then County Engineer, Williford, Gearhardt & Knight and also used with Michael Baker Engineering as well as Neel-Shafer Engineering. Thus, the record is clear that Mr. Warnock had absolutely no involvement in the development or origination of the form of the engineering contracts under which his firm eventually worked.

As your report demonstrates, any Board of Supervisors "relies heavily" on its Board Attorneys for legal advice, especially when it comes to matters such as legal contracts. The 2004-2008 Board of Supervisors relied heavily on the contracts developed by Brunini. The Board was told that the new contracts developed by Brunini would be a "solid form" for future engineering contracts. However, we learned recently from your office that an identical contract can be downloaded from the internet for \$500.00 and that it appears this was the actual basis of the contract recommended by the Brunini firm. We are currently investigating this matter further given the fact that the "creation" of this "solid form" agreement exposed the county to certain risks identified in your report.

As to the risks that may be a part of the "solid form" agreements, your review has cited few if any instances where these risks were realized. We believe your next report is likely to find that things that could have happened never did happen.

In summary of this point, the contract under review by your office was represented to the Board of Supervisors as being the legal work product of the Brunini firm and recommended to the County by the Brunini firm. The current Board of Supervisors has relied in good faith, as did the prior Board, on the form contracts developed by Brunini as Board Attorney at the time with no evidence to believe that such contracts were insufficient to protect the Board and the taxpayers of

Madison County. Be assured that our Board will consider your recommendations and review all contracts which were developed by Brunini and which are still in use by the County.

Concerns related to documentation of engineering invoices

The Review devotes great attention to the need for “additional documentation” to support engineering invoices. The Review states that such documentation “does not have to be extensive,” but gives no specific guidance on exactly what additional information should be required. For this reason and those described below, Madison County takes issue with this aspect of the Review.

In 2004, Madison County hired Mark Houston as its Comptroller. As he was a 20-year veteran in service to the State Auditor’s office with outstanding credentials and an outstanding reputation, Madison County’s 2004 Board considered itself very fortunate to be able to get a Comptroller with the experience and expertise that Mr. Houston brought to the Comptroller position. We never had reason to question Mr. Houston’s advice or decisions, and we believe that no Comptroller in the state was or is more qualified, experienced and dedicated than Mr. Houston.

At no time did Mr. Houston ever communicate to the Board a concern about lack of documentation concerning engineering invoices. Mr. Houston would never recommend that any invoice be paid without adequate documentation. The Board had the utmost confidence in Mr. Houston as Comptroller regarding every decision he made and regarding all advice he offered during the entire time period of your Review.

While mention is made of certain votes on motions considered by the Board regarding documentation associated with engineering invoices, it is important to note that those votes were taken after assurances from Mr. Houston and others that adequate documentation was being provided to the County and that the County had total access to whatever documentation was needed. Out of an abundance of caution, and after reading a draft report of the Review, the current Board of Supervisors expressed unanimously its intent that no invoice be paid by Madison County if any of its professional staff did not believe adequate documentation existed to support such invoice. See Minutes of September 30, 2010 Special Board Meeting.

Duties and Responsibility of the County Administrator

Madison County’s County Administrator has daily interaction with Board Members. The duties, responsibilities and expectations of the County Administrator are well defined and well understood between the Board of Supervisors and the County Administrator. During the vast majority of the time of the Review period (starting in 2004), Madison County enjoyed the excellent service of Donnie Caughman. His guidance and leadership were invaluable to Madison County until his retirement late last year.

Mr. Caughman came to Madison County in 2004 with decades of experience in local government, including three terms as a Chancery Clerk in Simpson County and 6 years as its County Administrator. Your report incorrectly states that the Board did not give him any specific duties. In fact, the Board, in its January 5, 2004 meeting, fully vested Mr. Caughman with every

duty and responsibility as outlined by Mississippi law in Miss Code Ann. § 19-4-1 and other applicable code sections. And also gave Mr. Caughman the duty to hire and fire employees. These duties are broad and significant and Mr. Caughman understood them well.

