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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
Willie D. Franks, Chairman

Case No. 2025-5

In Re: Haren Construction, Co., Inc.

South Carolina Department of Natural Resources
Project No. P24-6052-PG
Beaufort-Waddel Mariculture
Maturation Ponds Maintenance – Re-Bid

SCDNR RESPONSE IN OPPOSITION TO PARAGON’S MOTION TO STAY AND
CONSENT TO EXPEDITED BRIEFING¹

The South Carolina Department of Natural Resources submits this Response in Opposition to Paragon’s Motion to Stay the above-captioned matter. Paragon Inc. of South Carolina, LLC (Paragon) asserts the South Carolina Procurement Review Panel’s March 13, 2026 Order and April 6, 2026 Order Denying Motions to Reconsider in this matter should be stayed pending appeal. The Department opposes the motion for the reasons set forth herein and asks that the Court deny the Motion to Stay.

The granting of a stay is governed by Rule 241, SCACR, and Paragon carries the burden to show a stay is warranted. In responding to Paragon’s arguments, the Department asserts those

¹ The Department has maintained below and now before this Court that this appeal should be dismissed for lack of jurisdiction and does not intend to waive that position. However, to the extent the Court does not dismiss this action before deciding the pending request for expedited briefing, the Department consents to expedited briefing, subject to its jurisdictional objections.

arguments are lacking and that Paragon has not carried its burden and is incapable of doing so as a matter of law.

JURISDICTIONAL THRESHOLD

Prior to reaching the merits of Paragon’s motion, the Department is obligated to raise to the Court’s attention a threshold question of jurisdiction. As argued in the Department’s Motion to Dismiss which is contemporaneously filed with this Response, the Department asserts several grounds for dismissal and would urge the Court to first address those questions.

ARGUMENTS

I. Paragon’s Appeal Is Already Moot and Paragon Cannot Claim an Irreparable Harm

Paragon suggests it is entitled to “the opportunity to compete as the low bidder for a public construction contract — a right that cannot be compensated through money damages in this posture — constitutes irreparable harm.” (Paragon Motion to Stay, p. 5²).³ It then continues, stating: “The contest here is whether Paragon, as the apparent low bidder, was improperly excluded from award.” (Paragon Motion to Stay, pp. 5-6).

As discussed more fully in the Department’s Motion to Dismiss, Paragon’s challenge to the Department’s procurement decision is fatally flawed for several reasons. First, pursuant to state licensing laws, Paragon was prohibited from bidding on the project when it held no contractor’s license in the name of “Paragon Inc. of South Carolina, LLC” and thus has no entitlement upon which it can claim a harm. S.C. Code Ann. §§ 40-11-30, -200, and -370 (1976 & Supp. 2025). Statutory law makes it clearly illegal for a contractor to bid on a project except in the “exact name

² The pages of Paragon’s motion are not numbered so the page references herein are based on the counted / pdf page number.

³ In Paragon’s Motion to Stay before the Procurement Review Panel, it claimed a “right to compete ... for a public construction contract” and that it had a “concrete and protectable interest that will be extinguished by premature award.” (Paragon Motion Exhibit 13 – Panel Motion to Stay, p. 3). The abandonment of such a claim in the motion now before this Court is conspicuous and undermines Paragon’s claims for entitlement to any rights or remedies.

which appears on the license issued.” S.C. Code Ann. § 40-11-370. In essence, any bid submitted that is not in the exact name is illegal and should be deemed void *ab initio* for failing this most basic legal prerequisite. Paragon was not a lawful applicant, pursuant to sections 40-11-30, -200, and -370, and has no entitlement that it can rightfully claim was harmed.

