

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 MOTION TO DISMISS

The South Carolina Department of Natural Resources (“Department”) submits this Motion to Dismiss the above-captioned matter pursuant to Rule 240, SCACR.¹ For the reasons stated herein, the Department respectfully asks that the Court dismiss this appeal and vacate the March 13, 2026 and April 6, 2026 Orders of the South Carolina Procurement Review Panel (“Panel”) and the underlying November 19, 2025 Decision of the Chief Procurement Officer (“CPO”).² (Exhibits

¹ The Department previously filed a Notice of Cross-Appeal in an abundance of caution to preserve its rights to present arguments on appeal distinct from those raised by Paragon or the CPO. However, given Paragon’s recent filing of a Motion to Stay, the Department now files this motion to more expeditiously present the Court with arguments supporting the prompt disposal of this appeal.

² Although the Department has no objection to the outcome of the Panel’s decision affirming the Department’s rejection of Paragon, the Department asserts the Panel erred in not first addressing jurisdictional questions as the basis for that outcome. (Exhibits 2-6). *See Bell v. Fludd*, 28 S.C. 313, ___, 5 S.E. 810, 811(1888)(when facing a jurisdictional challenge it “would be not only premature, but improper, for [the court] to consider or determine” the merits); *Riddle v. Reese*, 53 S.C. 198, 31 S.E. 222 (1898); *see also Hardie v. United States*, 367 F.3d 1288, 1290 (Fed. Cir. 2004) (explaining jurisdiction is a threshold issue that a court must resolve before proceeding to the merits).

2, 3, and 1(PRP 15-21), respectively). The multiple grounds for dismissal of this appeal are presented in the alternative in recognition that any one basis would be adequate for dismissal.

BACKGROUND

This appeal arises from a procurement action initiated by the Department on August 12, 2025 upon the advertisement and solicitation for construction services. (Exhibits 1(PRP 16, 62, 79-84) and 2). More specifically, the Department sought professional construction services to substantially renovate the Waddell Mariculture facility in Beaufort County where the Department raises saltwater fish for release to public waters. (Exhibits 1(PRP 16, 66, 68,79-84) and 2). Paragon Inc. of South Carolina, LLC (“Paragon”) submitted a bid in response to the Department’s solicitation. (Exhibits 1(PRP 16, 63, 66) and 2). As part of its bid to the Department, Paragon did not submit any licenses from the South Carolina Department of Labor, Licensing and Regulation in the name of “Paragon Inc. of South Carolina, LLC.” (Exhibit 1(PRP 66)). Instead, it only submitted licenses issued in the name of “Paragon Builders.” (Exhibit 1(PRP 34, 36, 38, 52)). On October 17, 2025, the Department determined that Paragon was “non-responsible,”³ thus ineligible, and provided written notification of that to Paragon. (Exhibit 1 (PRP 66, 68-69)).

Paragon submitted a protest to the CPO asserting it was “responsive”⁴ and generally challenging the Department’s determination of ineligibility. (Exhibit 1 (PRP 24-69)). The CPO rendered a decision on November 19, 2025 reversing the Department’s determination and, in part,

³ The South Carolina Consolidated Procurement Code defines “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 which may be substantiated by past performance.” S.C. Code Ann. § 11-35-1410(8) (1976 & Supp. 2025).

⁴ “Responsive bidder or offeror” is “a person who has submitted a bid or proposal which conforms in all material aspects to the invitation for bids or request for proposals.” S.C. Code Ann. § 11-35-1410(9).

expressing a view that “bidding in its legal name rather than its trade name as it appears on its license is a minor informality per Section 11-35-1520(13).” (Exhibit 1 (PRP 15-21)).

The CPO’s decision was timely appealed to the Panel which reversed the CPO’s decision on the merits and, in part, expressed a view that “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.” (Exhibit 2).

Paragon, the CPO and the Department all filed Motions for Reconsideration which the Panel denied on April 6, 2026. (Exhibits 3 and 5). The Panel’s denial stated, in part: “The Panel determination that the name variation did not affect bidder responsibility, as set forth in its Order dated March 13, 2026, and did not limit the scope of its review. Even if the scope were limited, it would not alter the outcome.” (Exhibit 3).

ARGUMENTS

I. Paragon is statutorily barred from participating in SCDNR’s Procurement Action which deprived the CPO, Panel, and this Court of Jurisdiction.

Paragon failed to comply with a statutory licensing requirement in attempting to submit a bid to the Department. Compliance is a mandatory prerequisite to lawful bids and Paragon’s failure to comply renders Paragon’s bid void *ab initio*.

The statutory provisions that Paragon failed to obey require a contractor to use the exact name that appears on its license when submitting bids. Those provisions include the following:

SECTION 40-11-30. Licensing requirement.

No entity or individual 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 or greater than ten thousand dollars for mechanical contracting without a license issued in accordance with this chapter.

S.C. Code Ann. § 40-11-30(1976 & Supp. 2025)(emphasis added).

SECTION 40-11-200. Unlawful practice; penalty.

(B) It is a violation of this chapter for an awarding authority, owner, contractor, or an agent of an authority, owner, or contractor *to consider a bid*, sign a contract, or allow a contractor to begin work *unless the bidder or contractor has first obtained the licenses required by this chapter*. Bids or contracts submitted by contractors may not be reconsidered or resubmitted to an awarding authority, contractor, or owner if the contractor was not properly licensed at the time the initial bid or contract was submitted.

S.C. Code Ann. § 40-11-200(B)(1976 & Supp. 2025)(emphasis added). “Bid” is defined as “an offer to furnish labor, equipment, or materials or other services regulated by this chapter.” S.C. Code Ann. § 40-11-20(3)(1976 & Supp. 2025).

SECTION 40-11-370. License required to use term "licensed contractor"; engaging in construction under assumed name; enforcement of contract.

(A) It is unlawful to use the term "licensed contractor" or to perform or *offer to perform general or mechanical construction without first obtaining a license as required by this chapter*.

(B) *It is unlawful to engage in construction under a name other than the exact name which appears on the license issued pursuant to this chapter. "Engaging in construction" includes marketing, advertising, using site signs, and submitting contracts.* This requirement does not include advertising on vehicles, which may use an abbreviated version of the license name so long as the advertising is not misleading.

(C) An entity which does not have a valid license as required by this chapter may not bring an action either at law or in equity to enforce the provisions of a contract. *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.*

S.C. Code Ann. § 40-11-370(1976 & Supp. 2025)(emphasis added).

Therefore, the requirement of section 40-11-370 unequivocally requires a contractor to obtain a license in the “exact name” in which it intends to “engage in construction.” *See State v. Bridgers*, 329 S.C. 11, 14, 495 S.E.2d 196, 198 (1997)(“[W]here a statute uses a term that has a

well-recognized meaning in the law, the presumption is that the General Assembly intended to use the term in that sense.”). That term is further explained to include “submitting contracts” and even “marketing, advertising, using site signs.” S.C. Code Ann. § 40-11-370(B). To the extent a different trade name might be used, section 40-11-370(B) only allows such abbreviations for “advertising on vehicles ... so long as the advertising is not misleading.” The importance of this statutory requirement is demonstrated where the General Assembly clearly declared that “[i]t is *unlawful* to engage in construction [or market, advertise, use site signs, or submit contracts] under a name other than the exact name which appears on the license issued pursuant to this chapter.” S.C. Code Ann. §40-11-370(B).⁵ Likewise, a further consequence of a contractor entering “into a contract to engage in construction in a name other than the name that appears on its license” is that the contractor “may not bring an action either at law or in equity to enforce the provisions of the contract.” S.C. Code Ann. §40-11-370(C). Both of these consequences are substantial and demonstrate the legislative intent that contractors obtain and utilize licenses in the exact name specified by SCLLR. There is no ambiguity on that legal mandate.

Turning now to the facts of this case, the Department received a bid from “Paragon Inc. of South Carolina, LLC.” (Exhibit 1 (PRP 66)). Paragon has not provided for the record a contractor’s license issued in the name of “Paragon Inc. of South Carolina, LLC.” The only licenses Paragon provided to the Department are in the name of “Paragon Builders.” (Exhibit 1 (PRP 34, 36, 38, 52, 66)). Therefore, Paragon Inc. of South Carolina, LLC did not hold a license from SCLLR in that name as clearly required by statutory mandate before offering to perform general or mechanical construction. Given the statutory mandate of conducting business in the “exact name” on the

⁵ With respect to this issue, the fact that “Paragon Builders” was cited by SCLLR on August 5, 2025 for “engaging or offering to engage in contracting work or submitting a bid when not properly licensed or while a license was under suspension or revocation” and fined \$500 by SCLLR further demonstrates the importance of this requirement. (Exhibit 1 (PRP 478)).

license, the Department asserts it is Paragon's responsibility to seek and obtain a license from SCLLR in the correct legal name. See generally *Smother's v. United States Fid. & Guar. Co.*, 322 S.C. 207, 210–211, 470 S.E.2d 858, 860 (1996) (“Everyone is presumed to have knowledge of the law and must exercise reasonable care to protect his interests.”); *LaBruce v. City of North Charleston*, 268 S.C. 465, 234 S.E.2d 866 (1977)(“Citizens are charged with knowledge of existing law.”). Paragon's license application provides, in part, immediately above the Licensee / Legal Name field: “[I]ndividual or company listed in this section will be designated as the “License Holder.” You must sign contract for permits, conduct business, and advertise in this name only (See SC Code of Laws Section 40-11-20, 130, [...] 240 and 370(B).” (Exhibit 1 (PRP 40)). Quite simply, the requirements of “exact name” or “this name” reflect an obligation to only use a singular name, not two names or a “doing business as” alternative name. Additionally, the revision application form specifically includes a “name change” action item which demonstrates the remedy for Paragon's exact name deficiency being readily available. (Exhibit 1 (PRP 42-43)). In the absence of doing so, Paragon must bear the consequences of not complying with applicable law. As the Panel previously declared, “the lack of a proper license to do the work solicited in a state contract will always render a bidder nonresponsible.” *In re: Protest of Roofco, Inc.*, Panel Case No. 200-14(I), p. 3 (2001 WL 34058940; or alternatively <https://procurement.sc.gov/legal/legal-panel-orders>).

Finally, to the extent the CPO dismissed Paragon's lack of holding a license in the correct name as a mere informality and minor infraction, stating, “[i]n past years, the Contractors Licensing Board staff have advised the CPOC that this is a minor infraction not affecting a contractor's ability to perform the work.” and characterizing it as being a “minor informality” under section 11-35-1520(13), neither are sufficient legal grounds to overcome the statutory

mandates of sections 40-11-30, 40-11-200 and 40-11-370. (Exhibit 1 (PRP 20-21)). The legislature has mandated that contractors conduct business in the exact name appearing on any license and explained this requirement is to be broadly applied with limited exception. S.C. Code Ann. § 40-11-370(B). The Department is legally barred by section 40-11-200 and S.C. Regs. 19-445.2125(A)(3) from considering the bid from Paragon and a staff opinion of SCLLR cannot nullify those requirements. *See Quail Hill, L.L.C. v. County of Richland*, 387 S.C. 223, 236-38, 692 S.E.2d 499, 506-07 (2010) (finding a governmental entity is not estopped from enforcing its ordinances where its employee gives erroneous information or acts in contradiction to an ordinance). Furthermore, the “minor informalities” exceptions in the Procurement Code simply do not release this obligation. S.C. Code Ann. § 11-35-1520(13). In fact, exception (13) provides:

(13) Minor Informalities and Irregularities in Bids. A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders. The procurement officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the State. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:

...

(1)*Notwithstanding Title 40*, the failure of a bidder to indicate his contractor’s license number or *other evidence of licensure, except that a contract must not be awarded to the bidder unless and until the bidder is properly licensed under the laws of South Carolina.*

S.C. Code Ann. § 11-35-1520(13)(1)(emphasis added). Likewise, the statutory requirement that “Bids or contracts submitted by contractors may not be reconsidered or resubmitted to an awarding authority, contractor, or owner if the contractor was not properly licensed *at the time the initial bid or contract was submitted,*” also neutralizes any notion that the exact name requirement may be shrugged off as close enough. S.C. Code Ann. § 40-11-200(B). Despite the above authorities, the

Panel similarly erred after acknowledging the “name variation” and then ignoring the prohibitions established in sections 40-11-30, 40-11-200 and 40-11-370. (Exhibits 2 and 3).

Therefore, Paragon Inc. of South Carolina, LLC, under sections 40-11-30, 40-11-200, and 40-11-370, was prohibited as a matter of law from bidding on the Department’s solicitation. In the absence of a lawful bid, Paragon had no legal basis for challenging the Department’s rejection of the bid. That failure and statutory barrier deprived the CPO, Panel and this Court of jurisdiction to hear this appeal. *See Chet Adams Co. v. James F. Pedersen Co.*, 307 S.C. 33, 36, 413 S.E.2d 827, 828 (1992) (“Acts by a court as to a matter over which it has no jurisdiction are void.”).

II. Paragon lacks standing to initiate or maintain an appeal of SCDNR’s determination of non-responsibility.

Consistent with the foregoing discussion, the failure of Paragon to comply with statutory licensing requirements may also be treated as a lack of standing upon the express statutory terms of section 40-11-370.

“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). “Standing is ... that concept of justiciability that is concerned with whether a particular person may raise legal arguments or claims.” *Id.* (alteration in original) (internal quotation marks omitted). “It concerns an individual's sufficient interest in the outcome of the litigation to warrant consideration of [the person's] position by a court.” *Id.* (alteration in original) (internal quotation marks omitted). “Standing is a fundamental requirement for instituting an action.” *Brock v. Bennett*, 313 S.C. 513, 519, 443 S.E.2d 409, 412 (Ct.App.1994).

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); *Peoples Fed. Sav. & Loan Ass'n v. Res. Plan. Corp.*, 358 S.C. 460, 477, 596 S.E.2d 51, 60 (2004) (“A threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy.” (quoting *Lennon v. S.C. Coastal Council*, 330 S.C. 414, 415, 498 S.E.2d 906, 906 (Ct. App. 1998))); *Carolina All. for Fair Emp. v. S.C. Dep't of Labor, Licensing, & Reg.*, 337 S.C. 476, 486-87, 523 S.E.2d 795, 800-01 (Ct. App. 1999) (raising the issue of standing sua sponte in a declaratory judgment action and affirming the grant of summary judgment under Rule 56(c) because the appellant lacked standing).

Therefore, again, this appeal should be dismissed on the basis of Paragon not having standing to initiate or maintain the appeal pursuant to unique and express prohibitions in section 40-11-370.

III. Failure to Exhaust Administrative Remedies.

The Department asserts Paragon did not adequately protest the Department's non-responsibility determination and thus failed to exhaust administrative remedies thus depriving the CPO, Panel, and this Court of jurisdiction.

Upon review of the bid submission of Paragon, the Department determined Paragon was non-responsible. (Exhibit 1 (PRP 66, 68, 69)). The term "non-responsible" is a term of art in the context of the South Carolina Consolidated Procurement Code and is not interchangeable with "non-responsive." However, in its October 27, 2025 Notice of Intent to Protest (Exhibit 1 (PRP 54 – 61)) and November 4, 2025 Formal Protest (Exhibit 1 (PRP 24-32)), Paragon consistently asserted it was appealing the Department's decision that Paragon's bid was "non-responsive." (Exhibit 1 (PRP 24, 25, 28, 29, 31, 55, 59)). As addressed more fully herein, Paragon did not properly raise the "non-responsible" issue in a manner by which it can be addressed by this Court because the CPO should not even have considered it.

In the context of the Procurement Code, the terms "responsible" and "responsive" are frequently stated as dual requirements and have specific meanings. For example, "Responsible bidder or offeror" is defined 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 which may be substantiated by past performance." S.C. Code Ann. § 11-35-1410(8). In contrast, "Responsive bidder or offeror" is "a person who has submitted a bid or proposal which conforms in all material aspects to the invitation for bids or request for proposals." S.C. Code Ann. § 11-35-

1410(9). The Department is specifically charged by statute to make a determination of responsibility. S.C. Code Ann. §11-35-1810; 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 December 31, 2025) – 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”).

A bid is only to be awarded to a party that is both responsive and responsible. S.C. Code Ann. § 11-35-1810; *see e.g.* S.C. Code Ann. §11-35-1520(10)(“Unless there is a compelling reason to reject bids as prescribed by regulation of the board, notice of an award or an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids must be given by posting the notice on the date and at a location specified in the invitation for bids.”). Therefore, there is a material legal distinction between challenging responsiveness and responsibility. In this instance, Paragon’s protests pursued the legal theory of responsiveness and did not adequately raise a challenge to the Department’s non-responsibility determination.

Building upon this foundation, the Panel is statutorily mandated to conduct a *de novo* review of a challenged procurement decision. S.C. Code Ann. § 11-35-4410(1)(1976 and Supp. 2025)(“There is created the South Carolina Procurement Review Panel which is charged with the responsibility to review and determine *de novo*: (a) requests for review of written determinations of the chief procurement officers pursuant to Sections 11-35-4210(6), ...); *see generally Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Off.*, 346 S.C. 158, 551

S.E.2d 263 (2001). As such, the Panel is generally disregarding the decision of CPO and making a new decision as to the propriety of the Department's procurement decision. *See generally Nat'l Health Corp. v. S.C. Dep't of Health and Env'tl. Control*, 298 S.C. 373, 378, fn. 1, 380 S.E.2d 841, 844, fn. 1 (Ct.App.1989)(trial de novo is defined as "a new trial or retrial had in which the whole case is tried as if no trial whatsoever had been had in the first instance.")(citation omitted). However, as the South Carolina Court of Appeals recognized in *National Health Corporation*, some administrative reviews are "quasi-de novo, quasi-appellant." *Id.*, 298 S.C. 378, fn. 1, 380 S.E.2d 844, fn. 1; *see also Richards v. Spicer*, ___ S.C. ___, 915 S.E.2d 486, 520 (2025)("the circuit court also ruled that ... the Procurement Code gives appellate review of the CPO's decision to the Procurement Review Panel"); *Milliken and Co. v. S.C. Dept. of Labor*, 275 S.C. 264, 266, 269 S.E.2d 763, 764 (1980)("In our view, administrative review of the issuance of [an OSHA] citation is intended to be essentially appellate in nature: it should be undertaken only upon information which was available to the officer or examiner responsible for issuing the citation in the first place."). Furthermore, the Panel has previously explained that a protestant is limited by section 11-35-4210 to the established issues in its protest letter. *In re: Protest of Volume Services*, Panel Case No. 1994-8, p. 4. (1994 WL 16006483). In discussing this point, Panel Order explained:

Section 11-35-4210 provides the right to protest. Subsections (1) and (2) require a protestant to state its grounds for protest in writing to the CPO within a time limit. Thus, the issues in the case are established in the protest letter. The letter appealing to the Panel cannot add issues. If new issues were allowed to be included in the appeal letter to the Panel, no effect would be given to the requirements of subsection (1) and (2). Although, the Panel hearing is a de novo hearing under Code Section 11-35-441 0(1), it is only new as to evidence. The Panel may allow new evidence to be admitted, but only evidence concerning the established issues.

Id. *See also In re: Appeal by United Way Assoc. of South Carolina, Inc.*, Panel Case No. 2017-2, p. 10 and fn 7(available on <https://procurement.sc.gov/legal/legal-panel-orders>). Therefore, the

Department believes that whether the Panel’s review is framed as an administrative *de novo* review or appellate review, Paragon failed to properly raise the non-responsibility issue for the CPO or Panel to consider.

To initiate a timely protest, Paragon was statutorily required to “set forth both the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.” S.C. Code Ann. § 11-35-4210(2)(b). Here, the Department very clearly gave notice of its non-responsibility determination to Paragon in the October 17, 2025 memorandum (Exhibit 1 (PRP 66)). Thereafter and prior to Paragon submitting its formal protest, the Department stated in its October 30, 2025 memorandum: “Just to clarify, SCDNR deemed Paragon Inc. "Non-Responsible" and not Non-Responsive as noted in their notice of intent to protest.” (Exhibit 1 (PRP 68)). However, in its November 4, 2025 formal protest, Paragon declared the grounds for protest to be:

Paragon protests the Agency’s determination that its bid was non-responsive based on alleged violations of South Carolina Code Sections 40-11-270, 40-11-340, and 40-11-370. The Agency’s determination is erroneous, arbitrary, and contrary to law. Specifically, Paragon contends:

...

Issue: The Agency allegedly found Paragon’s bid non-responsive due to licensing deficiencies.

...

Issue: The Agency may have concerns regarding Paragon’s ability to properly subcontract portions of the work.

...

Issue: The Agency cited Section 40-11-370(B) regarding engaging in construction under a name other than the exact name on the license.