Mr. Caughman's experience and leadership were demonstrated on a daily basis as he managed the day-to-day affairs of Madison County. The Board had tremendous confidence in his leadership. Your report states that the County Administrator should be more involved in the review of engineering invoices and that a "checklist" should be developed to assist the County Administrator in reviewing the engineering invoices. While the procedure you suggest is not required by law, the Board will certainly consider it and all your suggestions regarding their benefit and potential improvement of future engineering or other professional services contracts.

Contract Analysis and Issues related to Engineering Contracts

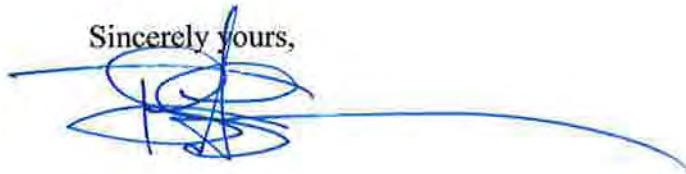
The Review commented extensively on the specifics related to 22 engineering contracts between Madison County and Warnock & Associates. Most, if not all, of these contracts followed the form developed by the Brunini firm in early 2004. As noted above, Madison County plans to reevaluate and seek to improve its contracts. We are already working with your office in this regard.

The Performance Review makes several findings and recommendations. Attached to this document as Exhibit "A" is our response to each.

We agree with the Review's finding that Madison County is fortunate to have such an excellent staff. And I would be remiss if I failed to point out that Madison County has the utmost faith in its engineer, Rudy Warnock. The criticism he has endured is politically motivated and fails to recognize that the engineering work of Warnock & Associates is excellent. In all these years, I have never heard anyone express otherwise. His communication and responsiveness to the Board of Supervisors is of great value and would be difficult, if not impossible, to replace.

While we clearly will not agree on all issues, we look forward to a constructive relationship with your office to make Madison County the best county in the State of Mississippi. If we can provide you with any additional information, please do not hesitate to ask.

Sincerely yours,

A handwritten signature in blue ink, appearing to be "Tim Johnson", with a long horizontal flourish extending to the right.

Tim Johnson
President, Madison County Board of Supervisors

Page(s)	<p style="text-align: center;">Findings and Recommendations</p> <p style="text-align: center;">OSA Findings are in BLUE, OSA Recommendations are in RED, and the Madison County Response is in BLACK</p>
Standard A1.06	<p><i>According to generally accepted standards, those charged with governance have the duty to oversee the strategic direction of the entity and the obligations related to the accountability of the entity. This includes overseeing the financial reporting process, subject matter, or program under audit including related internal controls.</i></p>
6	<p>In 2004, the new Board hired its first County Administrator and Comptroller. In addition they had a new Board Attorney and other staff. OSA finds that the original intent of this new Board was to delegate certain responsibilities to a highly competent staff. According to the Board minutes, with regard to their County Administrator, they did assign him “all duties and responsibilities enumerated in §19-4-1 through §19-4-9...” However, OSA finds that without defining the responsibilities and parameters within which they would be allowed to operate, in hiring and delegating Board responsibilities to them, the Board may have placed too much reliance on the new officials’ understanding of their roles communicating all of their expectations clearly.</p> <p>OSA recommends that the Board should immediately review the responsibilities that they have delegated to their staff, including the County Administrator, the Board Attorney, the Comptroller, and the Clerk of the Board and determine what additional expectations they have related to their delegated duties. As of September 30, 2010, OSA finds the Board has begun taking these actions. *As of September 30, the Board has begun taking these actions.*</p> <p>RESPONSE: Madison County hired extremely competent professionals in 2004. The expectations of these professionals was clearly defined in early 2004 and constantly reinforced through daily contact with Board Members. Each of these professionals, due to the extensive experience each of them possessed, completely understood their duties and responsibilities to the Board. To the extent they may not have met the expectations of the Board is a matter of conjecture. But we are gratified by your recognition that the current Board has made great advances since 2008, long before this performance review began.</p>
10	<p>OSA did not find evidence that the Board has instructed its staff to develop a process to immediately inventory and evaluate a contract upon its execution.</p> <p>OSA recommends that the Board of Supervisors should consider requiring its Board Attorney, upon approving any contract for services, to work with the County Administrator to develop a system that acts as a “checklist” of contractual terms and conditions that can be used by Board staff and that would streamline and strengthen the claims verification process. This system should be made a part of internal policies and procedures.</p> <p>RESPONSE: The claims verification process lies primarily with the Comptroller. During almost the entire time of your review, our comptroller was Mark Houston, a 20 year veteran of your office. A claim was not paid by the Board without his recommendation. In regard to setting up a "checklist" of contractual terms, the County will consider whether this is a cost-effective management tool for monitoring contract terms and conditions.</p>
12	<p>While OSA acknowledges the Board, in both its January 2004 and 2008 minutes properly delegated general duties and responsibilities under the law, OSA did not find evidence of any additional or specific responsibilities delegated by the Board to the County Administrator, such as instructing him to work closely with the Board Attorney to determine if the contracts properly protected the taxpayers’ interests. While the Board members may have shared the expectation that this would automatically happen, in the case of the selected contracts, OSA finds that there appeared to be numerous instances of a lack of both communication before and after the contracts were executed.</p>



