Exhibit 1

March 13, 2026 Order

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND** **In Re: Haren Construction Co., Inc.** **Project No. P24-6052-PG** **Beaufort-Waddell Mariculture** **Maturation Ponds Maintenance – Re-Bid**	))))))))	**BEFORE THE SOUTH CAROLINA PROCUREMENT REVIEW PANEL** **ORDER** **Case No. 2025-5**

I. INTRODUCTION

This matter comes before the South Carolina Procurement Review Panel (Panel) on the appeal by Haren Construction Co., Inc. (Haren) from the November 19, 2025, decision of the Chief Procurement Officer for Construction (CPO). The CPO sustained the protest filed by Paragon Inc. of South Carolina, LLC (Paragon) in connection with Project No. P24-6052-PG, the Beaufort-Waddell Mariculture Maturation Ponds Maintenance (Project), and remanded the procurement to the South Carolina Department of Natural Resources (DNR). PRP000015.

Although the parties raise several issues concerning licensing classifications, statutory exclusions, protest sufficiency, and scope of review, the dispositive question is whether DNR's non-responsibility determination was clearly erroneous, arbitrary, capricious, or contrary to law under S.C. Code Ann. § 11-35-2410(A).

Upon de novo review of the administrative record, the parties' briefs, and the applicable law, the Panel concludes that DNR's determination was not clearly erroneous, arbitrary, capricious, or contrary to law. The CPO's decision is therefore reversed.

Haren was represented by D. Gregory Placone, Esquire, and P. Nicholas Nybo, Esquire, of Hudson Lambert Parrott, LLC; the CPO by Manton M. Grier, Jr., Esquire, Assistant General Counsel for the State Fiscal Accountability Authority (SFAA); Paragon by

James M. Griffin, Esquire, of Griffin Humphries LLC; and DNR by Susan O. Porter, Esquire, General Counsel for DNR.

II. BACKGROUND

On August 12, 2025, DNR issued an advertisement and solicitation documents for the Project, including bidder instructions, specifications, and drawings defining the scope of work. PRP000062; PRP000084; PRP000192; PRP000470.

The solicitation describes renovation of hatchery infrastructure on DNR property, including rehabilitation of rearing ponds, replacement of piping networks, modifications to an existing head tower, site electrical systems, and related improvements. PRP000062; PRP000084; PRP000192.

The solicitation did not designate a specific contractor license classification for the prime contractor. However, the bid form required bidders to identify the entity performing electrical work under the Electrical (EL) license designation pursuant to the subcontractor listing requirements. PRP000105-106.

Paragon, which holds a Mechanical Contractor license with a Plumbing (PB) subclassification, submitted the apparent low responsive bid. PRP000063. During its responsibility review, DNR contacted personnel associated with the Contractor's Licensing Board within the South Carolina Department of Labor, Licensing and Regulation (LLR), who declined to provide a classification determination and advised that licensing questions should be directed to the local building official responsible for reviewing the Project's plans. PRP000070-73. DNR also reviewed contractor licensure information associated with Paragon's bid and noted that the bid was submitted under the name Paragon Inc. of South Carolina, LLC, while the contractor license in the LLR database was issued to Paragon

Builders. PRP000066. DNR relied on the engineer of record's opinion of cost and allocation of project costs by license classification contained in the administrative record. The estimate separated licensed construction work from non-licensed project costs, including contractor overhead and profit, insurance and bonds, engineering during construction, and third-party inspections. PRP000074. Based on that review, DNR issued a written determination dated October 17, 2025, concluding that Paragon was non-responsible – and therefore ineligible for award – because it did not satisfy the contractor licensing requirements of Title 40 of the South Carolina Code. PRP000066.

Paragon protested the determination, asserting that most of the Project fell within its PB subclassification, that the Project was not a municipal water supply system, that DNR had not properly quantified work outside its classification, and that the discrepancy between its legal and trade names was a mere ministerial variance. PRP000024. The CPO reviewed the protest.

On November 19, 2025, the CPO sustained the protest, concluding that the licensing issue presented a legal question, that the PB subclassification encompassed the work described in the solicitation, and that DNR had not sufficiently supported its sole prime determination. PRP000015.

Haren, which holds a General Contractors-Public Utility license with a Water and Sewer Lines (WL) subclassification, timely appealed. PRP000001. The parties initially agreed that the appeal could be resolved on the written record. After DNR raised jurisdictional and procedural issues in its response brief and limited reply briefing was permitted, no party requested a hearing, and the Panel proceeded on the written record.