(Exhibit 1 (PRP 25-26)). In its own words, Paragon only challenged the issue of non-responsiveness. Paragon’s protest issues do not identify non-responsibility or the legal standard for such adopted under the Procurement Code. *See* S.C. Code Ann. §11-35-1810; 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 December 31, 2025) – Section 6.11 Determination of Bidder’s Responsibility. Therefore, Paragon failed to meet that statutory standard for stating the grounds for appeal with its initial and final protests as to the non-responsible determination. This flaw is fatal to Paragon’s protest and the continuing appeals to the Panel and this Court.

Under a *de novo* standard, Paragon failed to exhaust a statutory administrative prerequisite to CPO or Panel review. As the United States Supreme Court explained in the *Woodford v. Ngo*:

Because exhaustion requirements are designed to deal with parties who do not want to exhaust, administrative law creates an incentive for these parties to do what they would otherwise prefer not to do, namely, to give the agency a fair and full opportunity to adjudicate their claims. Administrative law does this by requiring proper exhaustion of administrative remedies, which “means using all steps that the agency holds out, and doing so *properly* (so that the agency addresses the issues on the merits).” *Pozo*, 286 F.3d, at 1024 (emphasis in original). This Court has described the doctrine as follows: “[A]s a general rule ... courts should not topple over administrative decisions unless the administrative body not only has erred, *but has erred against objection made at the time appropriate under its practice.*” *United States v. L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 37, 73 S.Ct. 67, 97 L.Ed. 54 (1952) (emphasis added in *Woodford*). See also *Sims v. Apfel*, 530 U.S. 103, 108, 120 S.Ct. 2080, 147 L.Ed.2d 80 (2000); *id.*, at 112, 120 S.Ct. 2080 (O’Connor, J., concurring in part and concurring in judgment) (“On this underlying principle of administrative law, the Court is unanimous”); *id.*, at 114-115, 120 S.Ct. 2080 (BREYER, J., dissenting); *Unemployment Compensation Comm’n of Alaska v. Aragon*, 329 U.S. 143, 155, 67 S.Ct. 245, 91 L.Ed. 136 (1946); *Hormel v. Helvering*, 312 U.S. 552, 556-557, 61 S.Ct. 719, 85 L.Ed. 1037 (1941); 2 K. Davis & R. Pierce, *Administrative Law Treatise* § 15:8, pp. 341-344 (3d ed.1994). Proper exhaustion demands compliance with an agency’s deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings.

Woodford v. Ngo, 548 U.S. 81, 90-92 (2006); *accord Brown v. James*, 389 S.C. 41, 48, 697 S.E.2d 604, 608 (Ct. App. 2010). Furthermore, in administrative law, procedural prerequisites can become

jurisdictional. The United States Court of Appeals for the District of Columbia has explained in addressing exhaustion of administrative remedies under federal administrative law that:

the word “exhaustion” now describes two distinct legal concepts. The first is a judicially created doctrine requiring parties who seek to challenge agency action to exhaust available administrative remedies before bringing their case to court. We will call this doctrine “non-jurisdictional exhaustion.” ...

The second form of exhaustion arises when Congress requires resort to the administrative process as a predicate to judicial review. This “jurisdictional exhaustion” is rooted, not in prudential principles, but in Congress' power to control the jurisdiction of the federal courts. Whether a statute requires exhaustion is purely a question of statutory interpretation.

Avocados Plus Inc. v. Veneman, 370 F.3d 1243, 1247-48 (D.C. Cir. 2004) (internal citations omitted). “[T]he avenue of written protest remains the sole procedure by which a matter is brought before the Panel for consideration.” *Hitachi Data Systems Corp. v. Leatherman*, 309 S.C. 174, 179, 420 S.E.2d 843, 846(1992)(discussing statutory limitations on Panel’s authority); *accord Amisub of S.C., Inc. v. S.C. Dep't of Health & Env't Control*, 403 S.C. 576, 585, 743 S.E.2d 786, 791 (2013)(“The General Assembly has the authority to limit the subject matter jurisdiction of a court it has created; therefore, it can prescribe the parameters of the ALC's powers.”). Applying these principles to the instant matter, the CPO and Panel, as administrative agents outside of the judiciary, are likewise creatures of statute and subject to legislative limitations on jurisdiction. Where Paragon failed to timely raise the issue of non-responsibility pursuant to section 11-35-4210, it cannot maintain a challenge on that issue before the CPO, Panel or this Court.

Alternatively, under an appellate standard, Paragon both failed the statutory prerequisite and did not properly preserve the non-responsibility determination.⁶ As in other appellate matters, the requirements of issue preservation apply in administrative appeals. *See Carson v. South*

⁶ “The appellate court must always take notice of the lack of subject matter jurisdiction.” *Town of Hilton Head Island v. Godwin*, 370 S.C. 221, 223, 634 S.E.2d 59, 60 (Ct.App.2006).

Carolina Dep't of Natural Res., 371 S.C. 114, 120, 638 S.E.2d 45, 48 (2002) (court sitting in appellate capacity may not consider issues not raised or ruled on by administrative agency); *Gatewood v. S.C. Dep't of Corr.*, 416 S.C. 304, 324, 785 S.E.2d 600, 611 (Ct. App. 2016) ("An issue that is not raised to an administrative agency is not preserved for appellate review by the ALC."). Here, Paragon raised responsiveness that, as discussed above, is materially distinct from the non-responsibility determination. To preserve a matter for appellate review, it must both be raised to and ruled upon by the trial court, or here the CPO. Paragon did not adequately raise the non-responsiveness issue to the CPO or Panel.⁷

In summary, under the administrative challenge / appeal framework of the Procurement Code, Paragon did not timely or appropriately raise a challenge to the Department's non-responsibility determination thereby precluding the CPO and Panel from reviewing or modifying the Department's determination. That failure to comply with statutory prerequisites is a jurisdictional defect.

IV. The Department is Statutorily Prohibited from Awarding a Contract to Paragon Rendering this Appeal Moot.

Building upon the prior discussion, Paragon's failure to obtain a license in the exact name of Paragon Inc. of South Carolina, LLC precludes the Department from being able to award the construction job to Paragon. Stated differently, it would be illegal for the Department "to consider a bid, sign a contract, or allow a contractor to begin work" when the contractor has not complied with section 40-11-30, 40-11-200, and 40-11-370. S.C. Code Ann. § 40-11-200(B)(1976 & Supp. 2025). Therefore, Paragon's efforts to prevail will only lead to a dead end where the Department

⁷ To the extent the CPO's decision rules on non-responsibility, the issue was not properly presented by Paragon in compliance with S.C. Code Ann. § 11-35-4210(2) as discussed above and should be deemed void. See *Chet Adams Co. v. James F. Pedersen Co.*, 307 S.C. 33, 36, 413 S.E.2d 827, 828 (1992) ("Acts by a court as to a matter over which it has no jurisdiction are void.").

cannot award or authorize Paragon to begin work. Such an outcome would render this appeal moot. *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."). Therefore, Paragon's challenges to the Department's non-responsibility determination and rejection of Paragon's bid are moot and can have no practical effect.

CONCLUSION

Based on the authorities and arguments set forth above, the Department respectfully requests that the Court grant this Motion to Dismiss and vacate the March 13, 2026 and April 6, 2026 Orders of the South Carolina Procurement Review Panel and the underlying November 19, 2025 Decision of the Chief Procurement Officer.

Respectfully submitted,
s/ Van Whitehead

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South Carolina Department of Natural Resources
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April 25, 2026

Attorneys for the South Carolina Department of
Natural Resources

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

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

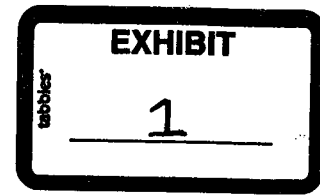
In Re: Haren Construction, Co., Inc.

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

EXHIBITS TO SCDNR MOTION TO DISMISS

- 1) Procurement Review Panel Record – excerpts (references to PRP)
 - a. November 19, 2025 CPO Protest Decision (PRP 15-21)
 - b. Paragon Formal Protest with attachments (PRP 24-69)
 - c. SCDNR Solicitation excerpt (PRP 79-84)
 - d. Citation and Notification of Penalty for General and/or Mechanical Contracting issued to Paragon Builders (PRP478)
- 2) March 13, 2026 Panel Order
- 3) April 6, 2026 Panel Order Denying Motions to Reconsider
- 4) SCDNR Brief
- 5) SCDNR Motion to Reconsider
- 6) SCDNR Response in Opposition to Paragon’s and CPOC’s Motions to Reconsider

Exhibit 1



HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

BRIAN J. GAINES
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES

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CHAIRMAN, SENATE FINANCE COMMITTEE

BRUCE W. BANNISTER
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

Protest Decision

Matter of: Paragon Inc. of South Carolina, LLC

File No.: 2026-004

Posting Date: November 19, 2025

Contracting Entity: South Carolina Department of Natural Resources

Project No.: P24-6052-PG

Description: Beaufort-Waddell Mariculture Maturation Ponds Maintenance - Re-Bid

DIGEST

Protest of Intent to Award on the grounds that the South Carolina Department of Natural Resources (Department) erred by finding a contractor with a Mechanical Contractor's-Plumbing License could not legally perform the water supply and discharge line and water supply tank work of the project granted where licensing law provides otherwise.

AUTHORITY

Per S.C. Code Ann. § 11-35-4210, the Chief Procurement Officer for Construction (CPOC) conducted an administrative review of a protest filed by Paragon Inc. of South Carolina, LLC (Paragon) protesting the Department's intention to award a contract to Haren Construction Co., Inc. (Haren) for rehabilitation of the head tower and rearing ponds M-1 through M-4, and replacement of the yard piping and electrical infrastructure at the Beaufort-Waddell Mariculture Center (the Project). Paragon's protest is attached as Exhibit A. This decision is based on materials in the procurement file and applicable law and precedents.

Protest Decision, page 2
Case No. 2026-004
November 19, 2025

BACKGROUND

On August 12, 2025, the Department published an advertisement for construction services for the Project. [Exhibit B] By the deadline for receipt of bids, the Department received two bids. [Exhibit C] The solicitation included three add alternates. Paragon was low on the base bid and on any combination of the base bid plus add alternates. [Id.]

On its bid, Paragon provided numbers for its contractor's licenses which are shown on the website of the Department of Labor, Licensing and Regulation as Paragon Builder's licenses. Paragon Builders has South Carolina contractor's license with the classifications of General Contractor-Building (BD License), General Contractor Specialty – Nonstructural Renovations (NR License), Mechanical Contractors – Plumbing (PB License), Electrical (EL License), and Packaged Equipment (PK License). [Exhibit D]

After reviewing the scope of work for the Project in the plans and specifications and the Project Architect-Engineer's (A/E) estimate of probable cost, the Department determined that Paragon lacks an appropriate contractor's license to bid the Project as a sole prime contractor.¹ [Exhibit E] The Department determined that Haren has an appropriate contractor's license to bid the project as a sole prime contractor.

On October 20, 2025, the Department posted a notice of its intent to award a contract to Haren for the base bid work of the Project plus the work of alternate one. [Exhibit F] On October 27, 2025, Paragon filed a notice of intent to protest setting forth the general basis of its protest. [Exhibit A] On October 30, 2025, the Department filed a response with the CPOC. [Exhibit G] On November 4, 2025, Paragon filed its formal protest of the Department's intent to award a contract asserting that it was properly licensed to bid the Project as a sole prime contractor.

¹ A contractor is limited to the scope of his license group and classification both in bidding and performing work. S.C. Code Ann. § 40-11-270; *see also* §§ 40-11-30 and 260(A).

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Case No. 2026-004
November 19, 2025

DISCUSSION

A determination of responsibility is required by S.C. Code Ann. §11-35-1810, which states “[r]esponsibility of the bidder or offeror shall be ascertained for each contract let by the State.” A responsibility determination is a determination that the bidder has the ability to perform. *See* S.C. Code Ann. Regs. 19-445.2125(A)(1). Possession of the proper contractor license is an issue of responsibility. *Protest of Brantley Construction Co., Inc.*, Panel Case No. 1999-3 (where the State is investigating the bidder’s ability to perform it is deciding an issue of responsibility); *Protest of Roofco, Inc.*, Panel Case No. 2000-14(I) (“[T]he lack of a proper license to do the work solicited in a state contract will always render a bidder nonresponsible.”); *see also* S.C. Code Ann. § 40-11-200(B) (“It is a violation of this chapter for an awarding authority ... to consider a bid ... unless the bidder has first obtained the licenses required by this chapter. Bids or contracts submitted by contractors may not be reconsidered or resubmitted to an awarding authority ... if the contractor was not properly licensed at the time the initial bid or contract was submitted.”).

A procurement officer’s determination of nonresponsibility is final and conclusive unless it is “clearly erroneous, arbitrary, capricious, or contrary to law.”² S.C. Code Ann. § 11-35-2410(A). To prevail, the protestant must prove the nonresponsibility determination is clearly erroneous, arbitrary, capricious, or contrary to law. *Protest of Brantley Construction Co., Inc.*, Panel Case No. 1999-3. Where the Department’s decision has a rational basis in law and fact, the CPOC will not, and indeed cannot, substitute his opinion for that of the Department’s.

The Department structured the solicitation and bid documents to seek bids for a sole prime contractor to construct the Project. A prime contractor “is an entity which contracts directly with an owner to perform general or mechanical construction.” S.C. Code Ann. § 40-11-20(20). A sole prime contractor is “the prime contractor for a project on which there is only one prime contractor.” S.C. Code Ann. § 40-11-20(24). A prime contractor may only bid and perform work within the scope of its license(s). S.C. Code Ann. § 40-11-270. However, a sole prime contractor

² The word “clearly” modifies the word “erroneous” but not the words “contrary to law.”

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Case No. 2026-004
November 19, 2025

may offer to perform work outside the scope of its license provided a certain percentage of the work falls within the scope of its license.³ In this regard, S.C. Code Ann. § 40-11-340 states:

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.

The Contractor's Licensing Laws define the total cost of construction as:

[T]he actual cost incurred by the owner, all contractors, subcontractors, and other parties for labor, material, equipment, profit, and incidental expenses for the entire project. This does not include the cost of design services unless those services are included in a construction contract.

S.C. Code Ann. § 40-11-20(23)

Paragon claims that using its bid, 13% of the work of the Project falls under its BD License, 19% falls under its EL License, and 53% falls under its PB License. While the CPOC does not believe that any of the work of the Project falls under Paragon's BD license since the Project does not involve the construction or renovation of a building, the CPOC need not decide that issue in this case. The controlling issue is whether the Department's determination that more than 51% of the work required a General Contractors-Public Utility license with a Water and Sewer Lines subclassification (WL License) to the exclusion of a PB license, was "clearly erroneous, arbitrary, capricious, or contrary to law."

This Project involves work on concrete water storage tanks, water distribution lines to distribute water to fish maturation ponds and drain lines from the ponds. All the work is on the Department's property and none of the work is to provided water and sewer service to the public.

Section 40-11-410(3)(c) addresses the scope of a WL License stating:

³ A sole prime contractor must subcontract any work outside the scope of its license(s).

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Case No. 2026-004
November 19, 2025

"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.

The primary focus of this license is public utility water and sewer service lines within the utility right-of-way or easement. However, it does not preclude water line work on property that is not within the right-of-way unless it is a service line to a residential structure.⁴ This Project does not involve a residential structure.

Section 40-11-410(5)(f) addresses the scope of a PB License stating:

"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

⁴ It seems odd that the statute singles out residential structures as opposed to other structures such as commercial structures.

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Case No. 2026-004
November 19, 2025

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.

The primary focus of this license is water and sewer service to commercial, residential, and other type facilities. A licensee with a PB license may not do water and sanitary piping within a utility right-of-way or easement but only “within property lines.” A licensee with a PB license may also work on water supply tanks within property lines.

Neither WL License nor the PB License appears to contemplate water and drainage line work of the type on this project.⁵ Neither expressly excludes such work and both incorporate language that seems to include such work. Therefore, the CPO finds that the language of both allow the licensee to do the water supply tank and line work of this project as well as the drainage line work.

Paragon also protests the Department's determination that Paragon was nonresponsible because it bid in the name of Paragon Inc. of South Carolina, LLC rather than the exact name appearing on its license – Paragon Builders. The Department places its reliance on Section 40-11-370(B) which states:

It is unlawful to engage in construction under a name other than the exact name which appears on the license issued pursuant to this chapter.

However, unlike other provisions in the licensing law, a violation of this Section is not a bar to the contractor performing the work on which they bid. In years past, the Contractors Licensing Board staff have advised the CPOC that this is a minor infraction not affecting a contractor's ability to perform the work. Moreover, Paragon Inc. of South Carolina, LLC, does appear on

⁵ While the scope of both licenses is clear when the work involves traditional utility services and water distribution and sanitary sewage collection for human occupied structures, the scope of each becomes murky where the work is not clearly either. The Department took reasonable steps to determine the applicable licenses when faced with the confusing language of the licensing law – it reached out to the Contractor's Licensing Board which gave an indefinite answer. The process of obtaining a definitive answer from the Board requires submitting the question to the Board at a quarterly meeting, a process that does not accommodate a project construction schedule.

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Case No. 2026-004
November 19, 2025

Paragon's license application as its legal name and Paragon Builders as its trade name. Additionally, Paragon provided its license number with its bid clearly identifying it as Paragon Builders. At the most, Paragon's bidding in its legal name rather than its trade name as it appears on its license is a minor informality per Section 11-35-1520(13).

DECISION

Based on the foregoing, the CPOC grants Paragon's protest and remands this matter back to the Department to proceed in accordance with the Procurement Code.



John St. C. White
Chief Procurement Officer

Columbia, South Carolina

Exhibit A

FORMAL PROTEST

Date: November 4, 2025

TO: Chief Procurement Officer Office of State Engineer Construction Office South Carolina
Department of Natural Resources Email: protest-ose@mrnm.sc.gov Physical Address: 1201
Main Street, Suite 600, Columbia, SC 29201

FROM: Paragon Inc. of South Carolina, LLC

2874 Columbia Road NE Orangeburg, SC 29118-1902 Telephone: (803) 534-1900 Email:
eric@paragonbuilderssc.com Attention: Eric Byrd, Vice President

RE: Formal Protest of Award Decision

Project Name: Beaufort-Waddell Mariculture Maturation Ponds Maintenance - Re-Bid Project
Number: P24-6052-PG **Award Notice Posted:** October 20, 2025

I. NOTICE AND TIMELINESS

Pursuant to South Carolina Code Section 11-35-4210, Paragon Inc. of South Carolina, LLC ("Paragon" or "Protester") hereby submits this Formal Protest of the South Carolina Department of Natural Resources' ("SCDNR" or "Agency") decision to deem Paragon's bid non-responsive and to award the above-referenced contract to Haren Construction Co. Inc.

This Formal Protest is timely submitted within fifteen (15) business days of the October 20, 2025, award notice posting, as required by Section 11-35-4210. A Notice of Intent to Protest was timely filed on October 27, 2025.

II. INTERESTED PARTY INFORMATION

Protester: Paragon Inc. of South Carolina, LLC (doing business as "Paragon Builders")

SC Contractor's License Numbers: CLG.100190, CLM.111292

Classification(s) & Limits: Building BD5, Plumbing PB5, Electrical EL5

Contact Person: Eric Byrd, Vice President 2874 Columbia Road NE Orangeburg, SC 29118-1902 Telephone: (803) 534-1900 Email: eric@paragonbuilderssc.com

Legal Counsel: James M. Griffin, Esquire Griffin Humphries LLC PO Box 999 Columbia, SC 29202 Telephone: 803-744-0800 Email: jgriffin@griffinhumphries.com

III. PROCUREMENT INFORMATION

Awarding Agency: South Carolina Department of Natural Resources **Project:** Beaufort-Waddell Mariculture Maturation Ponds Maintenance - Re-Bid **Project Number:** P24-6052-PG
Bid Opening Date: September 23, 2025 **Award Notice Date:** October 20, 2025 **Intended Awardee:** Haren Construction Co. Inc. **Award Amount:** \$6,207,000.00

IV. PARAGON'S BID INFORMATION

Legal Entity Name: Paragon Inc. of South Carolina, LLC **Trade/DBA Name:** Paragon Builders
Business Address: 2874 Columbia Road, Orangeburg, SC (Orangeburg County) **Federal Tax ID:** 58-2486021

Bid Amounts:

- Base Bid Amount: \$5,323,800.00
- Alternate #1: \$533,600.00
- Alternate #2: \$568,200.00
- Alternate #3: \$573,350.00

Status: Deemed "Non-Responsive" by Agency

V. GROUNDS FOR PROTEST

Paragon protests the Agency's determination that its bid was non-responsive based on alleged violations of South Carolina Code Sections 40-11-270, 40-11-340, and 40-11-370. The Agency's determination is erroneous, arbitrary, and contrary to law. Specifically, Paragon contends:

A. Compliance with Section 40-11-270 (License Requirements)

Issue: The Agency allegedly found Paragon's bid non-responsive due to licensing deficiencies.