Page(s)	<p style="text-align: center;">Findings and Recommendations</p> <p style="text-align: center;">OSA Findings are in BLUE, OSA Recommendations are in RED, and the Madison County Response is in BLACK</p>
	<p>With regard to this performance review, OSA recommends that the Board should specifically instruct the County Administrator to work with the Board Attorney and Clerk to ensure contracts are properly executed before they are filed in the Chancery Clerk's office for public review, and that they have, either through attachment or reference, such additional information that may allow the public to reasonably understand such agreements. Even before that, the Board should require the County Administrator, in conjunction with the Board Attorney to recommend changes and modifications to vendor contracts that create protections for the County and by extension, its taxpayers. Additionally, board members should never sign incomplete contracts.</p> <p>RESPONSE: As your review recognizes, these issues have been much improved since 2008 and much of the objectionable costs already have been removed. The Board Attorney, of course, already does recommend changes and modifications to any contract brought before the Board. In regard to the engineering contracts, the Board Attorney will be instructed to re-vamp these contracts given some of the concerns raised by your office and the prior reliance on the Brunini developed engineering contracts. We are not sure how much of this responsibility should be placed with the County Administrator, but will evaluate this going forward.</p>
Standard A.04	<p><i>According to generally accepted standards, control deficiencies can include: (1) Ineffective oversight by those charged with governance of the entity's financial reporting, performance reporting, or internal control, or an ineffective overall governance structure; (2) failure by management or those charged with governance to assess the effect of a significant deficiency previously communicated to them and either to correct it or to conclude that it will not be corrected; and/or (3) inadequate controls for the safeguarding of assets.</i></p>
13	<p>OSA finds that it is important to be able to verify invoices through additional documentation that links the invoice to not only the completed work, but to sufficient data elements that allow staff to track expenses and establish baseline data for future planning and budgeting. While the documentation does not have to be extensive, it should clearly be linked to the invoice that is provided.</p> <p>OSA recommends that the Board require sufficient documentation from the vendor with verification by the County Administrator and his staff, before any payments are made for these contracts. OSA reasonably concludes that a one-page invoice with no additional documentation may not be considered sufficient if it provides no chance for verification of the claim payment being requested. If there is information coming in to the County on a regular basis, but not attached to an invoice, the Board should consider whether such information could be regarded as sufficient documentation to help verify the accuracy of invoices.</p> <p>RESPONSE: The Board believes that sufficient documentation has been and always should be provided to its Comptroller before any claim is paid. Even single page invoices may be adequate when the Comptroller, and perhaps the County Administrator, are provided access to back-up documentation. We agree that a paper trail should exist to demonstrate this practice, which occurs in the normal course of business.</p>
15	<p>The Board should always require the County Administrator, upon the passage of the contract, to have appropriate procedures in place to file the contract properly and oversee the contract. These procedures should include proper claim payment review. Of note, in contract management, making a checklist of all relevant terms and conditions will help reduce problems associated with payments, documentation, and deliverables. OSA was unable to determine from documents and interviews if Madison County employs any such regular review process for its contracts with Warnock.</p>