On February 25, 2026, the Panel deliberated and reached its decision in this matter. Due to the unique technical nature of mariculture infrastructure and the difficulty of applying specialized Title 40 contractor subclassifications to the Project's scope, the Panel designated this matter as complex pursuant to S.C. Code Ann. § 11-35-4410(5), which requires the Panel to record its determination within thirty days.

III. FINDINGS OF FACT

After consideration of the entire record, the Panel finds the following facts:

1. DNR issued the solicitation for the Project. PRP000062; PRP000079.

2. Paragon submitted the apparent low responsive bid. PRP000063.

3. DNR's written determination stated that Paragon Inc. of South Carolina, LLC did not hold a contractor license under that name in the LLR database and that a contractor license was issued to Paragon Builders, identified by DNR as being "owned by the same owner." PRP000066. The administrative record also includes applications submitted to LLR that identify Paragon Inc. of South Carolina, LLC, doing business as Paragon Builders. PRP000040; PRP000042.

4. DNR's written determination relied upon the engineer's opinion of cost and allocation of project costs by license classification in concluding that eighty percent of the Project required WL licensure. PRP000066. The administrative record also includes the engineer's allocation supporting that conclusion. PRP000074.

5. Although Paragon asserted a different percentage allocation in its protest, the administrative record contains no competing engineering estimate or line-item cost analysis demonstrating that DNR's allocation was factually unsupported or artificially structured. PRP000026; PRP000074.

IV. APPLICABLE LAW

A. Standard of Review

Responsibility determinations under the Procurement Code are "final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law." S.C. Code Ann. § 11-35-2410(A). Although appeals to the Panel are conducted de novo – allowing the Panel to make its own findings of fact and conclusions of law – its review of such determinations remains subject to this statutory limitation. *See* S.C. Code Ann. § 11-35-4410(1). The Panel has recently applied this standard when reviewing procurement determinations. *See In re U.S. Facilities, Inc.*, Case No. 2025-1, at 5 (S.C. Procurement Rev. Panel May 19, 2025); *In re Schindler Elevator Corp.*, Case No. 2024-5, at 9 (S.C. Procurement Rev. Panel Sept. 19, 2024).

An administrative decision is arbitrary and capricious if it lacks a rational basis or is made without adequate determining principles. As the Court of Appeals has explained, a decision is arbitrary if it is "without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." *Blackmon v. S.C. Dep't of Health & Envtl. Control*, 441 S.C. 342, 353, 893 S.E.2d 578, 584 (Ct. App. 2022). Courts reviewing administrative decisions do not substitute their discretion for that of the agency in matters committed to agency expertise. The South Carolina Supreme Court has cautioned that otherwise "[j]udicial discretion in a non-judicial field would be substituted for that of the appropriate administrative agency. This we cannot do." *Guerard v. Whitner*, 276 S.C. 521, 523, 280 S.E.2d 539, 540 (1981).

In accordance with this principle of deference, judicial review of factual determinations made in the administrative process is limited. "As to factual issues, judicial review of administrative agency orders is limited to a determination of whether the order is supported by substantial evidence." *Murphy v. S.C. Dep't of Health & Envtl. Control*, 396 S.C. 633, 639, 723 S.E.2d 191, 194 (2012). "Substantial evidence is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached to justify its action." *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Moreover, "[t]he mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence." *Rhame v. Charleston Cnty. Sch. Dist.*, 415 S.C. 162, 167, 781 S.E.2d 151, 154 (Ct. App. 2015).

Under the substantial evidence standard, the reviewing body does not reweigh technical evidence or resolve competing expert judgments but determines only whether the agency's decision has a rational evidentiary basis in the record. Courts reviewing administrative decisions "need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion." *Schwiers v. S.C. Dep't of Health & Envtl. Control*, 429 S.C. 43, 49, 837 S.E.2d 730, 733 (Ct. App. 2019).

Panel precedent likewise recognizes that responsibility determinations are made by the procuring agency. The Panel has explained that "[t]he responsibility inquiry is delegated to the procuring agency and the Panel takes the position that review of this issue is limited to whether the procuring officer's determination was clearly erroneous, arbitrary, capricious, or contrary to law." *In re Value Options*, Case No. 2001-7, at 7 (S.C. Procurement Rev. Panel

Aug. 3, 2001). The Panel has further recognized that the party challenging such determinations bears the burden of proof. *Id*. at 7; *see also U.S. Facilities, Inc.*, at 5; *Schindler Elevator Corp*., at 9.