Paragon's Position:

Paragon holds all licenses necessary to perform the work as bid:

1. **General Contractor License CLG.100190** - authorizes Building-BD5 and Nonstructural Renovation-NR5 work with the following group limitations:
 - Group #5: Unlimited
 - Expiration: 10/31/2026
2. **Mechanical Contractor License CLM.111292** - authorizes Packaged Equipment-PK5, Plumbing-PB5, and Electrical-EL5 work with the following group limitations:
 - Group #5: Unlimited
 - Expiration: 10/31/2027

The work components of this project include:

- **Building work (BD5)** - covered by General Contractor License CLG.100190 at 13% of Total Project
- **Plumbing work (PB5)** - covered by Mechanical Contractor License CLM.111292 at 53% of total project
- **Electrical work (EL5)** - covered by Mechanical Contractor License CLM.111292 at 19% of total project
- **Pond liner work (15%)** - requires no specific license; Paragon will utilize its Building classification or engage appropriately licensed subcontractors as needed

Paragon's total bid of \$5,857,400 (including alternate #1) falls well within the unlimited group limitations of both licenses.

Supporting Documentation: See Exhibits A (General Contractor License CLG.100190) and B (Mechanical Contractor License CLM.111292).

B. Compliance with Section 40-11-340 (Subcontracting)

Issue: The Agency may have concerns regarding Paragon's ability to properly subcontract portions of the work.

Paragon's Position:

Paragon's licensing structure fully authorizes it to self-perform the major components of this work or to engage licensed subcontractors for specialized portions. Section 40-11-340 permits licensed general contractors to subcontract work to appropriately licensed specialty contractors. Paragon's approach is entirely consistent with this statutory framework and standard industry practice.

For the pond liner work, which represents 15% of the project and requires no specific contractor license under South Carolina law, Paragon may either:

- Perform the work under its Building-BD5 classification, or
- Engage appropriately licensed subcontractors as needed

This flexibility is expressly contemplated by South Carolina's contractor licensing statutes and regulations.

C. Compliance with Section 40-11-370 (Business Name)

Issue: The Agency cited Section 40-11-370(B) regarding engaging in construction under a name other than the exact name on the license.

Paragon's Position:

Paragon's bid was submitted under "Paragon Inc. of South Carolina, LLC," which is the exact legal name of the business entity and matches the Licensee/Legal Name on Paragon's contractor license application to the South Carolina Department of Labor, Licensing and Regulation (LLR).

Critical Distinction: While LLR issued the physical license documents under Paragon's trade name "Paragon Builders," the underlying legal entity holding both licenses is correctly identified as "Paragon Inc. of South Carolina, LLC." This is confirmed by:

1. **License Application (DOC 165)** - submitted in the name of "Paragon Inc. of South Carolina, LLC" with DBA "Paragon Builders" (See Exhibit C)
2. **License Records** - Both licenses (CLG.100190 and CLM.111292) are legally held by and issued to Paragon Inc. of South Carolina, LLC, even though the physical license certificates display the trade name
3. **Bid Submission** - Paragon's bid used the exact legal entity name that holds the licenses

Any alleged discrepancy between the legal entity name and the trade name displayed on the physical license certificates is a secondary, administrative matter that does not warrant bid rejection, particularly when:

- The entity is properly identified in the bid documents
- All license numbers are correctly provided
- The qualifying party is properly designated
- There is no indication of fraud, misrepresentation, or attempt to circumvent licensing requirements

Section 40-11-370(B) is intended to prevent unlicensed entities from fraudulently conducting business under someone else's license or misrepresenting their licensed status. That concern is wholly absent here. Paragon is the properly licensed entity, correctly identified itself, and submitted accurate license information.

The Agency's interpretation would improperly elevate form over substance and penalize a contractor for a ministerial variance between the legal entity name on its application and the trade name on its license certificate—a variance created by LLR's own administrative practices, not by any action or omission of Paragon.

D. Statutory Construction and Legislative Intent

South Carolina's contractor licensing statutes are designed to:

1. Protect the public by ensuring that construction work is performed by qualified, licensed contractors
2. Establish minimum standards for competency and financial responsibility
3. Prevent fraud and misrepresentation in the construction industry

Paragon fully satisfies each of these objectives. The Agency's restrictive interpretation would:

- **Improperly exclude legitimate plumbing work from the statutory scope** - contrary to the plain meaning of Section 40-11-410(5)(f) defining "plumbing" to include water distribution piping
- **Create uncertainty for contractors bidding on projects involving water piping systems on private property** - discouraging competition
- **Penalize contractors for administrative variances** between legal entity names and trade names on license certificates, even when the contractor is properly licensed and identified

VI. PREJUDICE TO PARAGON

Paragon will suffer substantial and irreparable prejudice if this protest is not granted:

1. Financial Harm

Paragon submitted the lowest responsible bid at \$5,857,400 (base bid plus alternate #1). The difference between Paragon's total bid and the intended award amount of \$6,207,000 is **\$349,600 more** than Paragon's total bid. This represents a significant financial loss to both Paragon and the State of South Carolina.

2. Loss of Business Opportunity

Paragon is a qualified, properly licensed contractor capable of performing this work in accordance with all applicable laws and regulations. Denying Paragon this contract opportunity based on erroneous legal interpretations unjustly deprives Paragon of legitimate business.

3. Reputational Harm

A determination of "non-responsiveness" carries significant negative implications for Paragon's professional reputation and may affect future bidding opportunities, despite Paragon's full compliance with all licensing requirements.

4. Competitive Disadvantage

If the Agency's restrictive interpretation of the Plumbing license definition stands, it would create uncertainty for contractors bidding on similar projects involving water piping systems on private property, potentially discouraging competition and increasing costs to public agencies.

VII. RELIEF REQUESTED

Paragon respectfully requests that the Chief Procurement Officer:

1. **Reverse** the determination that Paragon's bid is non-responsive;
2. **Find** that Paragon's Plumbing license (PB5) properly covers the yard piping installation work as defined in Section 40-11-410(5)(f);

3. **Find** that Paragon's bid was submitted in the proper legal name "Paragon Inc. of South Carolina, LLC," which is the legal entity that holds both contractor licenses CLG.100190 and CLM.111292;
4. **Find** that Paragon meets all requirements of Sections 40-11-270, 40-11-340, and 40-11-370;
5. **Determine** that Paragon submitted the lowest responsive and responsible bid; and
6. **Award** the contract to Paragon Inc. of South Carolina, LLC.

VIII. REQUEST FOR DOCUMENTS

Pursuant to Section 11-35-4210 and established protest procedures, Paragon requests access to the following documents within five (5) business days:

1. Complete bid tabulation showing all bids received
2. All documentation related to the responsiveness determination for Paragon's bid, including:
 - o Internal memoranda
 - o Email communications
 - o Evaluation notes
 - o Legal analysis or opinions
3. All documentation related to the responsiveness determination for the two other bidders (Haren Construction and BRW Construction)
4. Any communications within SCDNR or between other South Carolina State Agencies, legal counsel, or personnel regarding license classification interpretation for this project
5. Any legal opinions or guidance sought regarding the plumbing license scope under Section 40-11-410(5)(f)
6. Haren Construction and BRW Construction's license documentation and classifications
7. Any protest or inquiry submitted by any other bidder
8. Complete bid documents submitted by the two other bidders, including copies of sealed bid envelopes
9. All communications between SCDNR and LLR regarding licensing requirements for this project
10. Any determinations, rulings, or guidance from LLR regarding whether plumbing licenses cover yard piping installation work

IX. LEGAL ARGUMENT

A. South Carolina's Competitive Bidding Statutes Favor Acceptance of Low Bids

South Carolina law strongly favors competitive bidding and acceptance of the lowest responsive and responsible bid. The South Carolina Consolidated Procurement Code requires that "[a]n award shall be made with reasonable promptness by written notice to that responsible bidder whose bid will be most advantageous to the State." S.C. Code Ann. § 11-35-1520(5).

A bid should be deemed "non-responsive" only when there is a material deviation from the solicitation requirements that gives the bidder an unfair competitive advantage or otherwise compromises the integrity of the competitive bidding process. Minor irregularities or technicalities that do not affect the substance of the bid should be waived.

B. Paragon's Licenses Authorize All Work Contemplated by the Project

The plain language of Section 40-11-410(5)(f) defines "Plumbing" which includes the installation, replacement, alteration, and repair of all plumbing...when performed solely within property lines...and the installation, alteration, and repair of all piping, fixtures, and appliances, relating to water supply." This definition clearly encompasses the water distribution work in this project, which involves installation of piping systems for mariculture ponds.

The Agency's apparent interpretation—that plumbing licenses do not cover any piping work outside building walls on private property—is:

1. **Contrary to the statute's plain language**, which specifically addresses and includes water distribution piping
2. **Internally inconsistent**, as it would render the phrase "installation...of all piping, fixtures, and appliances relating to water supply" meaningless if all outside piping were categorically excluded
3. **Inconsistent with industry practice** and the reasonable expectations of licensed plumbing contractors
4. **Contrary to legislative intent** to establish clear scope boundaries for licensed trades

Moreover, Paragon's General Contractor license (Building-BD5) provides additional authority to perform this work or to engage appropriately licensed subcontractors.

C. The Business Name Issue Does Not Warrant Bid Rejection

Section 40-11-370(B) states: "No person may engage in the business of contracting in a name other than that shown on the license unless the name is properly registered pursuant to applicable law."

Here, Paragon's bid was submitted in the name "Paragon Inc. of South Carolina, LLC"—the exact legal entity name that:

- Holds both contractor licenses
- Is shown on the license application submitted to LLR
- Is properly registered with the South Carolina Secretary of State

The fact that LLR's physical license certificates display Paragon's trade name "Paragon Builders" rather than the legal entity name is an administrative matter within LLR's control, not Paragon's. Paragon cannot be penalized for LLR's administrative practices.

Section 40-11-370(B) is intended to prevent fraud and misrepresentation—situations where an unlicensed entity attempts to operate under a licensed contractor's name, or where a contractor misrepresents its identity to circumvent licensing requirements. Neither situation exists here.

Courts consistently hold that procurement statutes should be construed to promote competition and achieve the best value for public agencies, not to exclude qualified bidders based on technical irregularities that do not affect the substance of the procurement.

D. Applicable Legal Standards

South Carolina courts have established that:

1. **Procurement regulations should be construed liberally to favor competition** and should not be used to exclude responsible bidders except where necessary to protect the integrity of the procurement process
2. **Substantial compliance is sufficient** where strict compliance would serve no meaningful purpose and the public interest is not compromised
3. **Minor irregularities or immaterial variances** in bids should be waived when they do not provide a competitive advantage or prejudice other bidders
4. **Administrative interpretations that contradict statutory language** or frustrate legislative intent are not entitled to deference

E. Public Policy Considerations

Awarding this contract to Paragon serves important public policy objectives:

1. **Fiscal Responsibility:** Paragon submitted the lowest qualified bid, saving South Carolina taxpayers \$349,600
2. **Competitive Procurement:** Rejecting Paragon's bid based on erroneous legal interpretations discourages competition and increases costs
3. **Fair Treatment of Qualified Contractors:** Paragon holds all necessary licenses and has demonstrated its qualifications; the Agency's interpretation imposes arbitrary barriers to participation
4. **Consistency and Predictability:** Contractors need clear, consistent rules regarding licensing requirements; the Agency's restrictive interpretation creates uncertainty

X. CONCLUSION

Paragon Inc. of South Carolina, LLC is a fully qualified, properly licensed contractor that submitted the lowest responsible bid for this project. The Agency's determination of non-responsiveness is based on erroneous interpretations of South Carolina's contractor licensing statutes that contradict the plain language of those statutes and frustrate their intended purpose.

Paragon respectfully requests that this protest be granted, that Paragon's bid be deemed responsive and responsible, and that the contract be awarded to Paragon as the lowest qualified bidder.

XI. CONSENT TO ELECTRONIC COMMUNICATIONS

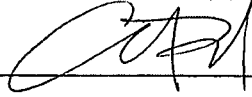
By submitting this Formal Protest to protest-ose@mrrm.sc.gov, Paragon (and any person acting on Paragon's behalf) consents to receive communications regarding this protest (and any related protests) at the email address of Paragon's legal counsel, James M. Griffin at jgriffin@griffinhumphries.com with copies to eric@paragonbuilderssc.com.

XII. CERTIFICATION

The undersigned certifies that the statements contained in this Formal Protest are true and accurate to the best of knowledge and belief.

Respectfully submitted this 4th day of November, 2025.

PARAGON INC. OF SOUTH CAROLINA, LLC

By:  Eric Byrd, Vice President

2874 Columbia Road NE Orangeburg, SC 29118-1902 Telephone: (803) 534-1900 Email: eric@paragonbuilderssc.com

ATTORNEY FOR PROTESTER:

James M. Griffin, Esquire Griffin Humphries LLC PO Box 999 Columbia, SC 29202 Telephone: 803-744-0800 Email: jgriffin@griffinhumphries.com

EXHIBITS

Exhibit A: General Contractor License CLG.100190

Exhibit B: Mechanical Contractor License CLM.111292

Exhibit C: Contractor License Application (DOC 165) showing Paragon Inc. of South Carolina, LLC as Licensee/Legal Name with DBA Paragon Builders

Exhibit D: Notice of Intent to Protest (filed October 27, 2025)

Ex. A

Paragon Builders General Contractor License
Expiration Date 10-31-2026

*** It is at the discretion of this licensee to designate any employee or their company to pull permits and conduct business in their behalf. ***

*** THIS LICENSE EXPIRES ON 10/31/2026 ***

VERIFY the QUALIFYING PARTY ("Qualifier") name(s) on this license is accurate. If a Qualifier ceases to serve this license, you must notify the board in writing (mail or email) within 15 business days for your license to remain Active. Failure to notify the board of a qualifier loss will result in immediate license cancellation and disciplinary action.

BOTH PARTS OF THIS POCKETCARD MUST BE PRESENTED TO CONDUCT BUSINESS AT ALL TIMES. DO NOT TEAR CARD IN HALF.

35
PARAGON BUILDERS
PO BOX 2058
ORANGEBURG SC 29116-2058

LICENSE#: CLG.100190

South Carolina Department of Labor, Licensing and Regulation
Contractor's Licensing Board
GENERAL CONTRACTOR

PARAGON BUILDERS
2874 COLUMBIA ROAD
ORANGEBURG SC 29118-1902

licensed to practice in the 2-letter Classification(s) and Group# listed below:

Building-BD5, Nonstructural Renovation-NR5

INITIAL ISSUE DATE: 01/07/1999

LICENSE EXPIRATION DATE: 10/31/2026

(If above license has "Limited Building-LB", work is limited to 3 stories in height)

GENERAL CONTRACTOR

LICENSE#: CLG.100190

EXPIRATION DATE: 10/31/2026

PARAGON BUILDERS

Qualifier(s): **DEQUINCEY S EDWARDS, STEPHON EDWARDS**

Licensee's Group# Limitation Per Job/Project (i.e., BD2 = Group 2):

Group #1 - \$100,000 Group #2 - \$400,000 Group #3 - \$1,000,000

Group #4 - \$3,000,000 Group #5 - \$Unlimited

M. Monica W. Fulton
Board Executive

WARNING - THIS DOCUMENT CONTAINS SECURITY FEATURES LISTED ON REVERSE SIDE

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
CONTRACTOR'S LICENSING BOARD**

LICENSE#: CLG.100190

PARAGON BUILDERS

2874 COLUMBIA ROAD
ORANGEBURG SC 29118-1902

Has been qualified by the laws of the State of South Carolina and is duly entitled to practice as a:

GENERAL CONTRACTOR

for each Classification and Group Limitation listed below:

(If this license has a "Limited Building-LB" classification, work is limited to 3 stories in height)

Building-BD5, Nonstructural Renovation-NR5

LICENSE NUMBER: CLG.100190

Initial License Date: 01/07/1999

EXPIRATION DATE: 10/31/2026

Qualifying Party(s): **DEQUINCEY S EDWARDS, STEPHON EDWARDS**

Group Limitation Per Job (i.e., BD2 = Group 2):

Group #1 - \$100,000 Group #4 - \$3,000,000

Group #2 - \$400,000 Group #5 - \$Unlimited

Group #3 - \$1,000,000

M. Monica W. Fulton
Board Executive

*** It is at the discretion of this licensee to designate any employee of their company to pull permits and conduct business on their behalf. ***

Ex. B

Paragon Builders Mechanical Contractor License
Expiration Date 10-31-2025

*** THIS LICENSE EXPIRES ON 10/31/2025 ***

The QUALIFYING PARTY ("Qualifier") name(s) on this license is accurate. If a Qualifier ceases to serve this license, you must notify the board in writing (mail or em in 15 business days for your license to remain Active. Failure to notify the board of a qualifier loss will result in immediate license cancellation and disciplinary action

THIS IS A 2-PART POCKETCARD - FOLD CARD IN HALF - DO NOT CUT OR TEAR CARD IN HALF
BOTH PARTS OF THIS POCKETCARD MUST BE PRESENTED TO CONDUCT BUSINESS AT ALL TIMES

LICENSE#: CLM.111292

CCG 1055888

South Carolina Department of Labor, Licensing and Regulation
Contractor's Licensing Board

MECHANICAL CONTRACTOR

PARAGON BUILDERS

2874 COLUMBIA ROAD
ORANGEBURG SC 29118-1902

Licensed to practice in the 2-letter Classification(s) and Group# listed below:

PK5, PB5, EL5, STEPHON EDWARDS, ERIC BYRD, 121268, -74603

LICENSE EXPIRATION DATE: 10/31/2025

(If this license has a "Limited Building-LB", work is limited to 3 stories in height)

MECHANICAL CONTRACTOR 1055888

LICENSE#: CLM.111292 - EXPIRES: 10/31/2025
PARAGON BUILDERS

Initial Issue Date: 04/28/2010 - Expiration Date: 10/31/2025
Qualifier(s): JONATHAN FERGUSON, PAUL R GILLETTE, RODGERS
HAMPTON

Group Limitations Per Job/Project (i.e. AC2 = Group 2):

Group #1 - \$35,000 Group #2 - \$100,000
Group #3 - \$200,000 Group #4 - \$400,000
Group #5 - \$Unlimited

M. Veronica W. Fulton
Board Executive

*** It is at the discretion of this licensee to designate any employee of their company to pull permits and conduct business in their behalf.***

DO NOT PEEL CARD FROM A CORNER

To remove card from backing

- Bend form back from the outside edge
- Pull card off backing

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
CONTRACTOR'S LICENSING BOARD

CCG 1055888

LICENSE#: CLM.111292

LICENSE#: CLM.111292

PARAGON BUILDERS
2874 COLUMBIA ROAD
ORANGEBURG SC 29118-1902

Has been qualified by the laws of the State of South Carolina and is duly entitled to practice as a:

MECHANICAL CONTRACTOR

for each Classification and Group Limitation listed below:

PK5, PB5, EL5, STEPHON EDWARDS, ERIC BYRD, 121268, -74603

LICENSE NUMBER:CLM.111292

Initial License Date:04/28/2010

EXPIRATION DATE:10/31/2025

Group Limitations Per Job (i.e. AC2 = Group 2):

Group #1 - \$35,000 Group #3 - \$200,000
Group #2 - \$100,000 Group #4 - \$400,000
Group #5 - \$Unlimited

M. Veronica W. Fulton
Board Executive

Qualifying Party(s): JONATHAN FERGUSON, PAUL R GILLETTE, RODGERS HAMPTON

It is at the discretion of this licensee to designate any employee of their company to pull permits and conduct business in their behalf. ***

**Paragon Builders Mechanical Contractor License
Expiration Date 10-31-2027**

*** It is at the discretion of this licensee to designate any employee of their company to pull permits and conduct business in their behalf.***

*** THIS LICENSE EXPIRES ON 10/31/2027 ***

VERIFY the **QUALIFYING PARTY** ("Qualifier") name(s) on this license is accurate. If a Qualifier ceases to serve this license, you must notify the board in writing (mail or email) within **15 business days** for your license to remain **Active**. Failure to notify the board of a qualifier loss will result in immediate **license cancellation** and disciplinary action.

BOTH PARTS OF THIS POCKETCARD MUST BE PRESENTED TO CONDUCT BUSINESS AT ALL TIMES. DO NOT TEAR CARD IN HALF.