Page(s)	<p style="text-align: center;">Findings and Recommendations</p> <p style="text-align: center;">OSA Findings are in BLUE, OSA Recommendations are in RED, and the Madison County Response is in BLACK</p>
	<p>OSA recommends that if they do not have such contract review procedures in place, that the Board requires them to be developed and implemented immediately to better manage their contracts.</p> <p>RESPONSE: The Board will consider whether the suggested "checklist" or punchlist is a cost effective management tool for the County Administrator or whether the Comptroller would be the more appropriate party to utilize such a tool.</p>
16	<p>OSA finds that the State Board of Engineering regulations allow public entities to bid for engineering services-the entity must first select on the basis of qualifications and competence, one engineer or firm for negotiations before they can submit a price for services.</p> <p>OSA recommends that the County should at least consider using the bidding process in the future where competition exists, even for personal service engineering contracts. Even though current law does not require it, nothing prevents a board from using bidding for engineering personal services to get the best product for the best price.</p> <p>RESPONSE: As you note, this is not a statutory requirement and based on our research, is not a common practice among other counties. The Board's experience is that having a single professional engineer responsible for a broad array of projects increases accountability and performance. By having a single engineering firm, the Board also has an engineer with comprehensive knowledge of its most critical projects. While using a bidding process may seem worthwhile, the unintended consequences for following such a recommendation could be very risky for a county.</p>
17	<p>OSA finds that, while the Board of Supervisors carries the ultimate responsibility of the actions of the county, each of the identified officers and representatives of the county also have legal obligations to perform certain functions as well. The courts have also said that anyone contracting with a county Board of Supervisors has the responsibility of ensuring that their contract(s) are properly executed and filed. Specifically, the Mississippi Supreme Court has stated, "We have held vendors responsible for assuring that their contracts with local government are lawfully made."</p> <p>OSA recommends that Madison County and Rudy Warnock review their contracts and implement any changes necessary to bring clarity and protection to all interested parties.</p> <p>RESPONSE: The contracts have been improved and the County will work with your office to continue this process.</p>
17	<p>OSA finds that, while in general a total of 14% (7% design phase and 7% construction phase fees) of estimated construction costs paid as engineering fees is not unusual for the type of road construction contracts that Warnock had with Madison County, these fees were usually only part of the total amount of compensation he received.</p> <p>Each of the contracts contained additional reimbursable expense provisions, some of which OSA finds would normally be considered overhead, such as phone and fax use as well as standard photocopying.</p> <p>OSA recommends that the Board instruct the Board Attorney and the County Administrator to work together to review contracts more carefully and remove or limit opportunities for duplicative or excessive payments before presenting them to the Board. Whether or not the engineer actually billed for the additional costs, by having them in the contract, the opportunity to have charged the County existed.</p> <p>RESPONSE: We believe your second phase of this report will demonstrate that these costs were rarely, if ever, billed to the County. And as your report noted in several instances, most of these issues have been resolved since 2008.</p>

Page(s)	<p style="text-align: center;">Findings and Recommendations</p> <p style="text-align: center;">OSA Findings are in BLUE, OSA Recommendations are in RED, and the Madison County Response is in BLACK</p>
30	<p>OSA finds that during a June 6, 2005, Board meeting and again during a June, 2009, Board meeting, similar motions were made and seconded to require that professionals submitting invoices to the County for payment provide itemized billing statements to allow comparison with contractual terms and conditions. However, the matter failed to garner a majority of the votes from the Board. OSA finds that the Board should have been aware of a potential problem related to a lack of documentation to verify expenditures and then should have taken corrective action in the management/payment of the invoices associated with its professional service providers.</p>
	<p>OSA recommends that the Board carefully consider the longterm and/or legal implications of its motions, especially as they may relate to claims and payments.</p>
	<p>RESPONSE: During these instances, the Board was assured by Mark Houston, a 20 year veteran of your office, that all the necessary documentation was obtained before any claim was paid. Therefore, there are no "legal" implications of these particular votes. Out of an abundance of caution, the Board has instructed its staff to ensure that it has all necessary documentation before any claim is paid.</p>

