



State of Mississippi

A Limited Review of the Mississippi Major Economic Impact Authority's Nissan Project

From the Office of State Auditor
Phil Bryant

February 18, 2003

Report Findings

The staff at MDA responded well to the responsibilities they were given on the Nissan Project by quickly developing procedures necessary to account for such a project.

MMEIA, while favorable interest rates were obtained for the short term notes, may have benefitted from having flexibility to issue bonds in phases. This would require amendments to some statutes.

For three reasons there was no way to assess the financial integrity of the special purpose entity (Trust) created by Nissan: (1) The Trust was new and had no historical financial records to analyze. (2) The documentation provided no information as to its financial viability other than its apparent legal status. (3) No information was provided regarding the trustees or members of the Trust.

The State's warranty for the site preparation work provided by the State is limited to \$15 million.

While the MOU appears to give Nissan almost unlimited discretion in determining training costs, it also requires the development of a training plan and budget in conjunction with MMEIA. Nissan contends the MOU establishes the budget as the \$80 million set forth in the enabling legislation and the training options set forth in the MOU as the legally required training plan.

While it was anticipated that the community colleges would provide a significant part of the training, there is no requirement for Nissan to utilize the community colleges at all.



**Office of the
State Auditor of Mississippi
Phil Bryant**

February 18, 2003

**A Limited Review of the Mississippi Major Economic Impact Authority's
Nissan Project**

House Bill 1, 2002 1st Extraordinary Session of the Mississippi Legislature established a requirement for the State Auditor's Office (SAO) to maintain an accounting of the costs associated with the Nissan Automobile Manufacturing Facility (Nissan Project). Because such an accounting is currently maintained by the Mississippi Development Authority (MDA), through the Mississippi Major Economic Impact Authority (MMEIA), the SAO applied certain procedures to the records maintained by MDA as it related to the Nissan Project.

As a result of this review, we noted the following:

The staff at MDA responded well to the responsibilities they were given on the Nissan Project by quickly developing procedures necessary to account for such a project.

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TABLE OF CONTENTS

	<u>Page</u>
State Auditor's Report	
Introduction	1
Purpose and Scope	1
Method	2
Background	2
Mississippi Major Economic Impact Authority	2
House Bill 1, Third Extraordinary Session, 2000	2
House Bill 1, First Extraordinary Session, 2002	2
House Bill 1834, Regular Session, 2002	2
Specific Nissan Project Elements of Legislation	3
MDA Contracts For Site Preparation For the Nissan Automobile Manufacturing Facility ...	4
Table 1	4
MDA Accounting Procedures Regarding Nissan Project Expenditures	7
Mississippi Major Economic Impact Authority	7
MDA Policies and Procedures	7
Personal Service Contract Review Board	7
Findings	
Nissan Project Financing	8
Special Purpose Entity (Trust)	8
State's Warranty On Site Preparation Work	9
Nissan Training Plan and Budget	9
Utilization of State Community Colleges For Training	9
Additional Project Costs	10
MDA Response to Responsibilities	10

Office of the State Auditor
Performance Audit Division

**A Limited Review of the
Mississippi Major Economic Impact Authority's
Nissan Project**

February 18, 2003

Phil Bryant
State Auditor

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Governor Ronnie Musgrove
Lt. Governor Amy Tuck
Senator Jack Gordon, Chairman of Senate Appropriations
Senator Bill Minor, Finance Committee
Representative Tim Ford, Speaker of the House
Representative Charlie Capps, Chairman of House Appropriations
Representative Billy McCoy, Chairman House Ways & Means Committee
Mr. Robert Rohrlack, Executive Director, Miss. Development Authority

Dear Madam / Sirs:

As part of our responsibilities set forth in House Bill 1, 2002 1st Extraordinary Session of the Mississippi Legislature, this office has completed *A Limited Review of the Mississippi Major Economic Impact Authority's Nissan Project*. This disclosure is presented to you in the report published herein.

Should you have any questions feel free to contact me at 601-576-2641.

Sincerely,

Phil Bryant
State Auditor

Introduction

Purpose and Scope

House Bill 1, 2002 1st Extraordinary Session of the Mississippi Legislature, established a requirement for the State Auditor's Office to maintain an accounting of the costs associated with the Nissan Automobile Manufacturing Facility (Nissan Project).

In meeting these requirements, the State Auditor's Office (SAO) and the Mississippi Development Authority (MDA) jointly agreed upon a series of procedures to be applied to the accounting and financial records of the Nissan Project, as it has been administered by the Mississippi Major Economic Impact Authority (MMEIA).