35
PARAGON BUILDERS
PO BOX 2058
ORANGEBURG SC 29116-2058

LICENSE#: CLM.111292

South Carolina Department of Labor, Licensing and Regulation
Contractor's Licensing Board
MECHANICAL CONTRACTOR

PARAGON BUILDERS
2874 COLUMBIA ROAD
ORANGEBURG SC 29118-1902

licensed to practice in the 2-letter Classification(s) and Group# listed below:
Packaged Equipment-PK5, Plumbing-PB5, Electrical-EL5

INITIAL ISSUE DATE: 04/28/2010
LICENSE EXPIRATION DATE: 10/31/2027

MECHANICAL CONTRACTOR

LICENSE#: CLM.111292

EXPIRATION DATE: 10/31/2027

PARAGON BUILDERS

Qualifier(s): JONATHAN FERGUSON, PAUL R GILLETTE, RODGERS HAMPTON

Licensee's Group# Limitation Per Job/Project (i.e., EL2 = Group 2):

Group #1 - \$35,000 Group #2 - \$100,000 Group #3 - \$200,000
Group #4 - \$400,000 Group #5 - \$Unlimited

Nathan J. Gillette
President

WARNING - THIS DOCUMENT CONTAINS SECURITY FEATURES LISTED ON REVERSE SIDE

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
CONTRACTOR'S LICENSING BOARD

LICENSE#: CLM.111292

PARAGON BUILDERS

2874 COLUMBIA ROAD
ORANGEBURG SC 29118-1902

Has been qualified by the laws of the State of South Carolina and is duly entitled to practice as a:

MECHANICAL CONTRACTOR

for each Classification and Group Limitation listed below:

Packaged Equipment-PK5, Plumbing-PB5, Electrical-EL5

LICENSE NUMBER: CLM.111292

Initial License Date: 04/28/2010

EXPIRATION DATE: 10/31/2027

Qualifying Party(s): JONATHAN FERGUSON, PAUL R GILLETTE, RODGERS HAMPTON

Group Limitation Per Job (i.e., EL2 = Group 2):

Group #1 - \$35,000 Group #2 - \$100,000
Group #3 - \$200,000 Group #4 - \$400,000
Group #5 - \$Unlimited

Nathan J. Gillette
President

*** It is at the discretion of this licensee to designate any employee of their company to pull permits and conduct business on their behalf. ***

Ex. C

Mechanical Contractor's Application

APPLICATION FOR LICENSURE (DOC 165)

This application form is used for:

- New license, including a business with a new name and Federal ID number, or a new type of business (Corporation, LLC, LLP, etc.)
- Reinstate a lapsed license.

Do not use this application if you need to revise a license, such as increasing the license group limitation, or name change with the same Federal ID number and type of business you need to complete the General and Mechanical Contractor Revision Application (Doc 180).

Submit the following with your application:

- The license fee is \$350. Fees are non-refundable. License fee in the form of a check or money order made payable to SCCLB. A returned check fee of up to \$30, or an amount specified by law, may be assessed on all returned funds. **NO CASH IS ACCEPTED.**
- Verification to conduct business in SC from the SC Secretary of State (not required for a sole proprietorship).
- Financial Statement or Surety Bond supporting the requested group limitation.
- Completed POP/OP Initial Application(s) (Doc 168) for individuals who are not currently certified by the Board or have a certification that has been inactive for more than four years or completed POP/OP Revision Application (Doc 181) to add an active POP/OP certification or a certification that has been inactive for less than four years.

Completed applications may be submitted to the Board at PO Box 11329, Columbia, SC 29211, by email to act.clb@lr.sc.gov, or delivered in person at 110 Centerview Dr., Columbia, SC 29210.

APPLICANT INFORMATION

Individual or company listed in this section will be designated as the License Holder. You must sign contracts, for permits, conduct business, and advertise in this name only (See SC Code of Laws Section 40-11-20, 130-240 and 370(B)).

License/Legal Name: Paragon Inc. of South Carolina, LLC

Doing Business As (DBA) Name: Paragon Builders

Business Phone: 803-534-1900

Email (required): eric@paragonbuilders.com

Business Address: 2874 Columbia Rd, Orangeburg SC, Orangeburg

Physical street address, City, State, and Zip Code

Home Address (if different from above): Same

Website: www.paragonbuilders.com

Is the licensee/entity listed above a current or previous SC Contractor? YES NO

If yes, license number: _____

Is this a reinstatement application? YES NO

Is this a name change or form of business change? YES NO

Mechanical Contractor's Revision Application



South Carolina Department of Labor, Licensing and Regulation
South Carolina Contractor's Licensing Board

110 Centerview Dr. • Columbia • SC • 29210

P.O. Box 11329 • Columbia • SC • 29211

Phone: 803-896-4686 • Contact:CLB@llr.sc.gov • Fax: 803-896-4814

llr.sc.gov/clb

**GENERAL AND MECHANICAL CONTRACTOR
 REVISION APPLICATION (DOC. 180)**

NOTE: Find your specific instructions on the previous page (i.e. "Change of Licensing Group", "Change of Business Name or Address", etc.). The instructions will let you know which sections of the application you need to complete. You may disregard all other sections of the application not mentioned in your instructions. **All applicants must complete sections A, E and F.**

Completed applications may be submitted to the Board at PO Box 11329, Columbia, SC 29211, by email to contact.clb@llr.sc.gov, or delivered in person at 110 Centerview Dr., Columbia, SC 29210.

REQUESTED ACTION

Indicate the reason for your application below. All applicants must complete the applicable sections and attestation at the end of this application.

Name Change Address Change Owner/Officer Change License Group Change

SECTION A

LICENSEE INFORMATION (as it currently appears on your license card)

ALL applicants must complete this section.

Licensee/Legal Name: Paragon Inc. of South Carolina, LLC

Doing Business As (DBA) Name: Paragon Builders License # M.111292

Business Phone: 803-534-1900 Email (required): stephon@paragonbuilderssc.com

Business Address: 2874 Columbia Road, Orangeburg, SC 29118 County: Orangeburg
Physical street address, City, State and Zip Code

Mailing Address (if different from above): POB 2058, Orangeburg, SC 29116

Federal Tax ID or SSN: 58-2466031 Website: www.paragonbuilderssc.com

SECTION B

CHANGE OF BUSINESS NAME OR ADDRESS (physical or mailing)

ONLY complete this section if you need to change your business name, corporate structure, address, or other contact information. Attach amended charter or the Secretary of State Articles of Amendment if this is a corporate name change. If your name, Federal ID No. or corporate structure has changed more than 15 business days ago, **do not** complete this form; you must submit a new **General and Mechanical Contractor Initial Application (Doc 165)**.

New Business Name: _____

Doing Business As (DBA) Name: _____

Business Phone: _____ Email (required): _____

Business Address: _____ County: _____
Physical street address, City, State and Zip Code

Mailing Address (if different from above): _____

Website: _____

Type of Business:

Corporations, LLCs, LLPs, or LPs must submit a Federal Tax ID number and a SC Secretary of State Certificate of Existence.

- Sole Proprietorship Domestic/Foreign Corporation Partnership
- Limited Liability Partnership Limited Liability Company

State of incorporation or organization: SC

SECTION C

CHANGE OF OWNERS OR OFFICERS

ONLY complete this section if there has been a change in the Licensee's ownership or corporate leadership. Provide the name, title, and date of birth and percent of business ownership of each owner, officer, partner, and/or member of the Licensee. Attach a separate sheet if necessary.

Name: _____ Title: _____

% Ownership: _____ Date of Birth: _____

Name: _____ Title: _____

% Ownership: _____ Date of Birth: _____

Name: _____ Title: _____

% Ownership: _____ Date of Birth: _____

Name: _____ Title: _____

% Ownership: _____ Date of Birth: _____

Name: _____ Title: _____

% Ownership: _____ Date of Birth: _____

SECTION D

CHANGE OF LICENSING GROUP

ONLY complete this section if you wish to change your licensing group limit. Select the group for increase and attach the appropriate financial documentation or surety bond. Please indicate the method for which you are qualifying for the new licensing group limit. Additional information about financial group limits can be found on the Board's website.

Groups 1 and 2 – (submit one)

- Owner Prepared financial statement with an affidavit of accuracy, Document #172; or
- Surety Bond Form for General Contractors / Surety Bond Form for Mechanical Contractors

Groups 3 and 4 – (submit one)

- Financial statement compiled by a licensed CPA in accordance with GAAP, including all disclosures required by GAAP or
- Surety Bond Form for General Contractors / Surety Bond Form for Mechanical Contractors

Group 5 – (submit one)

- An audited balance sheet prepared by a licensed CPA in accordance with GAAP, including all disclosures required by GAAP; or
- Surety Bond Form for General Contractors / Surety Bond Form for Mechanical Contractors

Requested Group Limit:

Group 1 Group 2 Group 3 Group 4 Group 5

Qualifying for Requested Group Limit by:

Net Worth Working Capital Surety Bond

What type of financial documentation are you submitting with your application?

Audited Balance Sheet Reviewed Financial Statement Compiled Financial Statement
 Owner Prepared Financial Statement (Doc 172) Surety Bond

SECTION E

BACKGROUND QUESTIONS

ALL applicants must complete this section. Answer all questions below. If you answer "Yes" to any of the questions, you are required to complete and submit the Explanatory Statement of Yes Answers - Doc. 142.

1. Since your last renewal or application with the Board, has this entity or any owner, officer, partner, or member been convicted, pled guilty or nolo contendere in the US or foreign country of a felony or the offense of forgery, embezzlement, obtain money under false pretenses, theft, extortion, or conspiracy to defraud or other like offense? YES NO

If yes, in addition to Doc 142, a criminal background check must be provided from the state in which the conviction occurred along with the court disposition and any other pertinent documentation. For South Carolina criminal background reports contact SLED at www.sled.sc.gov. Out-of-state applicants may submit a state-issued report, or any report generated by an accredited agency on PBSA's website found here: thepbsa.org/. All criminal background reports must not be older than thirty (30) days from the date of application.

- 2. Since your last renewal or application with the Board, has this entity or any owner, officer, partner, or member had a professional license or certificate denied, suspended, revoked or otherwise been disciplined in any state or jurisdiction, including South Carolina? YES NO

If yes, in addition to Doc 142, official documentation related to the relevant disciplinary action must be provided.

- 3. Since your last renewal or application with the Board, does this entity or any owner, officer, partner, or member have any unresolved complaints or charges pending before any professional licensing board in South Carolina or any other state or jurisdiction? YES NO

If yes, in addition to Doc 142, official documentation related to the relevant disciplinary action must be provided.

- 4. Since your last renewal or application with the Board, does this entity or any owner, officer, partner, or member have any outstanding monetary judgments related to construction, or have any bankruptcies? YES NO

If yes, in addition to Doc 142, official documentation related to the monetary judgments, including the order of judgment or final disposition, and bankruptcies, as well as any payment plans that have been established to satisfy construction related monetary judgments, must be provided.

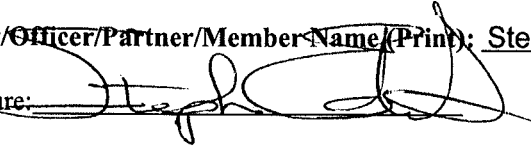
SECTION F

ATTESTATION

ALL applicants must complete this section.

I certify that the information and statements contained herein are true, accurate, and complete. I understand that the provision of false or inaccurate information may result in the cancellation or denial of a license issued pursuant to this application and may be subject to civil and criminal proceedings. I agree that all information in this application may be verified and investigated. I have read and am familiar with the South Carolina Contractor's Licensing Board Practice Act and hereby agree to abide by such laws.

Owner/Officer/Partner/Member Name (Print): Stephon Edwards

Signature:  Title Owner Date 8/28/2024

PRIVACY DISCLOSURE

South Carolina Law requires that every individual who applies for an occupational or professional license provide a social security number for use in the establishment, enforcement and collection of child support obligations and for reporting to certain databanks established by law. Failure to provide your social security number for these mandatory purposes will result in the denial of your licensure application. Social security numbers may also be disclosed to other governmental regulatory agencies and for identification purposes to testing providers and organizations involved in professional regulation. Your social security number will not be released for any other purpose not provided for by law.

Other personal information collected by the Department for the licensing boards it administers is limited to such personal information as is necessary to fulfill a legitimate public purpose. The South Carolina Freedom of Information Act ensures that the public has a right to access appropriate records and information possessed by a government agency. Therefore, some personal information on the application may be subject to public scrutiny or release. The Department collects and disseminates personal information in compliance with The South Carolina Freedom of Information Act, the South Carolina Family Privacy Protection Act, and other applicable privacy laws and regulations. Additionally, the Department shares certain information on the application with other governmental agencies for various governmental purposes, including research and statistical services.



South Carolina Department of Labor, Licensing and Regulation
South Carolina Contractor's Licensing Board
 110 Centerview Dr. • Columbia • SC • 29210
 P.O. Box 11329 • Columbia • SC • 29211
 Phone: 803-896-4686 • Contact: CLB@llr.sc.gov • Fax: 803-896-4814
llr.sc.gov/clb

SURETY BOND FOR MECHANICAL CONTRACTORS

BOND NUMBER: L272743-2227

KNOW ALL MEN BY THESE PRESENTS that we

Paragon Builders, as Principal and

Lexington National Insurance Corporation, a Surety Company authorized to do business in the State of South Carolina, as Surety, its successors, assigns, and legal representatives are held and firmly bound unto the South Carolina Contractor's Licensing Board, State of South Carolina and any person or business sustaining damage within the terms of this bond for payment, as Obligee in the sum of Three Hundred Thousand Dollars (\$300,000.00) lawful money of the United States of America per License Term. We bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. This bond is in lieu of providing a financial statement showing a minimum net worth or working capital as required in S.C. Code Ann. §40-11-260.

WHEREAS, the above bonded Principal has applied to the South Carolina Contractor's Licensing Board pursuant to Section 40-11-10 *et seq.* of the 1976 Code of Laws of South Carolina, as amended (the Act), to be granted an authorization to engage in the following construction groups with the following bond amounts:

- Group 1 Mechanical Contractor (\$7,000)
- Group 2 Mechanical Contractor (\$15,000)
- Group 3 Mechanical Contractor (\$30,000)
- Group 4 Mechanical Contractor (\$60,000)
- Group 5 Mechanical Contractor (\$300,000)

WHEREAS, the above bonded Principal is required in Section 40-11-262 of the Act to furnish the Board with a good and sufficient surety as one method of complying with one of the conditions upon which the authorization is granted.

NOW, THEREFORE, if the Principal, in compliance with 40-11-262, does not engage in an act or omission constituting a breach of construction contract or a contract for the furnishing of labor, materials, or professional services for construction undertaken by the Principal, or does not commit any unlawful act or omission in performing construction, then this obligation shall be void; otherwise it is to remain in full force and effect.

This bond is in full force and effect as to the above statutory, regulatory and procedural obligations of the Principal from 8/22/2024 through 10/31/2025 unless renewed by continuation certificate; however, the Surety or the Principal shall have the right to cancel this bond at any time by filing written notice with the South Carolina Contractor's Licensing Board and the applicable party of its intention to so cancel, giving at least thirty (30) days' notice prior to the effective date of the cancellation. This provision, however, shall not operate to relieve, release or discharge the Surety from any liability already accrued or which shall accrue before the expiration of the thirty (30) day period.

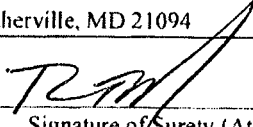
Regardless of the number of years this bond may remain in force or the number of claims against this bond, the aggregate liability of the Surety for any and all claims, suits or actions under this bond shall not exceed the sum of Three Hundred Thousand Dollars (\$ 300 ,000.00) for any License Term. Each License Term is a twenty-four month period beginning on November 1 and ending on October 31.

The Surety shall provide the board with written notice of any payment made in good faith under the Bond within thirty (30) days of such payment. No right of action shall accrue upon or by reason of this bond to or for the use or benefit of anyone whatsoever other than the Board or any person sustaining loss or damage within the terms of this bond for payment.

Witness our hands and seal this 22nd day of August , 20 24 .

Name and Address of Surety Company (Print)

Lexington National Insurance Corporation
PO Box 6098
Lutherville, MD 21094

By: 
Signature of Surety (Attorney-in-Fact)
Tyler Turnbull

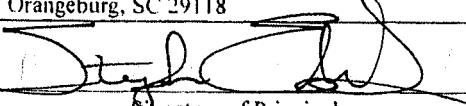
Power of Attorney (attach document)

To report a claim with regard to this bond, submit a claim on the form approved by the Board to the claim address below:

(Print) Lexington National Insurance Corporation
PO Box 6098
Lutherville, MD 21094

Name and Address of Principal (Print)

Paragon Builders
2874 Columbia Road
Orangeburg, SC 29118

By: 
Signature of Principal

IMPORTANT NOTICE – THIS POWER OF ATTORNEY IS VOID IF “LNIC Original” WATERMARK IS NOT PRESENT

POWER OF ATTORNEY

Lexington National Insurance Corporation

Lexington National Insurance Corporation, a corporation duly organized under the laws of the State of Florida and having its principal administrative office in Baltimore County, Maryland, does hereby make, constitute and appoint:

**Tyler Turnbull, Beverly Ivey, Della Case, Brett Branton,
Brendan Coale, Matthew Rose, Scott Pelin**

as its true and lawful attorney-in-fact, each in their separate capacity, with full power and authority to execute, acknowledge, seal and deliver on its behalf as surety any bond or undertaking of \$6,000,000 or less. This Power of Attorney is void if used for any bond over that amount.


This Power of Attorney is granted under and by authority of the following resolutions adopted by the Board of Directors of the Company on February 15, 2018:

Be it Resolved, that the CEO, President or any Vice-President shall be and is hereby vested with full power and authority to appoint suitable persons as Attorney-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and on the behalf of the Company, to execute, acknowledge and deliver any and all bonds, contracts, or indemnity and other conditional or obligatory undertakings, including any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts, and any all notices and documents cancelling or terminating the Company's liability thereunder and any such instruments so executed by any Attorney-in Fact shall be binding upon the Company as if signed by the CEO, President and sealed by the Corporate Secretary.

RESOLVED further, that the signature of the CEO, President or any Vice-President of LEXINGTON NATIONAL INSURANCE CORPORATION may be affixed by facsimile to any power of attorney, and the signature of the Secretary or any Assistant Secretary and the seal of the Company may be affixed by facsimile to any certificate of such power, or any such power or certificate bearing such facsimile signature or seal shall be valid and binding on the Company. Any such power so executed and sealed and certified by certificate so executed and sealed with respect to any bond to which it is attached continue to be valid and binding upon the Company.

IN WITNESS WHEREOF, the Company have caused this instrument to be signed and their corporate seal to be hereto affixed.



Ronald A. Frank, CEO



State of Maryland
County of Harford County, SS:

Before me, a notary public, personally appeared, Ronald A. Frank, CEO of Lexington National Insurance Corporation, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under the PENALTY of PERJURY under the laws of the State of Maryland that the foregoing paragraph is true and correct.

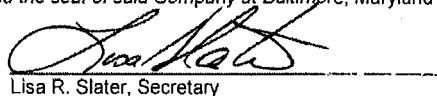
WITNESS my hand and official seal.

Commission Expires: 05/23/24


Notary

I, Lisa R. Slater, Secretary of Lexington National Insurance Corporation, do hereby certify that the above and foregoing is true and correct copy of a Power of Attorney, executed by said company, which is still in full force and effect; furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Company at Baltimore, Maryland this 17th day of January, 2024.


Lisa R. Slater, Secretary

Attached to bond signed this 22nd day of August, 2024

F:\lnic\Power of Attorney form CS 2021 with Watermark Seal

The State of South Carolina



Office of Secretary of State Mark Hammond

Certificate of Existence

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

PARAGON, INC. OF SOUTH CAROLINA, LLC, A Limited Liability Company duly organized under the laws of the State of South Carolina on April 30th, 1999, with a duration that is at will, has as of this date filed all reports due this office, paid all fees, taxes and penalties owed to the Secretary of State, that the Secretary of State has not mailed notice to the company that it is subject to being dissolved by administrative action pursuant to section 33-44-809 of the South Carolina Code, and that the company has not filed articles of termination as of the date hereof.

Given under my Hand and the Great
Seal of the State of South Carolina this
27th day of December, 2007.

Handwritten signature of Mark Hammond in cursive script.

Mark Hammond, Secretary of State

*** THIS LICENSE EXPIRES ON 10/31/2025 ***

VERIFY the QUALIFYING PARTY ("Qualifier") name(s) on this license is accurate. If a Qualifier ceases to serve this license, you must notify the board in writing (mail or email) within 15 business days for your license to remain Active. Failure to notify the board of a qualifier loss will result in immediate license cancellation and disciplinary action.