Standard A.08	<p><i>According to generally accepted standards, certain conditions might indicate a heightened risk of loss or fraud, including but not limited to: (1) inadequate monitoring by management for compliance with policies, laws, and regulations; (2) management has a willingness to accept unusually high levels of risk in making significant decisions; (3) operating policies and procedures have not been developed or are outdated; and/or (4) key documentation is lacking or does not exist.</i></p>
16	<p>OSA finds that all 22 contracts had been spread on the minutes on the date they were signed. However, at least one contract that OSA reviewed was in the Board minutes on the date it was signed, but the year of its effective date was one year earlier.</p>
	<p>OSA finds that the Board signing contracts which allowed Warnock to charge both a mileage fee and a daily vehicle use fee within one contract could create excessive expenses for the County if the engineer bills both.</p>
	<p>OSA recommends that the County should review and renegotiate such items with the engineer to only pay the most reasonable cost. One method of compensation for vehicle usage could be to tie reimbursement to State allowable mileage rates in the contract. This would allow for uniformity and would guarantee a fair and equitable reimbursement. This method of reimbursement provides the County a better opportunity to track mileage expenses paid to contractors.</p>
	<p>RESPONSE: The County does only pay the most reasonable costs regarding mileage reimbursement expenses and we expect the next phase of your audit will confirm this fact.</p>
19	<p>In its review, OSA found that in several of the contracts between Warnock and Madison County, construction costs are allowed to be exceeded if notice to and approval from the Board were obtained first.</p>
	<p>OSA recommends where such a clause occurs in the contract, it also contains a clause that the Board requires sufficient documentation to clearly identify and understand the need to increase the total project amount.</p>

Page(s)	<p style="text-align: center;">Findings and Recommendations</p> <p style="text-align: center;">OSA Findings are in BLUE, OSA Recommendations are in RED, and the Madison County Response is in BLACK</p>
	<p>RESPONSE: As the contract language requires, no increase occurs without notice to the Board and the Board's approval of any increase (or decrease). The Board always understands the need for an increase (or decrease) in total project cost before approving any increase (or decrease) and is always provided with adequate documentation in this regard.</p>
20	<p>In some of the contracts reviewed, OSA finds that Madison County frequently approved language limiting the engineer's liability to insurance limits. While this may be standard, OSA cautions the Board that when multiple contracts for multiple services on the same project are awarded to the same engineer, the Board should consider evaluating the total risk that may occur and design the contract to protect the taxpayer.</p> <p>OSA recommends that the county at least consider strengthening its position related to potential liability of design and construction contracts.</p> <p>RESPONSE: This admittedly standard liability language will be referred to our Board Attorney to determine whether any improvements can be made.</p>
22	<p>OSA finds that the 2005 General Services contract expired after the 2005 calendar year. OSA finds no evidence of such a contract after December 31, 2005.</p> <p>OSA recommends that the Board, through its County Administrator, take steps to review existing contracts for expiration dates and to immediately put in place controls to prevent Board approval of work or payments to a contractor in the absence of a valid written contract.</p> <p>RESPONSE: Mississippi law was not violated by paying Warnock in 2006 and 2007 for his general services provided to the County. However, the Board will review existing contracts for expirations dates to ensure all professional services contracts are up to date.</p>
22	<p>OSA finds that in Board minutes from July 3, 2006, the Board unanimously authorized Warnock to "prepare, in geo-referenced digitized format, copies of all approved permits issued by Madison County pursuant to his general services contract with the County." However, the general services contract was expired at the time the motion was made, and therefore, not valid.</p> <p>OSA recommends the Board be more specific with its motions, so that its intent will always be clear. This includes specifics about services which will entail additional costs.</p> <p>RESPONSE: The Board's intent was clear to everyone in the Board room on that particular day. Perhaps the minutes could have been more clear, but the intent was unmistakable and the Board (and its staff) acted accordingly and appropriately.</p>
23	<p>OSA finds that the 2005 general services contract between Madison County and Rudy Warnock expired on December 31, 2005 and subsequent Board minutes do not indicate any renewal, modification or replacement of the original contract, yet the minutes reflect payments to him based on the expired contract.</p> <p>OSA recommends that the Board and the Board Attorney more carefully review contract terms and Board minute motions in the future to ensure accuracy of interpretation and validity of claims. OSA also recommends that to comply with State law, the Board should not instruct contractors to hold invoices from one fiscal year until after a new fiscal year has begun.</p> <p>RESPONSE: There was an oversight in 2006 and 2007 by not renewing Warnock's general services contracts. As for the 2008 general services contract, the Board approved that contract for the term of this Board and the minutes have been corrected to reflect this fact.</p>