Likewise, the absence of any underlying right means that Paragon has no standing to pursue this challenge. “Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right.” *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct.App.2008) (alteration and internal quotation marks omitted). In contrast to a statute providing standing, section 40-11-370 expressly prohibits Paragon from initiating or maintaining this appeal. This point is demonstrated in *Youngblood v. South Carolina Department of Social Services* where the Supreme Court explained: “while the family court found statutory standing pursuant to section 63–9–60, we hold that statute does not give the Youngbloods standing; *instead, it specifically deprives them of standing.*” 402 S.C. 311, 318, 741 S.E.2d 515, 518 (2013)(emphasis added). That Court then concluded: “Because the statute *does not permit any exceptions and plainly states* that the section 63–9–60(A) grant of *standing does not apply* to children placed by DSS, the *family court erred in grounding standing on section 63–9–60.*” *Id.*, 402 S.C. at 319, 741 S.E.2d at 519 (emphasis added). *See also Jowers v. S.C. Dep't of Health & Env't Control*, 423 S.C. 343, 353, 815 S.E.2d 446, 451 (2018) (“Our courts will not address the merits of any case unless it presents a justiciable controversy.”); *Youngblood*, 402 S.C. at 317, 741 S.E.2d at 518 (“Standing, a fundamental prerequisite to instituting an action, may exist by statute, through the principles of constitutional standing, or through the public importance exception.”); *James v. Anne's Inc.*, 390 S.C. 188, 193, 701 S.E.2d 730, 732 (2010) (stating appellate courts have “the inherent authority to consider justiciability). This concept is reinforced by section 40-11-370(C) which states: ”An

entity that enters into a contract to engage in construction in a name other than the name that appears on its license may not bring an action either at law or in equity to enforce the provisions of the contract.”

Next, it would be illegal for the Department to “to consider a bid, sign a contract, or allow a contractor to begin work” when the contractor has not complied with Section 40-11-370. S.C. Code Ann. § 40-11-200(B)(1976 & Supp. 2025). These statutory requirements render Paragon’s pursuit of an award through this procurement appeal moot on a substantive basis. *See Cheap-O’s Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 602, 567 S.E.2d 514, 517 (Ct. App. 2002) (“An appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.” (quoting *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001))); *see also Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) (“A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court.”).

II. Paragon Lacks a Meritorious Appeal

Paragon claims its appeal has merit on several tenuous grounds which the Department asserts are contrary to Paragon’s claim. First, Paragon seeks to conjure merit from the mere fact that the CPO and Department have filed notices of appeal. While the Department will not speak for the CPO, the Department’s motivation for filing the notice of appeal is set forth in the Department’s Motion to Dismiss and clearly reflects Paragon’s appeal to be unsupported.

Next, Paragon alludes to the merits of the Panel’s decision that gave deference to the Department’s engineering staff in rejecting Paragon’s bid. As an agency of the State of South Carolina, the Department is expressly required to apply the South Carolina Consolidated

Procurement Code and regularly does so under authority delegated under the Code. See generally S.C. Code Ann. §§ 11-35-20, -40, -45, -210, - 310(18, 26, 28, 38) (1976 & Sup. 2025). Again and more specifically applicable to this appeal, the Department is specifically charged by the Procurement Code to make a determination of responsibility. S.C. Code Ann. §11-35-1810(2)(“Determination of Nonresponsibility. A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with regulations promulgated by the board.”); S.C. Regs. 19-445.2125(D)(“the procurement officer must be satisfied that the prospective contractor is responsible”); *see also* S.C. Regs. 19-445.2145(F) and Office of State Engineer OSE Manual “MANUAL FOR PLANNING AND EXECUTION OF STATE PERMANENT IMPROVEMENTS” (2023)(<https://procurement.sc.gov/manual> - last visited March 23, 2026) – Section 6.11 Determination of Bidder’s Responsibility(“the Agency must satisfy itself that the apparent low Bidder meets the State’s Standards of Responsibility”).

Going further with respect to licensing, the OSE Manual provides:

6.11 DETERMINATION OF BIDDER’S RESPONSIBILITY

Before posting the SE-370, the Agency must satisfy itself that the apparent low Bidder meets the State’s Standards of Responsibility.

6.11.1 Criteria for Determining Responsibility

Criteria the Agency should use in determining whether the Bidder meets the State’s Standards of Responsibility include whether the Bidder has:

- A. The appropriate financial, material, equipment, facility, and personnel resources and expertise (or the ability to obtain them) necessary to meet all contractual requirements.
- B. A satisfactory record of performance.
- C. A satisfactory record of integrity.
- D. *The necessary legal qualifications to contract with the State (includes being properly licensed).*
- E. Supplied all necessary information in connection with the inquiry concerning responsibility; and

F. No record of debarment from participation in construction projects in past 3 years from any state or Federal agency as recorded in the federal government's System for Award Management (SAM). This can be found at <https://www.SAM.gov> .

6.11.2 Verify Proper Contractor Licensing and License Limitations:

A. Before posting the SE-370, the Agency must verify that the Bidder and its listed Subcontractors have the proper contractor's license and license limitations, and they were in effect at the time of bidding.