THIS IS A 2-PART POCKETCARD - FOLD CARD IN HALF - DO NOT CUT OR TEAR CARD IN HALF
BOTH PARTS OF THIS POCKETCARD MUST BE PRESENTED TO CONDUCT BUSINESS AT ALL TIMES

CCG 1053518

CCG 1053518

LICENSE#: CLM.111816

South Carolina Department of Labor, Licensing and Regulation

Contractor's Licensing Board

MECHANICAL CONTRACTOR

PAUL R GILLETTE

DBA: GILLETTE PLUMBING

2874 COLUMBIA ROAD
ORANGEBURG SC 29118

licensed to practice in the 2-letter Classification(s) and Group# listed below:

Plumbing-PB2

LICENSE EXPIRATION DATE: 10/31/2025

(If this license has a "Limited Building-LB", work is limited to 3 stories in height)

*** It is at the discretion of this licensee to designate any employee of their company to pull permits and conduct business in their behalf.***

MECHANICAL CONTRACTOR

LICENSE#: CLM.111816 - EXPIRES: 10/31/2025

PAUL R GILLETTE

DBA: GILLETTE PLUMBING

Initial Issue Date: 09/02/2011 - Expiration Date: 10/31/2025

Qualifier(s): PAUL R GILLETTE

Group Limitations Per Job/Project (i.e. AC2 = Group 2):

Group #1 - \$35,000 Group #2 - \$100,000

Group #3 - \$200,000 Group #4 - \$400,000

Group #5 - \$Unlimited

Merivica W. Fulton
Board Executive

DO NOT PEEL CARD FROM A CORNER

To remove card from backing

- Bend form back from the outside edge
- Pull card off backing

Paul Gillette
Qualifying Party

CCG 1053518

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
CONTRACTOR'S LICENSING BOARD

LICENSE#: CLM.111816

LICENSE#: CLM.111816

PAUL R GILLETTE
DBA: GILLETTE PLUMBING

2874 COLUMBIA ROAD
ORANGEBURG SC 29118

Has been qualified by the laws of the State of South Carolina and is duly entitled to practice as a:

MECHANICAL CONTRACTOR

for each Classification and Group Limitation listed below:

Plumbing-PB2

LICENSE NUMBER:CLM.111816

Initial License Date:09/02/2011

EXPIRATION DATE:10/31/2025

Qualifying Party(s): PAUL R GILLETTE

Group Limitations Per Job (i.e. AC2 = Group 2):

Group #1 - \$35,000 Group #3 - \$200,000

Group #2 - \$100,000 Group #4 - \$400,000

Group #5 - \$Unlimited

Merivica W. Fulton
Board Executive

*** It is at the discretion of this licensee to designate any employee of their company to pull permits and conduct business in their behalf.***

*** THIS LICENSE EXPIRES ON 10/31/2025 ***

VERIFY the **QUALIFYING PARTY** ("Qualifier") name(s) on this license is accurate. If a Qualifier ceases to serve this license, you must notify the board in writing (mail or email) within **15 business days** for your license to remain **Active**. Failure to notify the board of a qualifier loss will result in immediate **license cancellation** and disciplinary action.

THIS IS A 2-PART POCKETCARD - FOLD CARD IN HALF - DO NOT CUT OR TEAR CARD IN HALF
BOTH PARTS OF THIS POCKETCARD MUST BE PRESENTED TO CONDUCT BUSINESS AT ALL TIMES

LICENSE#: CLM.111292

CCG 1055888

South Carolina Department of Labor, Licensing and Regulation

Contractor's Licensing Board

MECHANICAL CONTRACTOR

PARAGON BUILDERS

2874 COLUMBIA ROAD
ORANGEBURG SC 29118-1902

licensed to practice in the 2-letter Classification(s) and Group# listed below:

PK5, PB5, EL5, STEPHON EDWARDS, ERIC BYRD, 121268, -74603

LICENSE EXPIRATION DATE: 10/31/2025

(If this license has a "Limited Building-LB", work is limited to 3 stories in height)

MECHANICAL CONTRACTOR 1055888

LICENSE#: CLM.111292 - EXPIRES: 10/31/2025

PARAGON BUILDERS

Initial Issue Date: 04/28/2010 - Expiration Date: 10/31/2025

Qualifier(s): JONATHAN FERGUSON, PAUL R GILLETTE, RODGERS HAMPTON

Group Limitations Per Job/Project (i.e. AC2 = Group 2):

Group #1 - \$35,000 Group #2 - \$100,000

Group #3 - \$200,000 Group #4 - \$400,000

Group #5 - \$Unlimited

M. Veronica W. Fulton
Board Executive

*** It is at the discretion of this licensee to designate any employee of their company to pull permits and conduct business in their behalf.***

DO NOT PEEL CARD FROM A CORNER

To remove card from backing

- Bend form back from the outside edge
- Pull card off backing

CCG 1055888

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
CONTRACTOR'S LICENSING BOARD

LICENSE#: CLM.111292 LICENSE#: CLM.111292

PARAGON BUILDERS
2874 COLUMBIA ROAD
ORANGEBURG SC 29118-1902

Has been qualified by the laws of the State of South Carolina and is duly entitled to practice as a:

MECHANICAL CONTRACTOR

for each Classification and Group Limitation listed below:

PK5, PB5, EL5, STEPHON EDWARDS, ERIC BYRD, 121268, -74603

LICENSE NUMBER:CLM.111292
Initial License Date:.....04/28/2010
EXPIRATION DATE:10/31/2025

Group Limitations Per Job (i.e. AC2 = Group 2):
Group #1 - \$35,000 Group #3 - \$200,000
Group #2 - \$100,000 Group #4 - \$400,000
Group #5 - \$Unlimited

Qualifying Party(s): JONATHAN FERGUSON, PAUL R GILLETTE, RODGERS HAMPTON

M. Veronica W. Fulton
Board Executive

*** It is at the discretion of this licensee to designate any employee of their company to pull permits and conduct business in their behalf.***

*** It is at the discretion of this licensee to designate any employee of their company to pull permits and conduct business in their behalf. ***

*** THIS LICENSE EXPIRES ON 10/31/2026 ***

VERIFY the **QUALIFYING PARTY** ("Qualifier") name(s) on this license is accurate. If a Qualifier ceases to serve this license, you must notify the board in writing (mail or email) within **15 business days** for your license to remain **Active**. Failure to notify the board of a qualifier loss will result in immediate **license cancellation** and disciplinary action.

BOTH PARTS OF THIS POCKETCARD MUST BE PRESENTED TO CONDUCT BUSINESS AT ALL TIMES. DO NOT TEAR CARD IN HALF.

35
PARAGON BUILDERS
PO BOX 2058
ORANGEBURG SC 29116-2058

LICENSE#: CLG.100190

South Carolina Department of Labor, Licensing and Regulation
Contractor's Licensing Board

GENERAL CONTRACTOR

PARAGON BUILDERS

2874 COLUMBIA ROAD
ORANGEBURG SC 29118-1902

licensed to practice in the 2-letter Classification(s) and Group# listed below:

Building-BD5, Nonstructural Renovation-NR5

INITIAL ISSUE DATE: 01/07/1999

LICENSE EXPIRATION DATE: 10/31/2026

(If above license has "Limited Building-LB", work is limited to 3 stories in height)

GENERAL CONTRACTOR

LICENSE#: CLG.100190

EXPIRATION DATE: 10/31/2026

PARAGON BUILDERS

Qualifier(s): DEQUINCEY S EDWARDS, STEPHON EDWARDS

Licensee's Group# Limitation Per Job/Project (i.e., BD2 = Group 2):

Group #1 - \$100,000 Group #2 - \$400,000 Group #3 - \$1,000,000

Group #4 - \$3,000,000 Group #5 - \$Unlimited

M. Monica W. Filton
Board Executive

WARNING - THIS DOCUMENT CONTAINS SECURITY FEATURES LISTED ON REVERSE SIDE

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
CONTRACTOR'S LICENSING BOARD**

LICENSE#: CLG.100190

PARAGON BUILDERS

2874 COLUMBIA ROAD
ORANGEBURG SC 29118-1902

Has been qualified by the laws of the State of South Carolina and is duly entitled to practice as a:

GENERAL CONTRACTOR

for each Classification and Group Limitation listed below:

(If this license has a "Limited Building-LB" classification, work is limited to 3 stories in height)

Building-BD5, Nonstructural Renovation-NR5

LICENSE NUMBER: CLG.100190

Initial License Date: 01/07/1999

EXPIRATION DATE: 10/31/2026

Qualifying Party(s): DEQUINCEY S EDWARDS, STEPHON EDWARDS

Group Limitation Per Job (i.e. BD2 = Group 2):

Group #1 - \$100,000 Group #4 - \$3,000,000

Group #2 - \$400,000 Group #5 - \$Unlimited

Group #3 - \$1,000,000 *M. Monica W. Filton*

Board Executive

*** It is at the discretion of this licensee to designate any employee of their company to pull permits and conduct business on their behalf. ***

Ex. D

Notice of Intent to Protest
(filed October 27, 2025)



JAMES M. GRIFFIN
ATTORNEY AT LAW

8906 Two Notch Road, Suite 200
Columbia, South Carolina 29223
o. 803.744.0800 f. 803.744.0805
JGriffin@GriffinHumphries.com

October 27, 2025

VIA ELECTRONIC MAIL (protest-ose@mmo.sc.gov)

Office of State Engineer

Attn: Chief Procurement Officer for Construction

South Carolina Department of Natural Resources

1201 Main Street, Suite 600

Columbia, SC 29201

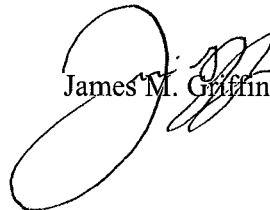
Re: Notice of Intent to Protest by Paragon Inc. of South Carolina LLC
Project Name: Beaufort-Wadell Mariculture
Maturation Ponds Maintenance – Re- Bid
Project Number: P24-6052-PG

Dear Sir:

Please find attached a Notice of Intent to Protest the bid award in the above referenced project number that I am submitting on behalf of my client Paragon Inc. of South Carolina LLC.

If you require any additional information, please feel free to contact me at 803-744-0800.

Sincerely,


James M. Griffin

cc: Eric Byrd (eric@paragonbuilderssc.com)

NOTICE OF INTENT TO PROTEST****Date:** October 27, 2025****TO: Chief Procurement Officer**

**Office of State Engineer
Construction Office
South Carolina Department of Natural Resources
Email: protest-ose@mmm.sc.gov
Physical Address: 1201 Main Street, Suite 600, Columbia, SC 29201**

FROM: Paragon Inc. of South Carolina, LLC

**2874 Columbia Road NE
Orangeburg, SC 29118-1902
Telephone: (803) 534-1900
Email: eric@paragonbuilderssc.com
Attention: Eric Byrd, Vice President
RE: Notice of Intent to Protest Award Decision**

**Project Name: Beaufort-Waddell Mariculture Maturation Ponds Maintenance - Re-Bid
Project Number: P24-6052-PG
Award Notice Posted: October 20, 2025**

I. NOTICE OF INTENT TO PROTEST

Pursuant to South Carolina Code Section 11-35-4210, Paragon Inc. of South Carolina, LLC ("Paragon" or "Protester") hereby submits this Notice of Intent to Protest the South Carolina Department of Natural Resources' ("SCDNR" or "Agency") decision to deem Paragon's bid non-responsive and its intent to award the above-referenced contract to Haren Construction Co. Inc.

This Notice of Intent to Protest is timely submitted within seven (7) business days of the October 20, 2025, award notice posting, as required by Section 11-35-4210.

II. INTERESTED PARTY INFORMATION**Protester:****Paragon Inc. of South Carolina, LLC****SC Contractor's License Numbers: CLG.100190, CLM.111292**

Classification(s) & Limits: Building BD5, Plumbing PB5, Electrical EL5

Contact Person:

Eric Byrd, Vice President
2874 Columbia Road NE
Orangeburg, SC 29118-1902
Telephone: (803) 534-1900
Email: eric@paragonbuilderssc.com

Legal Counsel:

James M. Griffin, Esquire
Griffin Humphries LLC
PO Box 999
Columbia, SC 29202
Telephone: 803-744-0800
Email: jgriffin@griffinhumphries.com

III. PROCUREMENT INFORMATION

Awarding Agency: South Carolina Department of Natural Resources
Project: Beaufort-Waddell Mariculture Maturation Ponds Maintenance - Re-Bid
Project Number: P24-6052-PG
Bid Opening Date: September 23, 2025
Award Notice Date: October 20, 2025
Intended Awardee: Haren Construction Co. Inc.
Award Amount: \$6,207,000.00

IV. PARAGON'S BID INFORMATION

Base Bid Amount: \$5,323,800.00
Alternate #1: \$533,600.00
Alternate #2: \$568,200.00
Alternate #3: \$573,350.00
Status: Deemed "Non-Responsive" by Agency

V. GROUNDS FOR PROTEST (SUMMARY)

Paragon protests the Agency's determination that its bid was non-responsive based on alleged violations of South Carolina Code Sections 40-11-270, 40-11-340, and 40-11-370. Specifically, Paragon contends:

A. Paragon's Plumbing License Covers the Yard Piping Work (Section 40-11-340 Compliance)

Issue: The Agency apparently determined that Paragon's Plumbing License (PB5) does not cover the yard piping installation for non-potable water from the head tower to the fishponds, which constitutes 53% of the project scope.

Paragon's Position:

1. Statutory Coverage: The definition of "Plumbing" under Section 40-11-410(5)(f) explicitly includes:

- "installation, alteration, and repair of all piping, fixtures, and appliances related to water supply"
- "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"
- Work performed "***solely within property lines**" and not on public easements or rights-of-way"

2. Project Characteristics Support Plumbing Classification:

- All piping is **within the Beaufort-Waddell property lines
- No work is on public easements or rights-of-way
- The work involves piping systems on the premises to supply water (albeit non-potable) to the fishponds
- The statute does not distinguish between potable and non-potable water for piping within private property
- The exclusion for "municipal or related water supply systems" does not apply to this private aquaculture facility

3. Section 40-11-340 Compliance:

Because Paragon's Plumbing license (PB5) covers 53% of the work, Paragon meets the 40% threshold required under Section 40-11-340 to act as sole prime contractor. Combined with Paragon's Electrical license (EL5) (19%) and Building license BD5) (13%), work not covered under a separate License classification (15%), Paragon is licensed to perform 100% of the total project work.

B. Compliance with Section 40-11-270 (License Classification Requirements)

Paragon holds appropriate licenses in all required classifications:

- Building BD5 – for concrete structures and access work (13%)
- Plumbing PB5 – for yard piping from head tower to ponds (53%)

- Electrical EL5 – for electrical panel replacement and pond wiring (19%)

For the pond liner work (15%), which requires no specific license, Paragon will utilize its Building classification or engage appropriately licensed subcontractors as needed.

C. Compliance with Section 40-11-370 (Business Name)

Issue: The Agency cited Section 40-11-370(B) regarding engaging in construction under a name other than the exact name on the license.

Paragon's Position:

Paragon's bid was submitted under "Paragon Inc. of South Carolina, LLC," which matches its legal business name and contractor license. Any alleged discrepancy is a secondary issue that does not warrant bid rejection, particularly when:

- The entity is properly identified
- All license numbers are correctly provided
- The qualifying party is properly designated
- There is no indication of fraud, misrepresentation, or attempt to circumvent licensing requirements

VI. PREJUDICE TO PARAGON

Paragon will suffer substantial prejudice if the protest is not granted:

1. Financial Harm: Paragon submitted the lowest responsible bid. The difference between Paragon's total bid (\$5,857,400) and the intended award (\$6,207,000) is \$349,600 more than Paragon's total bid.
2. Loss of Business Opportunity: Paragon is a qualified, properly licensed contractor capable of performing this work in accordance with all applicable laws and regulations.
3. Improper Interpretation of Law: The Agency's restrictive interpretation of the Plumbing license definition would improperly exclude legitimate plumbing work from the statutory scope, contrary to legislative intent.
4. Competitive Disadvantage: If this interpretation stands, it would create uncertainty for contractors bidding on similar projects involving water piping systems on private property.

VII. RELIEF REQUESTED

Paragon respectfully requests that the Chief Procurement Officer:

1. Reverse the determination that Paragon's bid is non-responsive.
2. Find that Paragon's Plumbing license (PB5) properly covers the yard piping installation work as defined in Section 40-11-410(5)(f);
3. Find that Paragon meets all requirements of Sections 40-11-270, 40-11-340, and 40-11-370;
4. Determine that Paragon submitted the lowest responsive and responsible bid; and
5. Award the contract to Paragon Inc. of South Carolina, LLC.

VIII. REQUEST FOR DOCUMENTS

Pursuant to Section 11-35-410 and protest procedures, Paragon requests access to the following documents within five (5) days:

1. Complete bid tabulation showing all bids received
2. All documentation related to the responsiveness determination for Paragon's bid
3. All documentation related to the responsiveness determination for the two other bidders (Haren Construction and BRW Construction).
4. Any communications within SCDNR or between other South Carolina State Agencies, legal counsel or personnel regarding license classification interpretation for this project
5. Any legal opinions or guidance sought regarding the plumbing license scope
6. Haren Construction and BRW Construction's license documentation and classifications
7. Any protest or inquiry submitted by any other bidder
8. Complete bid documents submitted by the two other bidders including a copy of the sealed bid envelope.

IX. FORMAL PROTEST TO FOLLOW

This Notice of Intent to Protest will be followed by a formal written protest within fifteen (15) days of the date the award notice was posted (October 20, 2025), as required by Section 11-35-4210.

X. CONSENT TO ELECTRONIC COMMUNICATIONS


By submitting this Notice of Intent to Protest to protest-ose@mmm.sc.gov, Paragon (and any person acting on Paragon's behalf) consents to receive communications regarding this protest (and any related protests) at the email address of Paragon's legal counsel, James M. Griffin at jgriffin@griffinhumphries.com with copies to eric@paragonbuilderssc.com.

XI. CERTIFICATION

The undersigned certifies that the statements contained in this Notice of Intent to Protest are true and accurate to the best of knowledge and belief.

Respectfully submitted this 27th day of October 2025.

PARAGON INC. OF SOUTH CAROLINA, LLC

By:  _____

Eric Byrd, Vice President

2874 Columbia Road NE
Orangeburg, SC 29118-1902
Telephone: (803) 534-1900
Email: eric@paragonbuilderssc.com

XII. CERTIFICATE OF SERVICE

I hereby certify that a copy of this Notice of Intent to Protest has been served via email on this 27th day of October, 2025, to:

****Chief Procurement Officer****

Office of State Engineer

Email: protest-ose@mmm.sc.gov

****South Carolina Department of Natural Resources****

Attention: Jeff Boyer, Engineer III

Email: boyerj@dnr.sc.gov

****Intended Awardee:****

Haren Construction Co. Inc.

[Address and contact information to be obtained from public records]

****Legal Counsel for Protester: ****

James M. Griffin, Esquire

Griffin Humphries LLC

PO Box 999

Columbia, SC 29202

Email: jgriffin@griffinhumphries.com

By:  _____

Eric Byrd, Vice President

11/18/25, 5:51 PM

Advertisement Print Page | scbo.sc.gov

Exhibit B

South Carolina Business Opportunities

Published by Division of Procurement Services - Delbert H. Singleton, Jr., Division Director

Ad Category: Construction

Ad Start Date: August 12, 2025

Agency/Owner: Department of Natural Resources

Project Name: Beaufort-Waddell Mariculture Maturation Ponds Maintenance *RE-BID*

Project Number: P24-6052-PG

Construction Cost Range: \$4,500,000 to \$7,000,000

Project Location: Waddell Mariculture Center

Description of Project/Services:

REBID * Revised Scope * - Rehabilitation of rearing ponds, replacement of yard piping and electrical

Bid/Submittal Due Date & Time: September 18, 2025 - 2:00pm

Number of Bid/Submittal Copies: 1

Project Delivery Method: Design-Bid-Build

Agency Project Coordinator: Jeff Boyer

Email: Boyerj@dnr.sc.gov

Telephone: (803) 360-0042

Documents May Be Obtained From: Karen Jones via email: Jonesk@dnr.sc.gov or phone 803-360-0042

Project Details: https://scbo.sc.gov/files/scbo/SE-310_2nd_Rebid_P24-6052-PG.pdf

South Carolina Business Opportunities • SCBO Team • 1333 Main Street, Suite 700 • Columbia, SC 29201
803-737-0600 • scbo@mno.sc.gov • <https://scbo.sc.gov> • <https://procurement.sc.gov>



Exhibit D

[Print this page](#)

Board: Commercial Contractors

PARAGON BUILDERS
2874 COLUMBIA ROAD
ORANGEBURG, SC 29118-1902
(803) 534-1900

License number: 100190
License type: GENERAL CONTRACTOR
Status: ACTIVE
Expiration: 10/31/2026
First Issuance Date: 01/07/1999
Classification:
Building-BD5
Nonstructural Renovation-NR5

Qualified By: Surety Bond
President / Owner: STEPHON EDWARDS

[Click here for Classification definitions and licensee's contract dollar limit](#)

Supervised By
EDWARDS DEQUINCEY (CQG)
EDWARDS STEPHON (CQG)

[File a Complaint against this licensee](#)

Board Public Action History:

View Orders		View Other License for this Person		
	Order Date	Name	License Type	License Number
View	8/5/2025	PARAGON BUILDERS	CLG	100190

[Print this page](#)

Board: Commercial Contractors

PARAGON BUILDERS
2874 COLUMBIA ROAD
ORANGEBURG, SC 29118-1902
(803) 534-1900

License number: 111292
License type: MECHANICAL CONTRACTOR
Status: ACTIVE
Expiration: 10/31/2027
First Issuance Date: 04/28/2010
Classification:
Packaged Equipment-PK5
Plumbing-PB5
Electrical-EL5

Qualified By: Surety Bond
President / Owner: STEPHON EDWARDS
Vice President: ERIC BYRD

[Click here for Classification definitions and licensee's contract dollar limit](#)

Supervised By
GILLETTE PAUL (COM)
HAMPTON RODGERS (COM)
FERGUSON JONATHAN (COM)

[File a Complaint against this licensee](#)

Board Public Action History:

[View Orders](#) [View Other License for this Person](#)
[No Orders Found](#)

Exhibit E

State of South Carolina
Department of Natural Resources



Thomas S. Mullikin, PhD, JD, Director
David Tarrant, Chief Operations Officer

Date 10/17/2025

Re: Beaufort - Waddell Mariculture Maturation Pond Maintenance
P24-6052-PG

Determination of non-responsibility – Paragon Inc. of South Carolina LLC.