House Bill 1 requires the SAO to "maintain an accounting of actual costs incurred for each project for which reimbursements are sought." Because such an accounting is currently maintained by MDA, the SAO determined the following procedures would be applied to MDA records and would accomplish the requirements of the bill:

- Summarize and review costs budgeted for training and related facilities; including Mississippi Development Authority's plans to utilize Mississippi community and senior colleges.
- Review MDA's policies and procedures for awarding construction contracts and contract monitoring, including procedures related to verification of completed and stored work.
- Assess the financial integrity of the special purpose entity (Trust) created by Nissan North America, Inc., for the purpose of completing transactions related to this project.
- Review and assess MDA's policies and procedures in place to ensure contractual compliance with the provisions established by the memorandum of understanding and applicable Mississippi statutes.
- Review risks associated with the construction warranties required by Nissan and evaluate any efforts MDA has made to protect the state from liability.
- Utilize assistance of professionals to evaluate the effects of this project on other related businesses.
- Review other expenses for reasonableness.

Method

The SAO contracted the accounting firm, Windham and Lacey, LLP, to conduct these procedures. The report was written by Windham and Lacey, LLP and the SAO, Performance Audit Division.

Background

Mississippi Major Economic Impact Authority

Three House bills specifically address the Nissan project and other similar projects that are currently implemented or contemplated by MDA. The bills are: House Bill 1, Third Extraordinary Session, 2000; House Bill 1, First Extraordinary Session, 2002; and House Bill 1834, Regular Session, 2002. These House bills, for the most part, amend Sections 57-75-5 through 57-75-35, Mississippi Code of 1972, Annotated.

Title 57, Chapter 75 is designated as the Mississippi Major Economic Impact Act. This act establishes the Mississippi Major Economic Impact Authority (MMEIA), the agency responsible for implementation of the Nissan Project. MMEIA has no staff other than its executive director who is also the executive director of MDA.

House Bill 1, Third Extraordinary Session, 2000

This law amends sections of Title 57, Chapter 75, as well as other sections of the Mississippi Code to enable the Mississippi Development Authority and the Mississippi Major Economic Impact Authority to meet the State's obligations agreed to in the Memorandum of Understanding (MOU) between Nissan North America, Inc., the State of Mississippi, and certain state and local supporting governmental entities. This MOU is the primary document that guides all activities regarding the Nissan Project.

House Bill 1, First Extraordinary Session, 2002

This law further amends Title 57, Chapter 75 in defining "Project" to describe the Nissan Project, to expand the powers of MDA and to expand the limits of the bonding authority of MDA.

House Bill 1834, Regular Session, 2002

This legislation further expands and refines the definition of "Project," revises the type of jobs that can be used to meet the minimum requirements under the MMEIA, and expands MDA's authority to issue bonds on other projects.

Specific Nissan Project Elements of Legislation

Other than the typical enabling legislation in these bills, there are many provisions that are unique to the Nissan Project. Some provisions are notable for the impact they have on the management and accounting of the Nissan Project:

- Contracts related to Nissan Project are exempted from the provisions of the state purchasing laws.
- Contracts for fill dirt and compaction for site preparation of the Project are provided a special procedure.
- One provision allows MMEIA to warrant any site work for a project up to \$15 million.
- Another provision allows MMEIA to own and lease water transmission lines constructed with bond proceeds.
- MMEIA is authorized to exercise the right of immediate possession to acquire land for the project.
- MMEIA is authorized to lease the Project to Nissan North America, Inc., or to a special purpose entity.
- Legislation allows for the funding of employee training activities and the construction of training facilities.
- Legislation authorizes MMEIA to process all expenses related to the Nissan Project.

**MDA Contracts For Site Preparation
For the Nissan Automobile Manufacturing Facility**

For purposes of the industrial site preparation for the Nissan automobile manufacturing facility, MDA entered into thirty-six (36) contracts with twenty-nine (29) entities totaling \$75.5 million. Table 1, pages 4 and 5, lists these contracts.

Table 1

Mississippi Development Authority Contracts For Industrial Site Preparation For the Nissan Automobile Manufacturing Facility		
Description	Contractor	Contract Amount
Legal: Land acquisition	Harris, Geno & Dunbar	\$2,954,238
General counsel	Gore, Kilpatrick, Purdie, Metz & Adcock	300,000
Soil Testing: Site testing	Burns, Cooley, Dennis Inc.	353,977
Site monitoring	Burns, Cooley, Dennis Inc.	1,297,990
I-55 interchange	Burns, Cooley, Dennis Inc.	55,667
Site Preparation Construction	Eutaw Construction Company	2,377,798
	Eutaw Construction Company	8,716,802
	Hill Wallace a Joint Venture, LLC	24,870,676
	Eutaw Construction Company	2,778,089
Engineering: Site preparation	WEI/NSI, LLC	1,125,556
Project engineer	Mendrop Wages, LLC	1,148,267
Utilities	Civiltech, Inc	395,000
Utilities	Civiltech, Inc.	234,000
Wastewater treatment	PW & Associates	956,990
I-55 interchange	Neel-Schaffer, Inc.	504,220
Water transmission	Neel-Schaffer, Inc.	149,186
Construction Manager	W. G. Yates & Sons Construction Company	750,000
	W. G. Yates & Sons Construction Company	466,000

