

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Southern Painting and Maintenance Specialists, LLC

Civil Action No. 2025-CP-23-00389

Plaintiff,

ORDER DENYING PLAINTIFF'S MOTIONS FOR PRELIMINARY INJUNCTION AND FOR DECLARATORY JUDGMENT

vs.

Greenville County,

Defendant.

Plaintiff Southern Painting and Maintenance Specialists, LLC (“Southern Painting”) filed motions for a preliminary injunction and declaratory judgment against Defendant Greenville County (the “County”), claiming that the County improperly awarded a contract to a vendor, Tailor Made Services, Inc. (“TMS”). The Court heard these motions on April 14, 2025. John-Paul Baum represented Southern Painting, and Boyd B. Nicholson, Jr. represented the County. For the reasons discussed below, the Court denies Southern Painting’s motions.

FACTS

The County issued Request for Proposals # 25029 (the “RFP”), “Animal Care Services – Shelter Flooring Installation” (the “Project”). The RFP described the goal of the Project as follows:

The goal of this project is to enhance the shelter’s functionality while improving the health and safety of both animals and personnel. This will involve replacing existing flooring – currently a mix of sealed concrete, VCT tile, ceramic tile, and epoxy-coated concrete – with a material that is moisture-resistant, scratch-resistant, and capable of withstanding frequent cleaning using accelerated hydrogen peroxide, stiff-bristle brushes, water hoses, and squeegees. The new flooring should also contribute to the facility’s overall aesthetic.

See RFP, Section 1.1, included as Exhibit A to the Affidavit of Robert Brewer (“Brewer

Affidavit”). Three vendors submitted proposals or bids: TMS, Southern Painting, and HRP Innovations (“HRP”). Brewer affidavit at ¶ 3. Because TMS’ proposal contained no indication that TMS held a South Carolina contractor’s license, Robert Brewer, the County’s Director of Procurement, contacted personnel from the South Carolina Contractors Licensing Board (“SC Licensing Board”) to determine whether a contractor’s license was needed. Brewer affidavit at ¶ 5. Based on this communication, Mr. Brewer understood that a South Carolina contractor’s license was not required to perform the work described in the RFP, and therefore, he determined that TMS was a responsible vendor. *Id.* Mr. Brewer also determined that Southern Painting and HRP were responsible vendors. *Id.*

The County’s evaluation committee evaluated the vendors’ proposals and deemed TMS’ proposal to be the most advantageous to the County. Therefore, the County awarded the contract to TMS. Brewer Affidavit at ¶ 6. Southern Painting protested this award on the grounds that (i) TMS did not have a required South Carolina contractor’s license, and (ii) Southern Painting could not confirm bid amounts. Brewer Affidavit at ¶ 6. *See also* Southern Painting’s Protest, attached as Exhibit B to Brewer Affidavit. Mr. Brewer then contacted the SC Licensing Board again about the licensing issue, and again concluded after this latest communication that TMS was not required to hold a South Carolina contractor’s license. Brewer Affidavit at ¶ 8. *See also* written communications with SCLLR personnel, attached as Exhibit C to Brewer Affidavit. Based on these communications, Mr. Brewer denied Southern Painting’s protest. Brewer Affidavit at ¶ 8. Pursuant to the Greenville County Procurement Ordinance (“GCPO”), Southern Painting appealed Mr. Brewer’s decision to the Greenville County Administrator, who upheld Mr. Brewer’s decision. *See* Affidavit of Bob Maffett at ¶ 13. *See also* Exhibit C to Maffett Affidavit (containing protest decisions of County officials). This lawsuit followed.

LEGAL STANDARD

I. Preliminary Injunction

For a preliminary injunction to be granted, the plaintiff must establish that (1) it would suffer irreparable harm if the injunction is not granted; (2) the party seeking injunction will likely succeed in the litigation; and (3) there is an inadequate remedy at law.” *Strategic Resources Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). The party seeking a temporary injunction has the burden of demonstrating facts and circumstances satisfying each of these elements. *Strategic Res. Co.*, 367 S.C. at 544, 627 S.E.2d at 689. If there is a failure by the movant to establish even one of these three elements, a request for a temporary injunction must be denied. *Shapemasters Golf Course Bldrs., Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 477-478, 602 S.E.2d 83, 85-86 (2004) (affirming trial court’s denial of restraining order because moving party did not show irreparable harm). Furthermore, “[i]n deciding whether to grant [a temporary] injunction, the court must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant, and grant an injunction which seems most consistent with justice and equity under the circumstances of the case.” *Strategic Res. Co.*, 367 S.C. at 544, 627 S.E.2d at 689. The granting of a temporary injunction is a drastic remedy and ought to be applied with caution. *Id.* at 544, 627 S.E.2d at 689 (citing *Forest Land Co. v. Black*, 216 S.C. 255, 57 S.E.2d 420 (1950)). *See also Scratch Golf Co. v. Dunes W. Residential Golf Props.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). (“An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.”).