B. Statutory Interpretation

When interpreting a statute, "[courts] must give the words in a statute their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation, and when the words are unambiguous, [courts] must apply their literal meaning." *Davis v. S.C. Dep't of Corr.*, 444 S.C. 138, 150, 906 S.E.2d 569, 575 (2024). If the language is clear, courts apply the statute according to its plain meaning.

Where statutory language does not resolve the issue presented, courts may defer to an agency's interpretation when the statute is ambiguous. As the South Carolina Supreme Court explained, "[i]f the statute or regulation is silent or ambiguous with respect to the specific issue, the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference." *Kiawah Dev. Partners II v. S.C. Dep't of Health & Envtl. Control*, 411 S.C. 16, 33, 766 S.E.2d 707, 717 (2014).

This deference reflects the institutional role of administrative agencies. Courts defer to agencies "because they have been entrusted with administering their statutes and regulations and because they have unique skill and expertise in administering those statutes and regulations." *Kiawah Dev. Partners II*, 411 S.C. at 34. At the same time, agency deference does not permit an interpretation that conflicts with the statute itself. The Supreme Court has explained that courts will reject an agency's interpretation "where the plain language of a statute is contrary to the agency's interpretation." *Davis*, 444 S.C. at 150.

C. Responsibility Determinations

Under the South Carolina Consolidated Procurement Code, the State must determine the responsibility of bidders and offerors before awarding a contract. Section 11-35-1810(1) provides that "[r]esponsibility of the bidder or offeror shall be ascertained for each contract let by the State based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts." Section 11-35-1410(8) defines a "responsible bidder or offeror" as "a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance."

When a protest challenges a bidder's ability to perform work required by the solicitation, the issue concerns responsibility rather than responsiveness. As the Panel explained, when the State examines "the bidder's ability to perform, the state is no longer determining responsiveness of the bid, but deciding the responsibility of the bidder." *In re Brantley Constr. Co.*, Case No. 1999-3, at 3 (S.C. Procurement Rev. Panel June 25, 1999). Because the ability to lawfully perform the work required by the solicitation is part of a bidder's legal capacity to perform the contract, questions concerning applicable contractor licensing requirements may properly arise during a procuring agency's responsibility determination.

When a responsibility determination requires application of a statute administered by another state agency, the procuring agency must apply that statute in evaluating bidder responsibility. In a procurement protest, however, the relevant inquiry is not whether the reviewing body would independently interpret that statute, but whether the procuring agency's

application of the statute lacked a rational basis or was contrary to law under § 11-35-2410(A).

D. Sole Prime Contractor Requirements

South Carolina law establishes specific licensing requirements for entities acting as sole prime contractors on construction projects. Section 40-11-340 provides:

> An entity licensed under the classifications or subclassifications in Sections 40-11-410(1), (2), or (3) may act as a sole prime contractor on a project if forty percent or more of the work as measured by the total cost of construction falls under one or more of the licensee's license classifications or subclassifications. An entity licensed under the classifications or subclassifications in Section 40-11-410(4) and (5) may act as sole prime contractor if fifty-one percent or more of the work falls under one or more of the licensee's license classifications or subclassifications.
> S.C. Code Ann. § 40-11-340.

Because sole prime eligibility under § 40-11-340 depends on the portion of a project's total construction cost falling within a contractor's license classifications, the categorization of project work for licensing purposes bears directly on a bidder's legal capacity to perform the contract. Under the Procurement Code, responsibility determinations must be based on a bidder's capacity to meet the terms of the contract. S.C. Code Ann. § 11-35-1810. Accordingly, determining whether the work required by a solicitation falls within a particular contractor license classification is part of the procuring agency's responsibility determination. Such determinations are "final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law." S.C. Code Ann. § 11-35-2410(A).