B. *If the Agency determines that a Bidder or one of its listed Subcontractors does not have the proper license and license limitations, the Agency must declare the Bidder is non-responsible. The Agency should notify the SC Contractors' Licensing Board that the Bidder or Subcontractor is offering to perform work without a proper license. The Agency may contact the Contractors' Licensing Board at: <https://lcr.sc.gov/clb/> .*

(emphasis added).

Therefore, any suggestion by Paragon that the Department lacks authority to make determinations under the Procurement Code are not supported under the above authorities. *In Re: Value Options*, Case No. 2001-7, at 3 (S.C. Procurement Rev. Panel, Aug 3, 2001, available: <https://procurement.sc.gov/legal/legal-panel-orders/>)("The Panel finds that State agencies also have broad discretion in making responsibility determinations for procurement contracts."). By extension, the above authorities directly charge the Department to also make determinations and application of the SCLLR licensing authority. *See* Manual Section 6.11.2(B). Referencing federal procurement, the Panel has previously acknowledged that "[a] contracting agency has broad discretion in making responsibility determinations since it must bear the brunt of difficulties experienced in obtaining the required performance." *In Re: Value Options* at 3.(internal citation and quotations removed).

Next, as the end user of the desired construction project – a saltwater mariculture facility – the Department does have specialized knowledge that is relevant to both the Procurement Code determinations and any necessary applications of SCLLR's licensing requirements. *See generally*, S.C. Code Ann. § 11-35-2410(A) and *In Re: Appeal by United Way Association of South Carolina*,

Inc. Case No. 2017-2, at 8 (S.C. Procurement Rev. Panel Nov. 14, 2017, available: <https://procurement.sc.gov/legal/legal-panel-orders>)(“The Panel has consistently held that it ‘will not substitute its judgment for the judgment of the evaluators, who are often experts in their fields, or disturb their findings so long as the evaluators follow the requirements of the Procurement Code and the RFP, fairly consider all proposals, and are not actually biased.’”).

Accordingly, the level of deference given by the Panel to the Department’s determinations under the Procurement Code and associated SCLLR licensing provisions were appropriate and Paragon’s claim of a meritorious basis for appeal is lacking.

III. A Stay Would Substantially Injure the Department and Public Interest

In Paragon’s Motion to Stay submitted to the Panel, it initially characterizes the underlying project in this procurement action as “a construction project involving rehabilitation of time-sensitive mariculture infrastructure.” (Paragon Motion Exhibit 13 – Panel Motion to Stay, pp. 3, 5-6). In its motion before this Court, Pargon now presents the project in a more subdued manner in an effort to downplay the resulting harm to the Department and the projects it undertakes on behalf of the public.

The Department has tremendous respect for the integrity of the Consolidated Procurement Code and the complimentary provisions of the licensing laws, especially sections 40-11-200 & -370, and believes the award of this procurement action to Haren is correct under both. The General Assembly provided dedicated funding for this project in fiscal year 2021-2022⁴ and the Department has diligently sought to procure the necessary services. Upon finally selecting Haren as an appropriate and lawfully qualified contractor, the timely and efficient activation of the

⁴ To the extent the Court may take judicial notice of legislative enactments, including the State’s annual budget, the 2021-2022 Appropriations Act reflects line-item funding the upgrades in this procurement action.

General Assembly’s intended rehabilitation of mariculture infrastructure at the Waddell facility has been delayed by Paragon’s appeal over the last several months⁵. Further delay under Paragon’s desired stay would substantially injure the Department’s efforts to fulfill the General Assembly’s mandate and negatively impact the Department’s and public’s interest in performing mariculture operations at the restored facility. Every month of delay means a month of delay for the Department growing fish.

Conclusion

The Department respectfully requests that the Court deny Paragon’s Motion to Stay.

Respectfully submitted,

s/ Van Whitehead

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(SCDNR 25-0060)
(Ct. App. 2026-000914)

⁵ As recounted in the Panel’s March 13, 2026 Order, the Department posted the solicitation underlying this dispute in August of 2025 and rendered an award decision on October 17, 2025 from which Paragon started its challenge.

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PROOF OF SERVICE

I certify that I have served the SCDNR's Response in Opposition to Paragon's Motion to Stay and Consent to Expedited Briefing upon counsel for all parties and the South Carolina Procurement Review Panel in the above captioned matter by sending a copy by email to each attorney listed below on April 25, 2026.

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