II. Declaratory Judgment

This case follows the County’s denial of Southern Painting’s protest. In that protest, Southern Painting claimed TMS was not a responsible vendor because TMS did not have a South

Carolina contractor's license. Mr. Brewer, the County's Procurement Director reviewing Southern Painting's protest in the first instance, and Mr. Joseph Kernell, the County Administrator reviewing Southern Painting's appeal of Mr. Brewer's decision, made written determinations upholding the County's prior determination that TMS was a responsive and responsible vendor.¹ The issue in this case, therefore, is whether the County's written determinations finding TMS to be a responsible and responsive vendor should be upheld. In a prior case also examining the validity of a written determination made by County officials under the GCPO, the South Carolina Court of Appeals stated that the plaintiff in that case had to demonstrate that the County's written determination was "arbitrary, unreasonable, in obvious abuse of discretion, or an excess of lawfully delegated power." *See Sloan v. Greenville Cnty.*, 356 S.C. 531, 555-56, 590 S.E.2d 338, 351 (Ct. App. 2003). The South Carolina Procurement Review Panel uses a similar standard in reviewing procurement decisions of this nature, in which protestors must demonstrate that procurement determinations of this nature are "clearly erroneous, arbitrary, capricious, or contrary to law." *See IN RE: Appeal by CBN Secure Technologies, Inc.*, Case No. 2024-4, 2024 WL 5325242 (S.C. Proc. Rev. Panel 2024). *See also In re: Protest of Brantley Construction Co., Inc.*, Case No. 1993-3, 1999 WL 33590765 (S.C. Proc. Rev. Panel 1999) ("[t]he protesting bidder must prove the determination of responsibility is clearly erroneous, arbitrary, capricious, or contrary to law.").

¹ Under the County's competitive sealed proposals procurement process, the County may only award a contract to a bidder that is responsive and responsible. *See* GCPO § 7-307 (8) - (10). The GCPO defines a responsible bidder as a "person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance." GCPO § 7-198(46), and it defines a responsive bidder as a "person who has submitted a bid which conforms in all material respects to the requirements set forth" in the solicitation documents. GCPO § 7-198(47).

DISCUSSION

Southern Painting seeks a preliminary injunction and declaratory judgment against the County on the grounds that the County's award of the Project to TMS was improper for two reasons: first, that TMS does not have a South Carolina contractor's license, and second, that TMS is not authorized to do business in South Carolina. Neither of these arguments, however, invalidates the award of the Project to TMS.

I. Licensing.

The requirements of licensure for general contracting in South Carolina are set forth in S.C. Code Ann. § 40-11-5, *et. seq.* (the "Licensing Act"), and it provides, among other things, that no one "may practice as a contractor by performing or offering to perform contracting work for which the total cost of construction is greater than ten thousand dollars for general contracting ... without a license issued" by the SC Licensing Board. S.C. Code Ann. § 40-11-30. A "general contractor" is one who "performs or supervises or offers to perform or supervise general construction," *id.* § 40-11-20(11), and the Licensing Act defines "general construction" as "the installation, replacement, or repair of a building, structure, highway, sewer, grading, asphalt or concrete paving, or improvement of any kind to real property." *Id.* § 40-11-20(10). The Licensing Act creates different categories of general contracting, *id.* § 40-11-410, and it describes those activities that are exempt from the Licensing Act. *Id.* § 40-11-360. The SC Licensing Board has the power to receive complaints, perform investigations and discipline contractors. *Id.* §§ 40-11-70 -- 40-11-110. It also has the authority to bring a lawsuit in civil court to enjoin a party from violating licensing statutes. *Id.* § 40-11-210. Any person who is aggrieved by a decision of the SC Licensing Board must appeal that decision to the SC Administrative Law Court, not the Circuit Court. *Id.* §

40-11-160.²

The record demonstrates that the County did not act in an arbitrary or capricious manner concerning the contractor licensing issues that this Project presented. As the affidavit of Robert Brewer demonstrates, the County investigated on two separate occasions the issue of whether TMS was required to hold a South Carolina contractor's license. The first investigation took place following the receipt of TMS's proposal. Because TMS did not submit a license with its proposal, the County contacted the SC Licensing Board, the authority having jurisdiction over the licensing of contractors. *See* Brewer Affidavit at ¶ 5 and Exhibit C to Brewer Affidavit. Based on the SC Licensing Board's response, Mr. Brewer deemed TMS responsive and responsible. Brewer affidavit at ¶ 5.