E. Relevant License Subclassifications

Section 40-11-410 identifies numerous classifications and subclassifications of construction work. Two subclassifications are relevant here. Section 40-11-410(3)(c) describes the WL subclassification as:

> "Water and Sewer Lines" which includes construction work on water mains, water service lines, water storage tanks, sewer mains, sewer lines, lift stations, pumping stations and appurtenances to water storage tanks, lift stations, pumping stations, pavement patching, backfill, and erosion control as a part of construction, and which includes connection at the building of all lines to the appropriate lines contained in commercial structures, installation and repair of a project involving manholes, the laying of pipe for storm drains and sewer mains, all necessary connections, and excavation and backfilling, and concrete work incidental thereto.
>
> Contractors in this license subclassification in license groups three, four, and five may install fire protection sprinkler system underground mains to a flanged outlet 1'-0" above the finished floor in compliance with National Fire Protection Association Standard 24. However, shop drawings must be submitted and approved by the State Fire Marshal with a copy of the approved drawings going to the licensed fire sprinkler contractor. Flushing and testing certificates must be delivered to the authority having jurisdiction and the performing licensed fire sprinkler contractor performing. General contractors in this license subclassification may not engage in water and sewer line work from the right-of-way to a residential structure unless the entity is a subcontractor to a licensee holding a plumbing subclassification.
> S.C. Code Ann. § 40-11-410(3)(c).

Section 40-11-410(5)(f) describes the PB subclassification as:

> "Plumbing" which includes the installation, replacement, alteration, and repair of all plumbing including solar water heating when performed solely within property lines and not on public easements or rights-of-way except to make connections to water meters or sewer taps as allowed by the utility owner; and the installation, alteration, and repair of all piping, fixtures, and appliances related to water supply, including pressure vessels and tanks, and excluding municipal or related water supply systems; venting and sanitary drainage systems for all fluid and semi-fluid and organic wastes; roof leaders; water-conditioning equipment; piping and equipment for swimming pools; and installation of a system of pipes, fittings, fixtures, drains, and all necessary component parts upon the premises or in a building to supply water to buildings and to convey sewage or other waste products from buildings. If this equipment is gas-fired, the necessary gas lines may be installed under this subclassification used in connection with this subclassification. Plumbing contractors in license groups three, four, and five are not required to be licensed under Chapter 45, Title 23 to install standpipe systems, including water hose connections, water hose cabinets, and related branch lines if the water hoses do not supply water to automatic fire protection sprinklers.
> S.C. Code Ann. § 40-11-410(5)(f).

V. DISCUSSION AND CONCLUSIONS OF LAW

Before addressing the parties' arguments, the Panel begins by noting the scope of its review. Although appeals to the Panel are conducted de novo, responsibility determinations remain subject to the standard of review set forth in § 11-35-2410(A). The Panel therefore does not decide which contractor license classification it would independently select, but whether DNR's determination lacked a rational basis or was contrary to law. With that framework in mind, the Panel addresses the issues presented.

A. Licensing

DNR determined that Paragon was non-responsible under the contractor licensing requirements applicable to the Project. DNR's determination referenced a discrepancy between the name appearing on Paragon's bid and the contractor license listed in the LLR database. PRP000066. The administrative record includes applications submitted to LLR that identify Paragon Inc. of South Carolina, LLC, doing business as Paragon Builders. The Panel therefore does not treat the name variation as affecting bidder responsibility. PRP000040; PRP000042.

The central dispute, however, concerns whether the Project could be performed under the PB subclassification or the WL subclassification. The contractor license subclassifications identified in § 40-11-410 describe broad categories of construction work and do not, as applied to this mariculture infrastructure, compel a single classification as a matter of law. The administrative record reflects that applying these subclassifications to specialized facilities is not always straightforward.

The Project involves an integrated seawater distribution system serving the hatchery facility, including a head tower, underground distribution piping, and outlet structures

connecting multiple ponds. PRP000062; PRP000068; PRP000192. Although some components resemble work typically performed under a PB subclassification, DNR determined that the Project concerns the installation and rehabilitation of a broader water distribution system supporting the facility's operations. Notably, S.C. Code Ann. § 40-11-410(3)(c) provides that the WL subclassification includes construction work involving water and sewer lines, pumping stations, pipe laying, manholes, necessary connections, and incidental concrete work. The Project plans reflect a complex piping network and integrated pumping components, along with manholes and utility vault structures connecting the maturation ponds' distribution system. PRP000068; PRP000301; PRP000413; PRP000470; PRP000476. DNR reasonably concluded that these functional infrastructure elements correspond to the pumping stations, water lines, and manholes contemplated by the WL subclassification. Because the Project's core utility involves the distribution of seawater through these components, DNR's selection of the WL classification is supported by the statute's plain language.