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23	<p>OSA finds no evidence of a term of service or expiration date for the 2008 general services agreement in the contract or in Board minutes.</p>
	<p>OSA recommends that the Board immediately review all of its contracts with the County Engineer to determine if there are any other contracts that have no term of service/termination date, or which have expired, or which are about to expire, and take appropriate action, including putting a valid contract in place, ceasing current payments, requiring repayment where necessary, etc. *As of September 30, the Board has begun taking these actions.*</p>
	<p>RESPONSE: As you note, this process has already taken place and every effort will be made to ensure such instances are not repeated.</p>
23, 24	<p>In the 2008 general services contract, OSA finds that typographical errors may have led to overpayments to Rudy Warnock. The mileage rate for the engineer's vehicle was written as "THIRTY-FOUR CENTS ONLY (\$0.485)" in the final signed copy provided to OSA by Madison County.</p>
	<p>OSA recommends that Madison County review its active and valid agreements with Warnock to identify and correct other related instances of conflicting, confusing, or ambiguous language.</p>
	<p>RESPONSE: Typographical errors sometime occur even after several reviews of a document. The Board Attorney should be primarily responsible for avoiding these errors. Of course, we pointed out dozens of typographical errors in the various drafts of the performance review. In short, while these errors sometimes slip by everyone, the substance of the contracts remain intact.</p>
24	<p>OSA finds that often, while the standard form was used, these contracts did not appear to have been carefully crafted or edited to protect Madison County taxpayers. Ambiguity and seemingly contradictory terms appear throughout a number of these contracts. Some executed copies of contracts provided to OSA were missing information, or contained obvious typographic errors that could potentially cause confusion in interpretations.</p>
	<p>OSA recommends that the Board Attorney and the Board of Supervisors exercise more care in reviewing, revising, and approving its contracts in the future.</p>
	<p>RESPONSE: As discussed in our written response, the Board relied on the Brunini firm for developing a "solid form" engineering contract. The current Board Attorney will be instructed to totally re-evaluate the current contract and whether a different contract should be used in the future.</p>
25	<p>First, OSA finds that documentation attached to the contract had not been reviewed for accuracy. Second, OSA finds that the deletions made in the November, 2004 contract did not occur in all subsequent contracts.</p>
	<p>OSA recommends that the Board require procedures to ensure that attachments to official document (such as contracts) are accurate and appropriate. OSA recommends if the Board identifies inappropriate contract elements that they want eliminated, that the staff be instructed to ensure those elements do not reappear in succeeding contracts.</p>
	<p>RESPONSE: As discussed in our written response, the Board relied on the Brunini firm for developing a "solid form" engineering contract. The current Board Attorney will be instructed to totally re-evaluate the current contract and whether a different contract should be used in the future.</p>
25, 26	<p>OSA finds that in some instances, the title of the contract was different from the scope/objective of the contract, which in turn varied from the description of services/deliverables noted in the appendix of the contract.</p>