After Southern Painting protested the award of the Project to TMS, Mr. Brewer made another inquiry concerning the need for a license to perform the work described in the RFP. Mr. Brewer again contacted the SC Licensing Board, stating in an e-mail:

We need a little more clarification as we are handling a protest from a responder to our RFP. The protest is that the awarded vendor does not have the proper license for the work. The project is applying sealant coating (specifications attached if you need them) to a concrete floor. There is no demolition needed to the current flooring or any concrete repair work. The protest states that a GC license with a classification of Nonstructural Renovation (NR) is needed.

I'm also attaching the following link to our project in case you need more information. ...

Please clarify if a GC license with a NR classification is needed.

² The South Carolina General Assembly created the SC Licensing Board pursuant to the Licensing Act: "There is created the South Carolina Contractor's Licensing Board under the administration of the Department of Labor, Licensing and Regulation. The purpose of this board is to protect the health, safety, and welfare of the public through the regulation of businesses and individuals who identify, assess, and provide contracting work to individuals or other legal entities through the administration and enforcement of this chapter and any regulation promulgated under this chapter and Article 1, Chapter 1." South Carolina Code § 40-11-10(A).

See January 6, 2025 e-mail from Robert Brewer to Rhonda Jackson at SC Licensing Board, included as part of Exhibit C to Brewer Affidavit. Ms. Jackson, the Program Coordinator of the SC Licensing Board, replied: “Sealants do not require a license from our board as stated in my 12/04/2024 email below.” See January 14, 2025 e-mail from Rhonda Jackson to Robert Brewer, included as part of Exhibit C to Brewer Affidavit.

Southern Painting also presented to the Court an e-mail from a state government employee regarding this licensing issue.³ This communication came from Carolyn Sutherland, Advice Counsel for the South Carolina Department of Labor, Licensing and Regulation (“SC LLR”). In its filings with the Court, Southern Painting quoted Ms. Sutherland as stating:

The project in question appears to refer to the installation of a flooring system that utilizes a “slurry” with a waterproofing technology rather than a typical “seal coating”. As pointed out in the email, the license would be required for installation of or flooring if the work is over \$10,000.

Exhibit C to Southern Painting’s Memorandum in Support of Motion for Declaratory Judgment. Unlike the County’s e-mail to Ms. Jackson of the SC Licensing Board, where the County provided the specifications provided by TMS for the Project and also a link to a Project description, the record does not show what Southern Painting provided to Ms. Sutherland by way of a description of the Project. Moreover, Southern Painting did not quote the remainder of Ms. Sutherland’s e-mail, wherein Ms. Sutherland stated in part that she was not qualified to opine whether the Project required a contractor’s license. See Exhibit C to Southern Painting’s Memorandum in Support of

³ Each of these e-mails the parties submitted to the Court constitute hearsay. See South Carolina Rules of Evidence, Rule 801. Neither party, however, objected to the introduction of these communications. Moreover, in a hearing involving a request for a preliminary injunction the trial court may rely upon hearsay evidence in determining likelihood of success on the merits. See *Jennings-Dill, Inc. v. Israel*, 442 S.C. 98, 110, 897 S.E.2d 201, 207 (Ct. App. 2024) (“Given the purpose of a preliminary injunction ... it is appropriate for a circuit court to rely on hearsay and speculative statements when deciding whether a party has met their burden of demonstrating a likelihood of success on the merits.”).

Motion for Declaratory Judgment (“That said, waterproofing and sealcoating are pretty similar in nature and I am not qualified to interpret the distinction here.”).

In summary, on two separate occasions the County contacted the SC Licensing Board about the need for a contractor’s license for this Project. Both times, the SC Licensing Board, the authority having jurisdiction over contracting licensing matters in this state, informed the County that a license was not required. The evidence that Southern Painting offered to rebut these two communications was a communication from Advice Counsel of SC LLR who stated that she was not qualified to opine on the issue.