The South Carolina Department of Natural Resources opened bids for the Beaufort - Waddell Mariculture Maturation Pond Maintenance project on 9/23/2025. Paragon Inc. of South Carolina LLC appeared to have submitted the lowest bids for the project. After careful review of the submitted bid documents and correspondence with SC LLR and OSE the following was determined:

1. Paragon Inc. of South Carolina LLC. does not have a contractor's license under that name. There is no contractor license in the SCLLR database for Paragon Inc. of South Carolina LLC., however there is a license for Paragon Builders owned by the same owner. *
2. Paragon Builders does not have the proper license classifications or subclassifications to act as a sole prime contractor per SCLLR for this project. Paragon Builders has the following licenses BD5, NR5, PB5 and EL5. Of these licenses only EL is applicable, which comprises 17% of the work requiring a SCLLR license. **

Based on the engineer's opinion, estimated cost and scope of work it is determined that the majority of the work (80%) requires licensure under a (WL) Water and Sewer Line license classification.

According to South Carolina Code of Laws:

***SECTION 40-11-370.** License required to use term "licensed contractor"; engaging in construction under assumed name; enforcement of contract.

(B) It is unlawful to engage in construction under a name other than the exact name which appears on the license issued pursuant to this chapter. "Engaging in construction" includes marketing, advertising, using site signs, and submitting contracts. This requirement does not include advertising on vehicles, which may use an abbreviated version of the license name so long as the advertising is not misleading.

****SECTION 40-11-340.** Qualifications for acting as sole prime contractor.

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.

See Attachment A - Email corresponded from SC LLR regarding WL classification for this project.

SE-370

Exhibit F

NOTICE OF INTENT TO AWARD - DESIGN-BID-BUILD CONTRACT

AGENCY: DNR - Department of Natural Resources

PROJECT NAME: Beaufort-Waddell Mariculture Maturation Ponds Maintenance

PROJECT NUMBER: P24-6052-CB

POSTING DATE: 10/20/2025

TO ALL BIDDERS

Unless stayed by protest or canceled, the Agency intends to enter into a contract as noted below. The successful bid will be accepted and the contract formed by execution of the contract documents. All bid bonds remain in effect for the bid acceptance period as provided in Section 4 of the Bid Form, except as otherwise provided in the Instructions to Bidders.

NAME OF BIDDER: Haren Construction Co. Inc

DATE BIDS WERE OPENED: 09/23/2025

BID INFORMATION:

BASE BID AMOUNT:		<u>\$5,682,000.00</u>
ALTERNATES:	#1 ACCEPTED <input checked="" type="checkbox"/>	<u>\$525,000.00</u>
	#2 ACCEPTED <input type="checkbox"/>	<u>\$540,000.00</u>
	#3 ACCEPTED <input type="checkbox"/>	<u>\$600,000.00</u>

TOTAL BID AMOUNT: \$6,207,000.00

TOTAL CONTRACT AWARD: \$6,207,000.00

(If the Total Contract Award is different from the Total Bid Amount, explain any negotiations that resulted in the change.)

N/A

REMARKS: *(If "No Contract to be Awarded" was entered above, indicate the reason.)*

N/A

Contractor should not incur any costs associated with the contract prior to receipt of a contract from the Agency for execution. Contractor should not perform any work before receipt of the Agency's written Notice to Proceed.

RIGHT TO PROTEST (SC Code 11-35-4210)

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of this contract may be entitled to protest. To protest an award, you must (i) submit notice of your intent to protest within seven (7) business days of the date the award notice is posted, and (ii) submit your actual protest within fifteen (15) days of the date the award notice is posted. Days are calculated as provided in Section 11-35-310(13). Both protests and notices of intent to protest must be in writing and must be received by the appropriate Chief Procurement Officer within the time provided.

PROTEST - CPO ADDRESS - OSE: Any protest must be addressed to the Chief Procurement Officer for Construction, Office of State Engineer, and submitted in writing (a) by email to: protest-ose@mmo.sc.gov, or (b) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. By submitting a protest to the foregoing email address, you (and any person acting on your behalf) consent to receive communications regarding your protest (and any related protests) at the email address from which you sent your protest.

Pursuant to Section 11-35-410, documents directly connected to a procurement activity may be available within five days after request. All document requests should be directed to the procuring agency project coordinator. If a protest is pending, the protestant's lawyer may access otherwise unavailable information by applying to the CPO for the issuance of a protective order. Additional information is available at www.procurement.sc.gov/legal.

BY: Jeff Boyer **TITLE:** Engineer III **DATE:** 10/17/2025

ACKNOWLEDGED BY OSE PROJECT MANAGER: Perry Derrick **DNR Motion to Dismiss** 09/20/2025 **054**

Exhibit G

State of South Carolina
Department of Natural Resources



Thomas S. Mullikin, PhD, JD, Director
David Tarrant, Chief Operations Officer

Date 10/30/2025

Re: Beaufort - Waddell Mariculture Maturation Pond Maintenance
P24-6052-PG

Determination of non-responsibility – Paragon Inc. of South Carolina LLC.

Dear Mr. White,

In response to Paragon Inc. of South Carolina LLC. (herein after referred to as Paragon Inc.) notice of intent to protest the bid award for the Beaufort – Waddell Mariculture Maturation Pond Maintenance – Re-Bid I offer SCDNR’s reasoning for our decision to deem Paragon Inc. Non- Responsible.

Just to clarify, SCDNR deemed Paragon Inc. “Non- Responsible” and not Non-Responsive as noted in their notice of intent to protest. A copy of the bid tabulation sent to all bidders is attached.

Background.

The Beaufort – Waddell Mariculture Maturation Pond Maintenance – Re-Bid project involves the renovation of SCDNR’s marine fish hatchery in Bluffton, SC. This facility basically works by pumping seawater into an elevated concrete tower where is then released, by a series of valves, to flow by gravity to several in ground ponds via a network of underground pipes and valves ranging from 8” to 12”. The seawater is held in the ponds for a period needed for fish production and then drained into a concrete outlet structure where the fish are harvested. The drained seawater is discharged into a drainage ditch and returned to the saltmarsh. Each pond also has electrical components needed to service the ponds.

Scope of Work

Renovation of the hatchery involves the replacement of the main line piping network from the elevated holding tower to the ponds, electrical network, rehabbing the concrete water tower (cleaning, coating and replacement of all piping), replacement of concrete outlet structures in the ponds, replacement of pond liners and associated minor grading. No buildings are being constructed or renovated in this project.

SCDNR determination of non-responsible

SCDNR determined that Paragon Inc. was Non Responsible based on correspondence with South Carolina Department of Labor, Licensing and Regulation (SCLLR) the S.C. Code of Laws Section 40-11-340 and 370 and OSE project manager Clint Burdett.

In accordance with OSE manual policies and guidance for establishment and maintenance of permanent improvement projects, section 6.11 Determination of Bidders Responsibility, SCDNR carefully reviewed the documentation provided by each of the 3 bidders on this project. Investigation of Paragon Inc. licensure with SCLLR found no SCLLR license under the name of Paragon Inc. of South Carolina, LLC. A search on the SC Contractors License Numbers provided in the SE-330 Bid Form, CLG 100190 and CML 111292 did find active General and Mechanical Contractors license for Paragon Builders with classifications of BD5, NR5, EL5, PK5 and PB5. Also noted on the General Contractors license page was a SCLLR Citation and Notification of Penalty for General and/or Mechanical Contracting for engaging in contracting work or submitting a bid when not properly licensed issued 8/4/2025.

Since the name on the bid documents did not have a license according to the SCLLR website, we contacted SCLLR for further clarification. SCLLR responded, citing:

S.C. Code of Laws Title 40 Chapter 11:

SECTION 40-11-370. License required to use term "licensed contractor"; engaging in construction under assumed name; enforcement of contract.

(B) It is unlawful to engage in construction under a name other than the exact name which appears on the license issued pursuant to this chapter. "Engaging in construction" includes marketing, advertising, using site signs, and submitting contracts. This requirement does not include advertising on vehicles, which may use an abbreviated version of the license name so long as the advertising is not misleading.

SECTION 40-11-420. Requirements for obtaining building permit; list of licensed contractors performing work on project.

(A) Building permits, when required by law, must be obtained by the sole prime contractor in the name appearing on that entity's contractor's license.

Subsequent correspondence with SCLLR regarding the proper license required for the major portion of work confirmed that a Water and Sewer Line (WL) classification was appropriate. Based on the EOR opinion of cost, over 40% of the work requires a SCLLR General Contractors license WL classification, see Bold sections below. Paragon Builders does not have a WL license.

SECTION 40-11-410. License classifications and subclassifications.

(c) "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.

Paragon Inc. stance that a Plumbing License (PB) is appropriate for 53% of the work in our determination is not valid. SCDNR's interpretation of the work that can be performed under a PB license is limited to "Supply water to buildings and convey sewage or other waste products from buildings". Please note that in Paragons Inc.'s Notice of Intent page 3 of 7, excerpt below, further supports our determination.

- "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".

There are no buildings being built or renovated in this project, therefore the PB classification is not appropriate for the work.

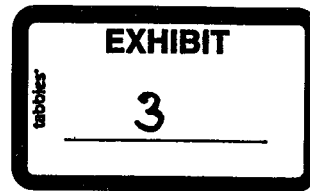
The bids were submitted on September 23, 2025, and are good for 60 days (November 22, 2025) If at all possible, we would like to have a determination prior to this date so we can proceed with the project. This is our 3rd advertisement, so we very much need to make an award.

Please let me know if you have any questions or need any information.

Jeff Boyer
Engineer III

Attachments. Attachment A - SCDNR & SCLLR email correspondence
EOR opinion of cost with License %

CC Andy Wicker PE SCDNR
Clint Burdett, OSE



**BEAUFORT-WADDELL MARICULTURE
MATURATION PONDS MAINTENANCE – RE-BID
P24-6052-PG**

BID-READY

AUGUST 8, 2025



Schnabel Engineering
348 W Parkcenter Blvd, Suite 200
Boise, ID 83706
Phone: (208) 331-9736

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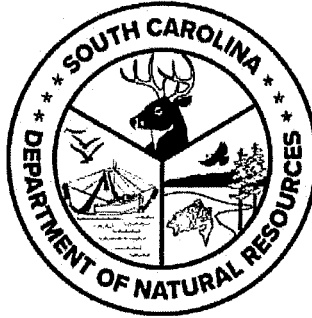
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**BEAUFORT-WADDELL MARICULTURE
MATURATION PONDS MAINTENANCE – RE-BID**

**SE-310 INVITATION FOR DESIGN-BID-BUILD
CONSTRUCTION SERVICES**

SE-310 INVITATION FOR DESIGN-BID-BUILD CONSTRUCTION SERVICES

AGENCY: DNR - Department of Natural Resources

PROJECT NAME: Beaufort-Waddell Mariculture Maturation Ponds Maintenance

PROJECT NUMBER: P24-6052-PG CONSTRUCTION COST RANGE: \$4,500,000 to \$7,000,000

PROJECT LOCATION: Waddell Mariculture Center

DESCRIPTION OF PROJECT/SERVICES: (450 character limit)

REBID * Revised Scope * - Rehabilitation of rearing ponds, replacement of yard piping and electrical

BID/SUBMITTAL DUE DATE: 09/18/2025 TIME: 02:00 PM NUMBER OF COPIES: 1

PROJECT DELIVERY METHOD: Design-Bid-Build

AGENCY PROJECT COORDINATOR: Jeff Boyer

EMAIL: Boyerj@dnr.sc.gov TELEPHONE: (803) 360-0042

DOCUMENTS OBTAINED FROM: Karen Jones via email: Jonesk@dnr.sc.gov or phone 803-360-0042

BID SECURITY IS REQUIRED IN AN AMOUNT NOT LESS THAN 5% OF THE BASE BID.

PERFORMANCE AND LABOR & MATERIAL PAYMENT BONDS: The successful Contractor will be required to provide Performance and Labor and Material Payment Bonds, each in the amount of 100% of the Contract Price.

DOCUMENT DEPOSIT AMOUNT: \$0.00 IS DEPOSIT REFUNDABLE: Yes No N/A

Bidders must obtain Bidding Documents/Plans from the above listed sources(s) to be listed as an official plan holder. Bidders that rely on copies obtained from any other source do so at their own risk. All written communications with official plan holders & bidders will be via email or website posting.

Agency **WILL NOT** accept Bids sent via email.

All questions & correspondence concerning this Invitation shall be addressed to the A/E.

A/E NAME: Schnabel Engineering A/E CONTACT: Bryant Charlo, PE

EMAIL: bcharlo@schnabel-eng.com TELEPHONE: (208) 331-9736

PRE-BID CONFERENCE: Yes No MANDATORY ATTENDANCE: Yes No

PRE-BID DATE: 08/28/2025 TIME: 10:30 AM

PRE-BID PLACE: Waddell Mariculture 211 Sawmill Creek Road, Bluffton, SC 29910

BID OPENING PLACE: SCDNR Headquarters, 260 D. Epting Lane, Room 248 West Columbia, SC 29172

BID DELIVERY ADDRESSES:

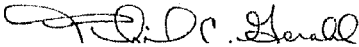
HAND-DELIVERY:

Attn: Jeff Boyer
260 D. Epting Lane, Room 248
West Columbia, SC 29172

MAIL SERVICE:

Attn: Jeff Boyer
260 D. Epting Lane, Room 248
West Columbia, SC 29172

IS PROJECT WITHIN AGENCY CONSTRUCTION CERTIFICATION? Yes No

APPROVED BY: 
(OSE PROJECT MANAGER)

DATE: 08/11/2025



South Carolina Department of Labor, Licensing and Regulation
Office of Investigation and Enforcement
P.O. Box 11329, Columbia, South Carolina 29211-1329
(803) 896-4470

CITATION AND NOTIFICATION OF PENALTY FOR GENERAL AND/OR MECHANICAL CONTRACTING

PARAGON BUILDERS

License Number: CLG. 100190
General Mechanical

Issuance Date: 8/5/2025
CASE NO.: 2025-495

This citation describes alleged violation(s) of Title 40, Chapter 11 of the South Carolina Code of Laws Ann., 1976, (as amended). The penalties listed are based on these violations. You must pay the proposed penalties pursuant to §40-11-100. Any citation and/or penalty assessed by the South Carolina Department of Labor, Licensing and Regulation may be appealed without payment by requesting a hearing in writing before the Board. Such requests must be addressed to: South Carolina Contractor's Licensing Board, P. O. Box 11329, Columbia, S.C., 29211-1329, and must be mailed within 15 days of receipt of this Citation. This citation concerns application of the South Carolina Contractors Practice Act and Regulations and does not necessarily resolve all aspects of any disciplinary action currently pending before the Board or which may be filed in the future. Disciplinary action by the Board may result in you being required to pay the costs associated with the investigation and prosecution of the case. If no appeal is filed, the citation will become a final order of the South Carolina Contractor's Licensing Board and the citation penalty must be paid within 30 days of issuance of the citation. Failure to pay this citation within 30 days from the date of issuance may result in administrative suspension of your license until the citation is paid in full.

Table with 4 columns: ITEM#, DISCIPLINARY AUTHORITY, DESCRIPTION OF VIOLATION, PENALTY AMOUNT. Contains 20 rows of violations and their corresponding penalties.

TOTAL PENALTY: \$500.00

Scott Geib, Investigator III

Copy received: Signature of Respondent Date

Please make check or money order payable to: South Carolina Contractor's Licensing Board

CERTIFICATE OF SERVICE BY MAIL
This is to certify that the undersigned has this date served this Citation and Notification of Penalty in the above entitled action upon all parties to this cause by depositing a copy hereof in the United States mail, certified return receipt requested, and postage paid, or in the Interagency Mail Services, addressed to the parties (or their attorneys) at the following address:

Date Fine Received:
Check No.:
Received By:

This 04 day of August, 2025. By: Scott Geib, Investigator III

Exhibit 2

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 & Env’tl. 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

Exhibit 3

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 DENYING
MOTIONS TO RECONSIDER

Case No. 2025-5

I. INTRODUCTION

This matter is before the Panel on the following post-order filings: Motions to Reconsider filed by the Chief Procurement Officer for Construction (CPO), Paragon Inc. of South Carolina, LLC (Paragon), and the South Carolina Department of Natural Resources (DNR), and an Objection to Motions to Reconsider filed by Haren Construction Co., Inc. (Haren).

Because the motions fail on their merits, the Panel need not decide whether it possesses authority to reconsider its Order, and the motions are denied.

II. BACKGROUND AND PROCEDURAL HISTORY

The Panel issued its Order on March 13, 2026, reversing the CPO’s November 19, 2025, decision, and affirming DNR’s determination that Paragon was non-responsible.

On March 23, 2026, the parties filed the post-order motions and objection. On March 25, 2026, the Panel issued a procedural order permitting responses. The CPO, DNR, and Haren filed responses on April 1, 2026. Paragon filed no response. The Panel has considered all timely submissions.

The motions challenge the Panel’s application of the standard of review and its treatment of the licensing issues, and the responses do not materially expand or alter those issues. DNR’s motion does not challenge the outcome but raises arguments concerning the scope of review and issue preservation.

III. DISCUSSION

The Panel has considered the arguments in the post-order filings. Those filings do not establish that the Panel's Order dated March 13, 2026, was contrary to law or reflects any error in the Panel's interpretation of the licensing subclassifications at issue.

The Panel first conducted a de novo review of the CPO's decision and independently determined that the relevant statutory provisions, as applied to the Project, do not mandate a single license subclassification as a matter of law. The Panel then determined that, under S.C. Code Ann. § 11-35-2410(A), DNR's selection among legally permissible subclassifications was not clearly erroneous, arbitrary, capricious, or contrary to law, and that the record demonstrated a rational basis for that determination. See Order dated March 13, 2026, at 11-14. To the extent the Order referenced DNR's technical expertise, that discussion pertained to DNR's selection of license subclassifications for the Project, not the Panel's interpretation of those statutes. Having concluded that DNR's determination was not contrary to law, the Panel could not and did not substitute its judgment for that of DNR. The Panel's review of DNR's determination was limited to the statutory standard. Because the governing statutes do not compel a single license subclassification, the Panel was not required to select one.

Consistent with that conclusion, the Panel recognized that the license subclassifications do not, on their face, resolve the Project's unique technical nature. In this context, those subclassifications permit more than one reasonable interpretation. The Panel's determination is supported by the absence of any competing engineering estimate or line-item cost analysis showing that DNR's cost allocation by license subclassification was factually unsupported or artificially structured (Order at 4). This analysis reflects the Panel's independent application of the governing statutes to the record rather than any deference to DNR's interpretation of law.

The arguments advanced by the CPO and Paragon largely restate positions already considered and rejected by the Panel and do not establish that the Panel misapprehended applicable law, overlooked material facts, or committed error warranting reconsideration.

DNR requested specific rulings regarding the scope of Paragon's protest and the name variation on Paragon's bid. The Panel determined that the name variation did not affect bidder responsibility, as set forth in its Order dated March 13, 2026, and did not limit the scope of its review. Even if the scope were limited, it would not alter the outcome.