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	<p>OSA recommends that Madison County ensure that any contract they approve in the future actually reflect the correct title, scope of work to be performed, and the description of the various deliverables related to the title and scope of work. All of the sections should reflect the same services to be performed by the engineer. Further, OSA recommends the County should ensure the removal of all inapplicable terms that may cause conflicts, ambiguity, or contradictions.</p> <p>RESPONSE: As discussed in our written response, the Board relied on the Brunini firm for developing a "solid form" engineering contract. The current Board Attorney will be instructed to totally re-evaluate the current contract and whether a different contract should be used in the future.</p>
26	<p>A number of the contracts reviewed either had missing terms or a blank line where a term should have been. For example, in the contracts titled, Design and Construction Phase Services for Parkplace Boulevard, and Design and Construction Phase Services on 2007 Canton Overlay Project, and Environmental Clearance, Route Location, Design Engineering, and Construction Engineering Services of Sowell Road Extension, OSA finds that the effective dates were blank. In one contract, Parking Lot Agreement, it appears that Mr. Warnock did not sign the contract.</p> <p>OSA recommends that Madison County immediately review its contracts with Warnock and take action to correct identified problems such as missing or incomplete information, blanks where information such as costs or dates should be, etc., in order to strengthen the contracts and increase the protection to the County.</p> <p>REPORT: As discussed in our written response, the Board relied on the Brunini firm for developing a "solid form" engineering contract. The current Board Attorney will be instructed to totally re-evaluate the current contract and whether a different contract should be used in the future.</p>
25	<p>Generally, OSA finds that many of the Warnock contracts provided compensation which resulted in more than about 14-15% of total construction costs. While these percentages are not the highest that Madison County paid for construction and design related engineering services, they are above the average.</p> <p>OSA finds that in many of the contracts reviewed, the actual payment clauses state that the fees-regardless of whether they are lump sum or percentage of total construction costs-are inclusive of any consultants (subcontractors) and of "labor, overhead, and profit." Therefore, OSA would expect to find no line itemed charges for subcontractors or other included charges unless they were part of additional services approved by the Board.</p> <p>OSA recommends that Madison County review these contractual issues to determine how best to protect their fiduciary interest from duplicative payments or over payments and, if they occurred, determine what actions should be taken regarding recovery of overpaid amounts.</p> <p>RESPONSE: The only time line item costs were paid by the County, such costs would have been authorized by the relevant contract and would not have been a duplicative payment or an overpayment. We expect that phase 2 of your performance review will confirm this fact.</p>
28	<p>In the contract "<i>Environmental Clearance, Route Location, Design Engineering, and Construction Engineering Services of Sowell Road Extension</i>," OSA finds the effective date of the contract and the date the contract was signed differs by a year.</p> <p>OSA finds that in many of the selected contracts, terms are incorrect, missing, incomplete, duplicative, inapplicable, or contradictory.</p>

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	<p>OSA recommends that the Board, should ensure that all terms and provisions are clearly, accurately, and explicitly stated in all its contracts and that unnecessary sections are removed. OSA also recommends that the Board immediately review all contract terms for overlapping and conflicting language between contracts as well as within contracts.</p> <p>REPORT: As discussed in our written response, the Board relied on the Brunini firm for developing a "solid form" engineering contract. The current Board Attorney will be instructed to totally re-evaluate the current contract and whether a different contract should be used in the future.</p>
28, 29	<p>OSA finds no evidence of a general services contract for the years 2006 and 2007, or for 2009 and 2010, yet, in approving other projects, there is Board reference in the minutes that there was a general services contract in those years.</p> <p>As previously stated, OSA recommends that the Board immediately review all of its contracts with the County Engineer to determine if there are any other contracts that have no term of service/termination date, or which have expired, or which are about to expire and take appropriate action to remedy the issue before assigning additional duties under such contracts..</p> <p>RESPONSE: This issue has already been addressed above.</p>
29	<p>During its review of contract activity in Board minutes, OSA also found that many of the contracts had similar names for projects. These similar names caused some confusion at times.</p> <p>OSA recommends that the Board consider using a numerical identifying system as well as the common title system for identifying the Warnock contracts to aid in the differentiation between similarly named contracts. Such an action would increase the accountability and transparency to the public.</p> <p>RESPONSE: The Board always understands what project is being voted on before any vote is taken. Any member of the public that has questions about any specific project can have access to that information quickly and easily through a public records request. In short, we do not agree that a numerical system is either warranted or likely to increase accountability or transparency.</p>
32	<p>OSA finds that this is the first time Warnock and Associates billed Madison County for utility permit application management that, had there been a general services contract in place, would have been included under that contract. Board minutes from July 3, 2006 authorized Warnock to begin to digitize the approved utility permits. Not only is the invoice dated prior to October 1, the attached memo clearly states that it is for prior year expenses. OSA found no evidence that the claim was allowed to be paid in the new fiscal year.</p> <p>OSA is concerned by the memo addressing the holdover of payments and recommends that the County not hold over charges beyond a fiscal year, as doing so may violate State law.</p> <p>RESPONSE: Based on our investigation, Mr. Houston instructed Mr. Warnock to hold over this invoice as Mr. Houston believed this was allowable under Mississippi law. We are continuing to investigate this issue to determine what, if any, action should be taken.</p>



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