Case law makes clear that Mr. Brewer acted reasonably in following the conclusions and reasoning of the SC Licensing Board, as the “construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.” *Ruocco v. South Carolina State Bd. of Registration for Professional Engineers and Land Surveyors*, 314 S.C. 111, 115, 441 S.E.2d 829, 831 (Ct. App. 1994) (citing *Dunton v. South Carolina Bd. of Examiners in Optometry*, 291 S.C. 221, 353 S.E.2d 132 (1987)). Southern Painting cites the United States Supreme Court case of *Loper Bright Enters. V. Raimondo*, 603 U.S. 369 (2024) and argues that this case has overruled *Ruocco* and the long-standing precedent it cites. *Loper Bright*, however, concerned interpretation of federal administrative law, and thus it has no effect on the present case dealing with the application of a South Carolina licensing statute to a Greenville County procurement.

The case of *In re: Protest of Monroe Construction Co., LLC*, Case No. 2011-3, 2011 WL 7068068 (S.C. Proc. Rev. Panel 2011) is instructive. In that case, the protesting contractor argued that the winning contractor had improperly listed an unlicensed subcontractor in its bid. A representative of the University of South Carolina (the contracting entity) who had prepared the

bid documents testified “that she checked the licenses of [the plumber] prior to award and determined that [the plumber] possessed a valid plumbing license, which is all that was required by the bid form.” The Procurement Review Panel held that “this inquiry satisfied the requirements of the Procurement Code with regard to responsibility” and therefore, the protesting contractor “failed to show that USC's determination of responsibility [was] ‘clearly erroneous, arbitrary, capricious, or contrary to law.’” *Id.* In the present case, Mr. Brewer did much more than the University of South Carolina representative in *In re: Protest of Monroe*. Here, Mr. Brewer made inquiries – not once but twice – with the SC Licensing Board concerning the licensing issue. Both times he received the same answer: a license was not required.

Based on this record, it is clear that the County acted reasonably. Reasonableness, however, is not the standard. Instead, Southern Painting must show that the County’s award to TMS and the County’s denial of Southern Painting’s protest was “arbitrary, unreasonable, in obvious abuse of discretion, or an excess of lawfully delegated power.” *Sloan v. Greenville Cnty.*, 356 S.C. at 555-56, 590 S.E.2d at 351. Southern Painting has not made this showing. Therefore, Southern Painting is entitled to no relief based on a claim that TMS was not properly licensed.

II. Registration to Do Business in South Carolina.

Southern Painting also claims that its motions should be granted because TMS is not registered to do business in South Carolina. As an initial matter, Southern Painting did not raise this issue in its protest, *see* Exhibit B to Brewer Affidavit, and therefore, this issue is waived. Notwithstanding this fact, however, the County demonstrated that TMS is in fact registered to do business in South Carolina. *See* Brewer Affidavit at ¶ 9 and Exhibit D to Brewer Affidavit. Southern Painting argues, however, that because TMS was not registered when it submitted its bid, TMS was barred from working on the Project. The law does not support this argument.

S.C. Code Ann § 33-15-101(a) provides that an out-of-state corporation “may not transact business in this State until it obtains a certificate of authority from the Secretary of State.” As noted, TMS is registered to do business in South Carolina. Moreover, nothing in the foreign corporation legislation provides that failure to obtain authorization before bidding on a project forever precludes such a corporation from working on that project. To the contrary, the only consequence for failure to become authorized in South Carolina is a small civil fine and the inability to bring lawsuits in South Carolina courts. *See* S.C. Code Ann § 33-15-102. Even if an unauthorized corporation brings an action in a South Carolina court, however, the action may continue if the unauthorized corporation thereafter obtains authorization to do business in South Carolina. *See* S.C. Code Ann § 33-15-102(b)-(c). For these reasons, Southern Painting’s arguments that TMS is not properly authorized to work on the Project must fail, and it is entitled to no relief based on these arguments.

CONCLUSION

Southern Painting has failed to demonstrate a likelihood of success on the merits, and thus Southern Painting is not entitled to a preliminary injunction.⁴ Southern Painting has likewise failed to demonstrate that it is entitled to any declaratory relief. Therefore, the Court denies Southern Painting’s motion for preliminary injunction and Southern Painting’s motion for declaratory judgment.

IT IS SO ORDERED.

The Honorable William C. McMaster III,
Circuit Court Judge for Greenville County

⁴ Because the Court finds no likelihood success on the merits, the Court need not rule concerning the remaining elements needed for a preliminary injunction.



Greenville Common Pleas

Case Caption: Southern Painting And Maintenance Specialists LLC vs. Greenville County
Case Number: 2025CP2300389
Type: Order/Other

So Ordered

William C. McMaster, III