**Mississippi Development Authority
Contracts For Industrial Site Preparation
For the Nissan Automobile Manufacturing Facility**

Description	Contractor	Contract Amount
	W. G. Yates & Sons Construction Company	1,200,000
Project Coordinator	Canup & Associates, Inc	913,000
	Canup & Associates, Inc.	374,000
Utilities	Enmark Energy, Inc.	1,500,000
Utilities Relocation	Bell South - Atlanta	22,689
	Bell South - Atlanta	70,652
	Entergy Distribution	16,397
	Entergy Distribution	85,242
Wastewater Pretreatment Facility	Malouf Construction Company	2,742,062
	Malouf Construction Company	3,241,084
Wastewater Treatment Process Tanks	American Tank & Vessel, Inc.	1,085,533
Temporary Training Facility Construction	Madison County Econ Develop Authority	2,415,352
Permanent Training Facility-Architect	Dale & Associates Architects, P.A.	656,959
Minority Contract Consulting	Denotee Martin Contractors, Inc.	165,240
	Morris Service Group, Inc.	62,900
	Systems Consultants Associates	50,000
	Capitol Drywall Supply	48,000
Cemetery Removal	Rosemont Gardens Memorial Park	59,000
	City of Canton (Cemetery)	25,500
Fire Station Construction Grant	City of Canton	1,000,000
MOU with Mississippi State University	Mississippi State University	4,500,000
	Mississippi State University	3,620,000
Grant Agreement for IHL Scholarships	Board of Trustees of IHL	1,000,000
CAVS Access Road	Partridge Sibley Industrial Services, Inc.	297,128
Administrative Assistant	Ablest Staffing Services	83,524
Photography	Gil Ford Photography	9,500

**Mississippi Development Authority
Contracts For Industrial Site Preparation
For the Nissan Automobile Manufacturing Facility**

Description	Contractor	Contract Amount
West Connector Road Engineering	Williford, Gearhart & Knight	88,977
Starkville CAVS Architects	Foil-Wyatt, Architects & Engineers P. A.	400,000
Canton CAVS Architects	Cooke Douglas Farr Lemons, Architects	350,000
Total		\$75,517,195

Source: Mississippi Development Authority

Mississippi Development Authority Accounting Procedures Regarding Nissan Project Expenditures

Mississippi Major Economic Impact Authority

House Bill 1, Third Extraordinary Session, 2000, authorizes the MMEIA to process all expenditures related to the Nissan Project. Because MMEIA has no staff, this function has been delegated to the MDA staff. In spite of the relatively large volume of transactions and the short start-up period, MDA has absorbed this activity with no increase in personnel.

MDA Policies and Procedures

Expenditures for this project were exempted from almost all of the laws to which public expenditures are normally subject. However, MDA has developed a system of policies and procedures regarding the Nissan Project which appear to provide assurance that expenditures are in compliance with both the MOU and State laws not specifically exempted. Additionally, the procedures implemented appear to provide adequate internal control over expenditures.

MDA has devised a comprehensive set of procedures for processing expenditures through the department and the Statewide Automated Accounting System (SAAS). Within the department, MDA runs a parallel invoice processing system through a series of spreadsheets that records all expenditures by contract and monitors costs to approved contract amounts. Within SAAS, MDA has established a series of organizational, project and activity codes to identify Nissan Project costs. The two systems are reconciled weekly.

Personal Service Contract Review Board

Based on an interpretation of House Bill 1, First Extraordinary Session, 2002, contracts for services related to the Nissan Project are considered exempt from overview by the Personal Service Contract Review Board. However, MDA has applied selected portions of the Board's contract preparation procedures to those contracts. MDA has devised interim and final contract evaluation report forms to use in monitoring contracts. MDA has requested legislation to eliminate any ambiguity related to this exemption.

Section 57-75-9, Mississippi Code of 1972, Annotated, exempts all contracts from the provisions of Section 31-7-13, requiring written quotes or advertised bids for services, construction and commodities. However, Section 57-75-9 provides a procedure to be followed for excavation contracts, fill dirt and compaction for the Project site preparation. MDA established a process to meet the requirements of this provision. This process utilizes as many of the guidelines for advertising as set forth by the Department of Finance and Administration as is possible given the time restraints imposed on the Project. In addition, MDA, although exempt from their oversight, takes contracts over \$100,000 to the Public Procurement Review Board (PPRB) for review. The PPRB considers House Bill 1, First Extraordinary Session, 2002, to exempt contracts from their oversight. The PPRB presently performs a staff review of contract documents and notes the contract on the Board Minutes without approving or disapproving the contract.