The CPO concluded that § 40-11-410 permits the Project to be performed under a PB subclassification, but the statute does not require that classification. Courts interpret statutes according to their plain language, and where the language does not definitively resolve the issue, agencies may apply the statute to the facts before them. *See Davis*, 444 S.C. at 145; *Kiawah Dev. Partners II*, 411 S.C. at 33.

Deference is warranted where the dispute concerns the technical application of licensing categories to specialized mariculture infrastructure. Under *Kiawah*, the Panel recognizes that DNR possesses the expertise necessary to evaluate the technical nature of the Project's intake and distribution systems. The mere possibility that the PB subclassification

could have been selected does not render DNR's actual determination clearly erroneous under § 11-35-2410(A). The relevant inquiry is not whether the Panel would have selected the same classification, but whether DNR's determination had a rational basis. Because DNR's determination that eighty percent of the Project required WL licensure aligns with the components described in § 40-11-410(3)(c) and reflects the agency's technical expertise, it had a rational basis and was not clearly erroneous, arbitrary, capricious, or contrary to law.

B. Sole Prime Contractor Determination

DNR further determined that Paragon could not serve as the sole prime contractor because the predominant portion of the Project required WL licensure for sole prime eligibility. Section 40-11-340 establishes the percentage thresholds governing sole prime eligibility. A contractor may serve as sole prime only if the applicable percentage threshold is satisfied – forty percent of the project's total construction cost for WL work and fifty-one percent for PB work. The statute ensures that the prime contractor holds licensure covering the predominant portion of the project's construction work. Because Paragon holds a PB license and not a WL license, its eligibility turns on whether DNR reasonably classified the Project as predominantly WL.

Responsibility determinations fall within the discretion of the procuring agency, and state agencies possess broad authority to make such procurement judgments. *Value Options*, at 6. The party challenging such a determination bears the burden of proving it was clearly erroneous, arbitrary, capricious, or contrary to law. *Id.* at 7; *see also U.S. Facilities, Inc.*, at 7; *Schindler Elevator Corp.*, at 9.

In evaluating Paragon's eligibility to serve as sole prime contractor, DNR relied on the engineer's design estimate and itemized cost allocation indicating that eighty percent of the

Project required WL licensure. PRP000066; PRP000074. This allocation significantly exceeds both the forty percent threshold applicable to WL work and the fifty-one percent threshold applicable to PB work. The administrative record contains no competing engineering estimate or technical analysis demonstrating that DNR's allocation lacked a rational basis or was artificially structured. Although Paragon asserted a different percentage allocation in its protest, it did not submit independent engineering analysis contradicting the agency's estimate. PRP000026. The engineer's estimate therefore provides a rational evidentiary basis for DNR's determination.

Under the substantial evidence standard governing administrative review, a reviewing body does not reweigh technical evidence or substitute its judgment for competing expert evaluations. *See Murphy*, 396 S.C. at 639; *Lark*, 276 S.C. at 135; *Rhame*, 415 S.C. at 167. The inquiry is whether the agency's determination is supported by evidence from which reasonable minds could reach the same conclusion. Because DNR relied on a professional engineering estimate contained in the administrative record, its determination that Paragon did not satisfy the statutory requirements for sole prime eligibility is supported by substantial evidence.

C. Substitution of Judgment by the CPO

By selecting a different licensing classification, the CPO substituted his judgment for that of the procuring agency. The Procurement Code does not permit such substitution. Because DNR's determination was supported by substantial evidence and reflected a reasoned application of the governing statutes, the CPO exceeded his scope of review.

D. Scope of Holding

Because the Panel resolves the appeal based on the merits of DNR's determination that the portion of the Project requiring WL licensure exceeded the statutory thresholds for sole prime eligibility, it need not address additional arguments raised by the parties. The Panel emphasizes the limited nature of its holding. This Order does not determine that WL licensure was the only possible classification for the Project. Rather, the Panel holds only that DNR's determination was not clearly erroneous, arbitrary, capricious, or contrary to law.

VI. ORDER

For the foregoing reasons:

1. The CPO's November 19, 2025, protest decision is **REVERSED**.
2. DNR's determination that Paragon is non-responsible is **REINSTATED**.
3. This matter is **REMANDED** to DNR for further action consistent with this Order and the South Carolina Consolidated Procurement Code.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT REVIEW PANEL

BY: Willie D. Franks

Willie D. Franks, Chairman

March 13, 2026
Columbia, South Carolina