The Panel has considered the motions, Haren's objection, and the responses filed. These submissions provide no basis to modify the Panel's Order dated March 13, 2026. Any argument not expressly addressed has been considered and is either redundant or without merit.

IV. CONCLUSION

The post-order motions are denied. The Panel's Order dated March 13, 2026, remains unchanged.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT REVIEW PANEL

BY: Willie D. Franks
Willie D. Franks, Chairman

April 6, 2026
Columbia, South Carolina

Exhibit 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

**BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL**

In Re: Appeal by Haren Construction Co.,
Inc

Brief of the South Carolina
Department of Natural Resources

Project No. P24-6052-PG

Case No. 2025-5

Beaufort-Waddell Mariculture Maturation
Ponds Maintenance - Re-Bid

The South Carolina Department of Natural Resources (Department or SCDNR) submits this brief for the Administrative Review on the Written Record in the above-captioned matter.¹ This matter generally arises from the Department’s solicitation of construction to which Haren Construction Co., Inc. (Haren) and Paragon Inc. of South Carolina, LLC (Paragon) submitted bids. Upon the Department determining that Paragon was non-responsible and issuing an Intent to Award to Haren, Paragon submitted a protest for review by the Chief Procurement Officer for Construction (CPOC). The CPOC rendered a decision on November 19, 2025 granting Paragon’s protest and remanding the matter to the Department. Haren timely sought further administrative review, and this matter is now pending before the Procurement Review Panel. For the reasons expressed more fully herein, the Department believes it correctly determined Paragon to be non-responsible and on procedural and, alternatively, substantive grounds that decision should stand.

FACTUAL AND PROCEDURAL BACKGROUND

The Department adopts and incorporates by reference the factual and procedural background set forth in Haren’s Request for Further Administrative Review.

¹ Pursuant to S.C. Code Ann. § 11-35-4410(4)(i)(1976 and Supp. 2025), the Procurement Review Panel may “establish its own rules and procedures for the conduct of its business and holding of its hearings.” Furthermore, the Panel’s adopted procedures (<https://prp.sc.gov/procedures> - last visited December 31, 2025), establish specific procedures for Administrative Review on the Written Record that provide in part: “the Panel will establish or approve a briefing schedule for the submission of response and reply briefs. No oral argument or presentation of evidence will occur unless otherwise ordered by the Panel.” In contrast, Administrative Review with a Hearing allows for the “the submission of prehearing statements identifying the issues to be addressed, witnesses to be called, and evidence to be presented. Oral argument and the presentation of evidence will occur at the hearing.” Therefore, although statutorily conducting a *de novo* review of the SCDNR non-responsibility determination, the posture of this matter is potentially a hybrid of a trial or an appellate review upon a fixed record. S.C. Code Ann. § 11-35-4410(1)(1976 and Supp. 2025).

ARGUMENTS

The Department largely joins and adopts the arguments set forth by Haren in its request for Further Administrative Review and provides further arguments as provided below.

I. Paragon Failed to Adequately Protest the Department's Non-responsibility Determination and the Issue is not Properly before the Panel

Upon review of the bid submission of Paragon, the Department determined Paragon was non-responsible. The term “non-responsible” is a term of art in the context of the South Carolina Procurement Code and is not interchangeable with “non-responsive.” However, in its October 27, 2025 Notice of Intent to Protest (PRP 54 – 61) and November 4, 2025 Formal Protest (PRP 24-32), Paragon consistently asserted it was appealing the Department’s decision that Paragon’s bid was “non-responsive.” (PRP 24, 25, 28, 29, 31, 55, 59). As addressed more fully herein, Paragon has not properly raised the “non-responsible” issue in a manner by which it can be addressed by the Panel because the CPOC should not even have considered it.

In the context of the South Carolina Procurement Code, the terms responsible and responsive are frequently stated as dual requirements and have specific meanings. For example, “Responsible bidder or offeror” is defined 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 which may be substantiated by past performance.” S.C. Code Ann. § 11-35-1410(8). In contrast, “Responsive bidder or offeror” is “a person who has submitted a bid or proposal which conforms in all material aspects to the invitation for bids or request for proposals.” S.C. Code Ann. § 11-35-1410(9). The Department is specifically charged by statute to make a determination of responsibility. S.C. Code Ann. §11-35-1810; S.C. Regs. 19-445.2125(D)(“the procurement 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 December 31, 2025) – 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”).

A bid is only to be awarded to a party that is both responsive and responsible. S.C. Code Ann. § 11-35-1810; *see e.g.* S.C. Code Ann. §11-35-1520(10)(“Unless there is a compelling reason

to reject bids as prescribed by regulation of the board, notice of an award or an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids must be given by posting the notice on the date and at a location specified in the invitation for bids.”). Therefore, there is a material legal distinction between challenging responsiveness and responsibility. In this instance, Paragon’s protests pursued the legal theory of responsiveness and did not adequately raise a challenge to the Department’s non-responsibility determination.

Building upon this foundation, the Panel is statutorily mandated to conduct a *de novo* review of a challenged procurement decision. S.C. Code Ann. § 11-35-4410(1)(1976 and Supp. 2025)(“There is created the South Carolina Procurement Review Panel which is charged with the responsibility to review and determine de novo: (a) requests for review of written determinations of the chief procurement officers pursuant to Sections 11-35-4210(6), ...); *see generally Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Off.*, 346 S.C. 158, 551 S.E.2d 263 (2001). As such, the Panel is generally disregarding the decision of CPOC and making a new decision as to the propriety of the Department’s procurement decision. *See generally Nat'l Health Corp. v. S.C. Dep't of Health and Env'tl. Control*, 298 S.C. 373, 378, fn. 1, 380 S.E.2d 841, 844, fn. 1 (Ct.App.1989)(trial de novo is defined as “a new trial or retrial had in which the whole case is tried as if no trial whatsoever had been had in the first instance.”)(citation omitted). However, as the South Carolina Court of Appeals recognized in *National Health Corporation*, some administrative reviews are “quasi-de novo, quasi-appellant.” *Id.*, 298 S.C. 378, fn. 1, 380 S.E.2d 844, fn. 1; *see also Richards v. Spicer*, ___ S.C. ___, 915 S.E.2d 486, 520 (2025)(“the circuit court also ruled that ... the Procurement Code gives appellate review of the CPO’s decision to the Procurement Review Panel”); *Milliken and Co. v. S.C. Dept. of Labor*, 275 S.C. 264, 266, 269 S.E.2d 763, 764 (1980)(“In our view, administrative review of the issuance of [an OSHA] citation is intended to be essentially appellate in nature: it should be undertaken only upon information which was available to the officer or examiner responsible for issuing the citation in the first place.”). Furthermore, the Panel has previously explained that a protestant is limited by section 11-35-4210 to the established issues in its protest letter. *In re: Protest of Volume Services*, Panel Case No. 1994-8, p. 4. In discussing this point, Panel Order explained:

Section 11-35-4210 provides the right to protest. Subsections (1) and (2) require a protestant to state its grounds for protest in writing to the CPO within a time limit. Thus, the issues in the case are established in the protest letter. The letter appealing

to the Panel cannot add issues. If new issues were allowed to be included in the appeal letter to the Panel, no effect would be given to the requirements of subsection (1) and (2). Although, the Panel hearing is a *de novo* hearing under Code Section 11-35-441 0(1), it is only new as to evidence. The Panel may allow new evidence to be admitted, but only evidence concerning the established issues.

Id. See also In re: Appeal by United Way Assoc. of South Carolina, Inc., Panel Case No. 2017-2, p. 10 and fn 7. Therefore, the Department believes that whether framed as an administrative *de novo* review or appellate review, Paragon failed to properly raise the non-responsibility issue for the CPOC or Panel to consider.

To initiate a timely protest, Paragon was statutorily required to “set forth both the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.” S.C. Code Ann. § 11-35-4210(2)(b). Here, the Department very clearly gave notice of its non-responsibility determination to Paragon in the October 17, 2025 memorandum (PRP 66). Thereafter and prior to Paragon submitting its formal protest, the Department stated in its October 30, 2025 memorandum: “Just to clarify, SCDNR deemed Paragon Inc. "Non- Responsible" and not Non-Responsive as noted in their notice of intent to protest.” (PRP 68). However, in its November 4, 2025 formal protest, Paragon declared the grounds for protest to be:

Paragon protests the Agency’s determination that its bid was non-responsive based on alleged violations of South Carolina Code Sections 40-11-270, 40-11-340, and 40-11-370. The Agency’s determination is erroneous, arbitrary, and contrary to law. Specifically, Paragon contends:

...

Issue: The Agency allegedly found Paragon’s bid non-responsive due to licensing deficiencies.

...

Issue: The Agency may have concerns regarding Paragon’s ability to properly subcontract portions of the work.

...

Issue: The Agency cited Section 40-11-370(B) regarding engaging in construction under a name other than the exact name on the license.

(PRP 25-26). In its own words, Paragon only challenged the issue of non-responsiveness. Paragon’s protest issues do not identify non-responsibility or the legal standard for such adopted under the South Carolina Procurement Code. *See* S.C. Code Ann. §11-35-1810; 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 Sate Engineer OSE Manual

“MANUAL FOR PLANNING AND EXECUTION OF STATE PERMANENT IMPROVEMENTS” (2023)(<https://procurement.sc.gov/manual> - last visited December 31, 2025) – Section 6.11 Determination of Bidder’s Responsibility. Therefore, Paragon failed to meet that statutory standard for stating the grounds for appeal with its initial and final protests as to the non-responsible determination. This flaw is fatal to Paragon’s protest and remains a basis for the Panel to summarily dispose of the instant matter under either a *de novo* or appellate standard of review.²

Under a *de novo* standard, Paragon failed to exhaust a statutory administrative prerequisite to CPOC or Panel review. As the United States Supreme Court explained in the *Woodford v. Ngo*:

Because exhaustion requirements are designed to deal with parties who do not want to exhaust, administrative law creates an incentive for these parties to do what they would otherwise prefer not to do, namely, to give the agency a fair and full opportunity to adjudicate their claims. Administrative law does this by requiring proper exhaustion of administrative remedies, which “means using all steps that the agency holds out, and doing so *properly* (so that the agency addresses the issues on the merits).” *Pozo*, 286 F.3d, at 1024 (emphasis in original). This Court has described the doctrine as follows: “[A]s a general rule ... courts should not topple over administrative decisions unless the administrative body not only has erred, *but has erred against objection made at the time appropriate under its practice.*” *United States v. L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 37, 73 S.Ct. 67, 97 L.Ed. 54 (1952) (emphasis added in *Woodford*). See also *Sims v. Apfel*, 530 U.S. 103, 108, 120 S.Ct. 2080, 147 L.Ed.2d 80 (2000); *id.*, at 112, 120 S.Ct. 2080 (O’Connor, J., concurring in part and concurring in judgment) (“On this underlying principle of administrative law, the Court is unanimous”); *id.*, at 114-115, 120 S.Ct. 2080 (BREYER, J., dissenting); *Unemployment Compensation Comm’n of Alaska v. Aragon*, 329 U.S. 143, 155, 67 S.Ct. 245, 91 L.Ed. 136 (1946); *Hormel v. Helvering*, 312 U.S. 552, 556-557, 61 S.Ct. 719, 85 L.Ed. 1037 (1941); 2 K. Davis & R. Pierce, *Administrative Law Treatise* § 15:8, pp. 341-344 (3d ed.1994). Proper exhaustion demands compliance with an agency’s deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings.

Woodford v. Ngo, 548 U.S. 81, 90-92 (2006); accord *Brown v. James*, 389 S.C. 41, 48, 697 S.E.2d 604, 608 (Ct. App. 2010). Furthermore, in administrative law, procedural prerequisites can become jurisdictional. The United States Court of Appeals for the District of Columbia has explained in addressing exhaustion of administrative remedies under federal administrative law that:

² The Panel has summarized precedent for summary dismissal in other instances: “dismissed protests that were not timely filed, that raised an issue for the first time on appeal, and that failed to state a claim upon which relief could be granted.” *In re: Appeal by United Way Assoc. of South Carolina, Inc.*, Panel Case No. 2017-2, p. 10 and fn 6-8.

the word “exhaustion” now describes two distinct legal concepts. The first is a judicially created doctrine requiring parties who seek to challenge agency action to exhaust available administrative remedies before bringing their case to court. We will call this doctrine “non-jurisdictional exhaustion.” ...

The second form of exhaustion arises when Congress requires resort to the administrative process as a predicate to judicial review. This “jurisdictional exhaustion” is rooted, not in prudential principles, but in Congress' power to control the jurisdiction of the federal courts. Whether a statute requires exhaustion is purely a question of statutory interpretation.

Avocados Plus Inc. v. Veneman, 370 F.3d 1243, 1247-48 (D.C. Cir. 2004) (internal citations omitted). “[T]he avenue of written protest remains the sole procedure by which a matter is brought before the Panel for consideration.” *Hitachi Data Systems Corp. v. Leatherman*, 309 S.C. 174, 179, 420 S.E.2d 843, 846(1992)(discussing statutory limitations on Panel’s authority); *accord Amisub of S.C., Inc. v. S.C. Dep't of Health & Env't Control*, 403 S.C. 576, 585, 743 S.E.2d 786, 791 (2013)(“The General Assembly has the authority to limit the subject matter jurisdiction of a court it has created; therefore, it can prescribe the parameters of the ALC's powers.”). Applying these principles to the instant matter, the CPOC and Panel, as administrative agents outside of the judiciary, are likewise creatures of statute and subject to legislative limitations on jurisdiction. Where Paragon failed to timely raise the issue of non-responsibility pursuant to section 11-35-4210, it cannot maintain a challenge on that issue before the CPOC or the Panel.

Alternatively, under an appellate standard, Paragon both failed the statutory prerequisite and did not properly preserve the non-responsibility determination.³ As in other appellate matters, the requirements of issue preservation apply in administrative appeals. *See Carson v. South Carolina Dep't of Natural Res.*, 371 S.C. 114, 120, 638 S.E.2d 45, 48 (2002) (court sitting in appellate capacity may not consider issues not raised or ruled on by administrative agency); *Gatewood v. S.C. Dep't of Corr.*, 416 S.C. 304, 324, 785 S.E.2d 600, 611 (Ct. App. 2016) (“An issue that is not raised to an administrative agency is not preserved for appellate review by the ALC.”). Here, Paragon raised responsiveness that, as discussed above, is materially distinct from the non-responsibility determination. To preserve a matter for appellate review, it must both be

³ “The appellate court must always take notice of the lack of subject matter jurisdiction.” *Town of Hilton Head Island v. Godwin*, 370 S.C. 221, 223, 634 S.E.2d 59, 60 (Ct.App.2006).

raised to and ruled upon by the trial court, or here the CPOC. The issue was not adequately raised to the CPOC and therefore cannot be revived before the Panel.⁴

In summary, under the administrative challenge / appeal framework of the South Carolina Procurement Code, Paragon did not timely or appropriately raise a challenge to the Department's non-responsibility determination thereby precluding the CPOC and Panel from reviewing or modifying the Department's determination. That failure to comply with statutory prerequisites is a jurisdictional defect.

II. The Department did not clearly err in determining that Paragon is non-responsible because more than 51% of the work does not fall under Paragon's PB License.

The Department, in the alternative and assuming *arguendo* that Paragon is not procedurally barred from challenging the Department's non-responsibility determination, adopts and incorporates by reference the arguments on this issue as set forth in Haren's Request for Further Administrative Review. In that regard, the Department's view is that the nature of the Work aligns more with the scope of the WL License held by Haren than the licenses that Paragon represents itself to hold.⁵ Additionally, assuming *arguendo* that the PB License, or other licenses, held by Paragon Builders⁶ were applicable to the Work, under the "sole prime contractor" solicitation at issue Paragon fails to pass either of the thresholds (40% or 51%) for the Work as prescribed by S.C. Code Ann. §§ 40-11-340 and 410. Specifically, the Department explained that:

- "Based on the engineer's opinion, estimated cost and scope of work it is determined that the majority of the work (80%) requires licensure under a WL Water and Sewer license classification."
- Paragon "does not have the proper license classifications or subclassifications to act as a sole prime contractor per SCLLR for this project."
- "correspondence with SCLLR regarding the proper license required for the major portion of work confirmed that a Water and Sewer Line(WL) classification was

⁴ To the extent the CPOC's decision rules on non-responsibility, the issue was not properly presented by Paragon in compliance with S.C. Code Ann. § 11-35-4210(2)(b) as discussed above.

⁵ See Section III(A) below discussing "exact name" requirement for licenses.

⁶ The Department does not concede that Paragon Inc. of South Carolina, LLC holds any contractor licenses as discussed in Section III(A) below.

appropriate. Based on the [Engineer of Record] opinion of cost, over 40% of the work requires a SCLLR General Contractors license WL classification.”

- Paragon “does not have a WL license.”

(PRP 66, 69, 74).

III. The Department’s Determination that Paragon is Non-Responsible is Further Supported by Correspondence with the SCLLR and Citation Issued by SCLLR to Paragon.

The Department, in the alternative and assuming *arguendo* that Paragon is not procedurally barred from challenging the Department’s non-responsibility determination, adopts and incorporates by reference the arguments on this issue as set forth in Haren’s Request for Further Administrative Review.

In addition to the argument by Haren on this issue, the Department also adopts and elaborates upon the following reasoning contained elsewhere in Haren’s brief as being supportive of the non-responsibility issue.

A. Reasonableness of Department’s Non-Responsibility Determination⁷

This matter arises under the South Carolina Procurement Code and is generally limited to the authorities and framework established by the Code. *Responsible Econ. Dev. v. S.C. Dep’t of Health & Env’tl. Control*, 371 S.C. 547, 553, 641 S.E.2d 425, 428 (2007)(explaining impropriety of DHEC commingling distinct statutory framework standards absent statutory authority to do so). However, with respect to professional licensing, the statutory authority generally assigned to the Department of Labor, Licensing and Regulation, also provides in part:

SECTION 40-11-200. Unlawful practice; penalty.

(B) It is a violation of this chapter for an *awarding authority*, owner, contractor, or an agent of an authority, owner, or contractor *to consider a bid, sign a contract, or allow a contractor to begin work unless the bidder or contractor has first obtained the licenses required by this chapter. Bids or contracts submitted by contractors may not be reconsidered or resubmitted to an awarding authority, contractor, or owner if the contractor was not properly licensed at the time the initial bid or contract was submitted.*

S.C. Code Ann. § 40-11-200(B)(1976 & Supp. 2025)(emphasis added). Although not contained within the Procurement Code, this provision directly applies to the procurement process being utilized by the Department where the Department is functioning as an “awarding authority.”

⁷ See Haren Request for Further Administrative Review, p. 5, fn 11. (PRP 6).

Furthermore, the Panel previously took the “opportunity to state that the lack of a proper license to do the work solicited in a state contract will always render a bidder nonresponsible.” *In re: Protest of Roofco, Inc.*, Panel Case No. 2000-14(I), p. 3. These principles also merge under the State Standards of Responsibility: “Factors to be considered in determining whether the state standards of responsibility have been met include whether a prospective contractor has: ... (2) a satisfactory record of integrity; (3) qualified legally to contract with the State.” S.C. Regs. 19-445.2125(A).

Next, the Department explained that part of Paragon’s non-responsibility arose from Paragon not lawfully representing itself in accordance with license requirement of S.C. Code Ann. § 40-11-370(B). (PRP 66 &68). That provision establishes:

SECTION 40-11-370. License required to use term "licensed contractor"; engaging in construction under assumed name; enforcement of contract.

(A) It is unlawful to use the term "licensed contractor" or to perform or *offer to perform general or mechanical construction without first obtaining a license as required by this chapter.*

(B) *It is unlawful to engage in construction under a name other than the exact name which appears on the license issued pursuant to this chapter. "Engaging in construction" includes marketing, advertising, using site signs, and submitting contracts.* This requirement does not include advertising on vehicles, which may use an abbreviated version of the license name so long as the advertising is not misleading.

(C) An entity which does not have a valid license as required by this chapter may not bring an action either at law or in equity to enforce the provisions of a contract. *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.*

S.C. Code Ann. § 40-11-370(1976 & Supp. 2025)(emphasis added). Therefore, the requirement of section 40-11-370 unequivocally requires contractors to obtain license in the “exact name” in which it intends to “engage in construction.” *See State v. Bridgers*, 329 S.C. 11, 14, 495 S.E.2d 196, 198 (1997)(“[W]here a statute uses a term that has a well-recognized meaning in the law, the presumption is that the General Assembly intended to use the term in that sense.”). That term is further explained to include “submitting contracts” and even “marketing, advertising, using site signs.” To the extent a different trade name might be used, section 40-11-370(B) only allows such

abbreviations for “advertising on vehicles ... so long as the advertising is not misleading.” The importance of this requirement is demonstrated where the General Assembly clearly declared that “[i]t is *unlawful* to engage in construction [or market, advertise, use site signs, or submit contracts] under a name other than the exact name which appears on the license issued pursuant to this chapter.” S.C. Code Ann. §40-11-370(B).⁸ Likewise, a further consequence of a contractor entering “into a contract to engage in construction in a name other than the name that appears on its license” is that the contractor “may not bring an action either at law or in equity to enforce the provisions of the contract.” S.C. Code Ann. §40-11-370(C). Both of these consequences are substantial and demonstrate the legislative intent that contractors obtain and utilize licenses in their correct legal name. There is no ambiguity on that legal mandate.