Findings

Nissan Project Financing

The enabling legislation in this report authorizes the MMEIA to issue bonded indebtedness in an amount up to \$351 million for the project and an additional amount not to exceed \$12.5 million for the purpose of defraying the expenses associated with the construction of surface water transmission lines for the project. To date, these bonds have not been issued. Instead, MMEIA has used proceeds from short-term notes issued by the State to fund the Project. Bonds will be issued at the completion of the Project to repay the notes. Several issues regarding these bonds have emerged:

- Favorable interest rates were obtained for the short term notes. However, projects may benefit from the flexibility to issue bonds in phases or segments. In discussion with the Mississippi Treasurer's Office and MDA it was determined that in order to accomplish this, current statutes may need to be amended.
- Since the bond proceeds are being used primarily for a private enterprise, it appears that most of the bonds will be issued as taxable bonds. Interest rates on taxable bonds are not as favorable as rates on tax-exempt bonds. The result will be a higher debt service requirement. The identification of the taxable amount versus the tax-exempt amount of the bond issue will be decided during the construction of the project as opposed to when the MOU was drafted. Identification will be made jointly by MDA and the State Bond Commission. The structure of the MOU will be reviewed by bond counsel to ensure the most cost effective financing options, currently available, are exercised.

Special Purpose Entity (Trust)

For three reasons, there is no means of assessing the financial integrity of the special purpose entity (Trust) created by Nissan.

First, the Trust is a new entity and therefore has no historical financial records to analyze for this purpose. Second, although Nissan has provided some documentation regarding the Trust, none of the documents provide any information as to its financial viability other than its apparent legal status. Third, Nissan cannot provide any information regarding the trustees or members of the Trust.

The Trust is designed to afford Nissan North America, Inc., with a vehicle to finance its construction related debt. However, the Trust appears not to be secured by Nissan North America or by any of the Trustees. Additionally, provisions of the lease agreement between the State and the Trust appear to limit the liability of the Trust to the unspecified non-personal interest of the Trust.

State's Warranty On Site Preparation Work

The MOU with Nissan calls for the State to warrant site preparation work provided by the State, (specifically the building's foundation pad), from damage due to shifting Yazoo clay. The enabling legislation limits the State's exposure for this risk to \$15 million. The MMEIA and its engineers are devising ways to accurately measure the movement of the clay so that if any damage occurs to the pad, they can determine if the damage is due to such movement or to other factors.

The State has capped its risk at \$15 million. It may be possible to insure this risk and further limit the State's exposure. MMEIA asserts no effort has been made to obtain insurance. MMEIA reports testifying to the Ways and Means and Finance Committees "that insurance for this purpose represents an unfunded commitment by the State, i.e., it is not included in the budget for the bonds." Furthermore MMEIA maintains if such insurance is available the cost could exceed 40% of the value of the warranty.

There appears to have been some actions taken by Nissan's building construction contractor that may void the warranty. Apparently, when construction began on the building, Nissan's contractors dug a trench for foundation footings that was too deep. This possibly damaged the integrity of the pad. MMEIA is investigating the effects of the trench on the pad.

Nissan Training Plan and Budget

Subsequent to providing MMEIA with invoices for training, Nissan provided a formal training plan and budget. Nissan maintains the language in the MOU actually establishes the budget as the \$80 million set forth in the enabling legislation and the training options set forth in the MOU as the legally required for a training plan. Although the MOU appears to give Nissan almost unlimited discretion in determining training costs, the language in the MOU requires the development of a training plan and budget in conjunction with MMEIA. This ambiguity renders it impossible to determine if costs charged to the training budget are in compliance with the Legislature's intent.

Utilization of State Community Colleges For Training

Because of two apparently conflicting paragraphs in the MOU, there is no requirement for Nissan to utilize the State's community colleges in its training. Section 5.5(c) of the MOU discusses the use of the community colleges as training resources but Section 5.5(b) removes any limits as to what comprises training resources and costs. This allows Nissan to determine, unilaterally with few restrictions, the training resources that are to be used.

Additional Project Costs

In addition to the costs funded directly by the aforementioned Legislative action; MMEIA is administering a \$20 million commitment from Madison County for Phase I of the project.

MMEIA is responsible for the coordination and partial funding of the design and construction of roads and highways along with the Mississippi Department of Transportation. MMEIA is responsible for funding cost in excess of \$24.6 million Phase I transportation improvements along with \$5 million for the new interstate interchange associated with Phase II of the project.

MDA Response to Responsibilities

The accounting and financial staff at MDA has responded well to the responsibilities they were given on the Nissan Project. They very quickly devised the procedures that were necessary to adequately account for a project that is unique to Mississippi.