Turning now to the facts of this case, the Department received a bid from “Paragon Inc. of South Carolina, LLC.” (PRP 66). Paragon has not provided for the record a contractor’s license issued in the name of “Paragon Inc. of South Carolina, LLC.”⁹ The only licenses provided to the Department are in the name of “Paragon Builders”. (PRP 51 – 52). Therefore, it does not appear that Paragon Inc. of South Carolina, LLC has obtained a license from SCLLR in that name as clearly required by statutory mandate before offering to perform general or mechanical construction. Given the statutory mandate of conducting business in the “exact name” on the license, the Department asserts it is Paragon’s responsibility to seek and obtain a license from SCLLR in the correct legal name. See generally *Smothers v. United States Fid. & Guar. Co.*, 322 S.C. 207, 210–211, 470 S.E.2d 858, 860 (1996) (“Everyone is presumed to have knowledge of the law and must exercise reasonable care to protect his interests.”); *LaBruce v. City of North Charleston*, 268 S.C. 465, 234 S.E.2d 866 (1977)(“Citizens are charged with knowledge of existing law.”). In the absence of doing so, Paragon must bear the consequences of not complying with applicable law. As the Panel previously declared, “the lack of a proper license to do the work solicited in a state contract will always render a bidder nonresponsible.” *In re: Protest of Roofco, Inc.*, Panel Case No. 200-14(I), p. 3.

⁸ With respect to this issue, the fact that “Paragon Builders” was cited by SCLLR on August 5, 2025 for “engaging or offering to engage in contracting work or submitting a bid when not properly licensed or while a license was under suspension or revocation” and fined \$500 by SCLLR further demonstrates the importance of this requirement. (PRP 478).

⁹ To the extent the Panel elects to receive additional evidence in this matter or take judicial notice of public records as may be permitted, the SCLLR online license database lists no businesses by that name holding a commercial contractor’s license. See <https://verify.llronline.com/LicLookup/Contractors/Contractor.aspx?div=69> – last visited January 2, 2026.

Finally, to the extent the CPOC dismissed Paragon's lack of holding a license in the correct name upon the representation that "[i]n past years, the Contractors Licensing Board staff have advised the CPOC that this is a minor infraction not affecting a contractor's ability to perform the work." (PRP 20-21) and characterizing it as being a "minor informality" under section 11-35-1520(13), neither are sufficient legal grounds to overcome the statutory mandates of sections 40-11-200 and 40-11-370. The legislature has mandated that contractors conduct business in the exact name appearing on any license and explained this requirement is to be broadly applied with limited exception. As outlined above, the Department is legally barred by section 40-11-200 and S.C. Regs. 19-445.2125(A)(3) from considering the bid from Paragon and a staff opinion of SCLLR cannot nullify those requirements. *See Quail Hill, L.L.C. v. County of Richland*, 387 S.C. 223, 236-38, 692 S.E.2d 499, 506-07 (2010) (finding a governmental entity is not estopped from enforcing its ordinances where its employee gives erroneous information or acts in contradiction to an ordinance). Furthermore, the "minor informality" exceptions in the Procurement Code are simply inapplicable to the licensing mandates of Title 40 and cannot relieve the Department of the prohibition in section 40-11-200. *See Responsible Econ. Dev.*, 371 S.C. at 553, 641 S.E.2d at 428 (2007)(explaining impropriety of DHEC commingling distinct statutory framework standards absent statutory authority to do so).

B. Deference to Department Determination¹⁰

The Department must be afforded broad discretion with respect to responsibility determinations, which are matters of business judgment, because the Department "must bear the brunt of difficulties experienced in obtaining the required performance." *See In re: Protest of Value Options, et al.*, Panel Case No. 2001-7 at 6 (quoting *News Printing Co., Inc. v. U.S.*, 46 Fed. Cl. 740 (2000)). The Panel must not "substitute its judgment" for that of the Department or "disturb [its] findings" so long as the Department "follow[ed] the requirements of the Procurement Code, fairly consider[ed] all proposals, and [was] not actually biased." *See Protest of Coastal Rapid Public Transit Authority*, Panel Case No. 1992-16.

The Panel must affirm the Department's responsibility determination unless Paragon proves by a preponderance of the evidence that the Department's responsibility determination was

¹⁰ See Haren Request for Further Administrative Review, pp. 6-7 (PRP 7-8).

"clearly erroneous, arbitrary, capricious, or contrary to law." See S.C. Code Ann. § 11-35-2410(A); *Protest of Brantley Construction Co., Inc.*, Panel Case No. 1999-3. Paragon bears the burden to "demonstrate a lack of reasonable or rational basis for the [Department's] decision or subjective bad faith on the part of the [Department] or clear and prejudicial violation of relevant statutes and regulations which would be tantamount to a lack of reasonable or rational basis." See *In re: Protest of Value Options, et al.*, Panel Case No. 2001-7 at 7 (quoting *Robert E. Derektor of Rhode Island, Inc. v. Goldschmidt*, 516 F. Supp. 1085 (D. R.I. 1981)).

As discussed above, the Department closely evaluated the submission by Paragon under both the South Carolina Procurement Code and SCLLR licensing requirements and has correctly applied those in concluding Paragon is non-responsible. S.C. Code Ann. §§ 11-35-1810; 40-11-200 and 40-11-370; 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 December 31, 2025) – Section 6.11 Determination of Bidder's Responsibility. (PRP 66, 68, 74). The Department is required by law to make a determination on responsibility and, under the applicable standards, Paragon was properly declared non-responsible. *Id.* The Department consulted with the Office of State Engineer Project Manager and SCLLR licensing staff, closely evaluated elements, costs, and license needs for the Work, discerned the name discrepancy related to Paragon's licenses, and found the prior citation of Paragon by SCLLR. (PRP 66 - 74). Together, the Department has documented with substantial evidence the basis for its determination that was reasonable and rational under the relevant legal standards and that Department decision should be affirmed the proper deference. Therefore, there is no basis for concluding the Department has acted in a manner that is "clearly erroneous, arbitrary, capricious, or contrary to law" and the Department's determination that Paragon was non-responsible should be affirmed in the disposition of this matter.

CONCLUSION

The Department's determination that Paragon was non-responsible was statutorily mandated under the South Carolina Procurement Code, and related authorities, and supported by substantial evidence. Furthermore, the Department's determination was clearly not arbitrary or capricious given the relevant standards for responsibility and facts known to the Department about

Paragon. Paragon failed to properly challenge the Department's non-responsibility determination according to the requirements of the Procurement Code and that failing deprived both the CPOC and likewise the Panel of jurisdiction to review the Department's determination that Paragon is non-responsible. In the absence of a lawful challenge under the Procurement Code, the Department's determination should stand as a matter of law. Therefore, the Panel should confirm that neither the CPOC nor the Panel has jurisdiction to alter the Department's determination where Paragon failed to satisfy statutory prerequisites for initiating an appeal of the non-responsibility determination.

Assuming *arguendo* that Paragon's challenge is not statutorily barred, Paragon has failed to demonstrate the Department erred in determining Paragon was non-responsible given the nature of the Work and the limitations of Paragon's licenses in conjunction with Paragon's failure to observe other legal requirements relevant to the Department's non-responsibility determination. If not procedurally barred, the Panel should conclude the Department properly applied the applicable legal standards with substantial evidence supporting the Department's non-responsibility determination.

Respectfully submitted,

s/ Susan O. Porter

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January 5, 2026

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

**BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL**

In Re: Appeal by Haren Construction Co.,
Inc

Certificate of Service

Project No. P24-6052-PG

Case No. 2025-5

Beaufort-Waddell Mariculture Maturation
Ponds Maintenance - Re-Bid

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January 5, 2026

Exhibit 5

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

**BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL**

In Re: Appeal by Haren Construction Co.,
Inc

South Carolina
Department of Natural Resources
Motion to Reconsider

Project No. P24-6052-PG

Case No. 2025-5

Beaufort-Waddell Mariculture Maturation
Ponds Maintenance - Re-Bid

The South Carolina Department of Natural Resources submits this Motion to Reconsider¹ the South Carolina Procurement Review Panel’s March 13, 2026 Order in the above-captioned matter. While the Department accepts and supports the Panel’s conclusion in the Order, this motion is made in the interest of urging the Panel to rule upon the additional arguments presented in the Department’s brief as additional grounds upon which the Panel may affirm the Department’s determination. This request is made to preserve the Department’s appellate rights by having the Panel make a ruling on the unaddressed arguments. *See Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (holding a party must file a Rule 59(e), SCRCP, motion to reconsider when an argument has been raised, but not ruled on, to preserve it for appellate review).

Jurisdictional Threshold

First, the Department requests that the Panel address the jurisdictional question as a prerequisite to reaching any substantive decision in the alternative in this matter. As stated in *Bell v. Fludd*, the South Carolina Supreme Court explained:

In the argument here a question of jurisdiction has for the first time been raised, which must first be disposed of; for, if the court below had no jurisdiction of the case, then it is manifest that no question as to the merits is properly before us, and hence it would be not only premature, but improper, for us to consider or determine any such question.

¹ The publicly available procedures of the Procurement Review Panel do not address post-order motions. *See* <https://prp.sc.gov/procedures> (last visited March 23, 2026). However, prior decisions by the Panel reflect that motions to reconsider are accepted by the Panel. *In Re: Appeal by uWork.com, Inc. d/b/a Covendis Technologies*, Panel Case No. 2023-4(II). Alternatively, the Panel has accepted a motion to alter or amend. *In Re: Protest Compusult, Inc.*, Panel Case No. 1994-20. As such, the Department files this motion alternatively under either designation upon the arguments set forth herein. Furthermore, the Department would respectfully request that the Panel instruct the parties on their opportunity and deadlines for filing responses and replies in this matter.

Id., 28 S.C. 313, ___, 5 S.E. 810, 811(1888); *Riddle v. Reese*, 53 S.C. 198, 31 S.E. 222 (1898); *see also Hardie v. United States*, 367 F.3d 1288, 1290 (Fed. Cir. 2004) (explaining jurisdiction is a threshold issue that a court must resolve before proceeding to the merits).²

“Name Variation” Error

Next and in the alternative, the Department asks that the Panel reconsider that portion of its Order in Section V(A) concluding “[t]he Panel therefore does not treat the name variation as affecting bidder responsibility.” Order, p. 11. The Department asserts the Panel’s conclusion on that point is erroneous in several respects.

As discussed in Section III(A) of the Department’s brief³, statutory law makes it clearly illegal for a contractor to bid on a project except in the “exact name which appears on the license issued.” S.C. Code Ann. § 40-11-370 (1976 & Supp. 2025). 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. Although the Panel acknowledges the “name variation,” it then disregards the foregoing statutory provision. Likewise, under the Office of State Engineer’s “MANUAL FOR PLANNING AND EXECUTION OF STATE PERMANENT IMPROVEMENTS” it 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).*

² Consistent with the mandate in *Bell*, it is the Department’s position that if the Panel and CPOC lacked jurisdiction in this matter, the Panel need not reach the merits other than vacating the CPOC decision and remanding the matter to the Department to proceed with the procurement action.

³ Rather than restating these arguments in full here, the Department incorporates by reference the arguments and authority of Section III(A) in its brief.

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://lir.sc.gov/clb/> .

Id., (<https://procurement.sc.gov/manual> - last visited March 23, 2026)(emphasis added). Consistent with those authorities, the Panel has previously declared, "the lack of a proper license to do the work solicited in a state contract will always render a bidder nonresponsible." *In re: Protest of Roofco, Inc.*, Panel Case No. 200-14(I), p. 3.

Likewise, although not cited by the Panel, the "minor informalities" exceptions in the Procurement Code simply do not release this obligation. S.C. Code Ann. § 11-35-1520(13). In fact, exception (l) provides:

Notwithstanding Title 40, the failure of a bidder to indicate his contractor's license number or other evidence of licensure, except that a contract must not be awarded to the bidder unless and until the bidder is properly licensed under the laws of South Carolina.

S.C. Code Ann. § 1135-1520(13)(l)(emphasis added).

Finally, the "awarding authority" – whether viewed as the Department, CPOC, or Panel – would be acting unlawfully in considering a bid as required by Section 40-11-370. S.C. Code Ann. § 40-11-200(B). Therefore, the Panel's statement that a "name variation" does not affect responsibility would appear to be an *ultra vires* act, or potentially encouraging another state entity to do so in violation of sections 40-11-200(B) and 40-11-370. Therefore, the Panel should acknowledge Paragon was barred from submitting a bid and non-responsible when the contractor

name on the bid submittal did not exactly match the name on a contractor license issued by SCLLR, as required by the above authorities.

Conclusion

The Department respectfully requests that the Panel grant this motion to reconsider, or alternatively to alter or amend, the March 13, 2026 Order to modify it by adopting the additional arguments presented in the Department’s brief. Additionally, the Department respectfully requests guidance from the Panel as to the parties’ opportunity and deadlines for filing responses and replies in this matter.⁴ Finally, the Department requests that the Panel address the merits of this motion in an expedited manner so that the Department may proceed with its intended construction project without further delay.

Respectfully submitted,

s/ Van Whitehead

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March 23, 2026

⁴ In the event the other parties file post-order motions, the Department reserves all rights to file responses separate and distinct from this Motion to Reconsider.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

**BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL**

In Re: Appeal by Haren Construction Co.,
Inc

Certificate of Service

Project No. P24-6052-PG

Case No. 2025-5

Beaufort-Waddell Mariculture Maturation
Ponds Maintenance - Re-Bid

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March 23, 2026

Exhibit 6

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

**BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL**

In Re: Appeal by Haren Construction Co.,
Inc

SCDNR Response in Opposition to
Paragon's and CPOC's Motions to
Reconsider

Project No. P24-6052-PG

Case No. 2025-5

Beaufort-Waddell Mariculture Maturation
Ponds Maintenance - Re-Bid

The South Carolina Department of Natural Resources submits this Response in Opposition to Paragon's Motion to Reconsider and CPOC's Motion to Reconsider, which were filed on March 23, 2026.¹ Given the similarity of arguments presented by Paragon and CPOC in their respective motions, the Department provides this joint response to both.

Paragon and CPOC assert the South Carolina Procurement Review Panel's March 13, 2026 Order in the above-captioned matter should be modified to address three alleged errors: improper deference, failure to conduct a *de novo* hearing, and application of an incomplete standard of review.

Deference to Using Agency

Their first argument is that the Department "is not charged with administering" the relevant statute which the argument subsequently associates with the Contractor's Licensing Board. As a procurement matter, the primary legal framework is the South Carolina Consolidated Procurement Code, S.C. Code Ann. § 11-35-10, *et seq.* (1976 & Supp. 2025), which then links with SCLLR's licensing requirements. For the reasons stated below, the Department disagrees with Paragon's and CPOC's motions.

Although the Department is certainly cognizant and respectful of the roles of both the Chief Procurement Officer and the South Carolina Procurement Review Panel, it must disagree with Paragon's and CPOC's starting proposition. As an agency of the State of South Carolina, the

¹ The Department maintains and does not waive its position, as asserted in its prior brief and motion for reconsideration, that the CPOC and Panel lacked jurisdiction but responds in the alternative to Paragon's and the CPOC's motions to preserve the Department's rights in the course of this appeal. Similarly, the Department views the March 23, 2026 email from Greg Placone, counsel for Haren, to be a response to the pending motions. As such, the Panel's March 25, 2026 Order does not permit the submission of a reply. However, if the Haren email is deemed a motion, the Department respectfully opposes the motion only to the extent it is inconsistent with the Department's pending motion.

Department is expressly required to apply the South Carolina Consolidated Procurement Code and regularly does so under authority delegated under the Code. The following excerpts are examples from the Code, with emphasis added, which demonstrate this point.

SECTION 11-35-20. Purpose and policies.

(1) This code must be construed and applied to promote underlying purposes and policies.

(2) The underlying purposes and policies of this code are:

(c) to develop procurement capability responsive to *appropriate user needs*;

(e) to require the adoption of competitive procurement laws and practices *by units of state and local governments*;

(h) to develop an efficient and effective means of *delegating roles and responsibilities to the various government procurement officers*.

SECTION 11-35-40. Application of Procurement Code.

(2) Application to State Procurement. This code applies to every procurement or expenditure of funds by this State under contract *acting through a governmental body* as herein defined ... *No state agency or subdivision thereof may sell, lease, or otherwise alienate or obligate telecommunications and information technology infrastructure of the State by temporary proviso and unless provided for in the general laws of the State.*

SECTION 11-35-45. Payment for goods and services received by State.

(B) *All agencies and institutions of the State are required to comply with the provisions of this section. ...*

(C) The Comptroller General shall issue written *instructions to the agencies to carry out the intent of this section. All offices, institutions, and agencies of state government shall fully cooperate with the Comptroller General in the implementation of this section.*

(D) The thirty-day period shall not begin *until the agency, whether or not the agency processes vouchers through the Comptroller General, certifies its satisfaction with the received goods or services and proper invoice.*

SECTION 11-35-210. Determinations; exemption.

(A) Written determinations expressly required by the code or regulations must be retained in an *official contract file of the governmental body administering the*

contract. These determinations must be documented in sufficient detail to satisfy the requirements of audit as provided in Section 11-35-1230.

SECTION 11-35-310. Definitions.

Unless the context clearly indicates otherwise:

(18) "Governmental body" means a *state government department*, commission, council, board, bureau, committee, institution, college, university, technical school, agency, government corporation, or other establishment or official of the executive or judicial branch. Governmental body excludes the General Assembly or its respective branches or its committees, Legislative Council, the Legislative Services Agency, and all local political subdivisions such as counties, municipalities, school districts, or public service or special purpose districts or any entity created by act of the General Assembly for the purpose of erecting monuments or memorials or commissioning art that is being procured exclusively by private funds.

(26) "Procurement officer" means any person duly authorized by the appropriate chief procurement officer *or the head of the purchasing agency to enter into and administer contracts and make written determinations and findings with respect thereto. The term also includes an authorized representative of the governmental body within the scope of his authority.*

(28) "*Purchasing agency*" means any governmental body other than the chief procurement officers authorized by this code or by way of delegation from the chief procurement officers to enter into contracts.

(38) "*Using agency*" means any governmental body of the State which utilizes any supplies, services, information technology, or construction purchased under this code.

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 and CPOC 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)(“ 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)(“ 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.’”). Quite simply, the Department’s Mariculture staff have long operated this saltwater mariculture facility and therefore know of the design and operational requirements more than anyone within SCLLR, OSE, or the Panel. Similarly, the Department’s Engineering staff have long supported the Department’s facility and operational needs and, again, have a specialized knowledge as to the work being sought through this solicitation and how best to characterize it for procurement and licensing purposes. Finally, as a precursor to even reaching the WL versus PB licensing question, the Department asserts that Paragon failed the “exact name” requirement of S.C. Code Ann. § 40-11-200(B) and 40-11-370 (1976 & Supp. 2025), which requires no interpretation or deference to apply.

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 do not warrant modification.

Conduct of a *de novo* Hearing

Paragon and CPOC next argue that the Panel failed to conduct a *de novo* hearing because it “did not even attempt to interpret the statute.” The Department would counter that by pointing to the opening paragraph of the Panel’s “Discussion and Conclusions of Law.” There the Panel clearly stated the legal framework and scope by which it would address the issues presented.

Therefore, contrary to the Paragon and CPOC positions, the Panel did explain the legal basis for its decision under the relevant statutory framework. Paragon and CPOC find the Panel’s brevity and outcome objectionable, but that does not render the Panel’s treatment erroneous. *See generally, Pinckney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001) (“However, this broad scope of review does not require an appellate court to disregard the factual findings below or ignore the fact that the trial judge is in the better position to assess the credibility of the witnesses.”); *Stoney v. Stoney*, 425 S.C. 47, 62, 819 S.E.2d. 201, 209 (Ct. App. 2018)(discussing application of *de novo* review of family court decision by appellate courts).

Standard of Review Applied

The final argument made in the Paragon and CPOC motions are that the Panel applied an “incomplete standard of review” by not evaluating whether the decision under review was “contrary to law.” As above, the Department would highlight the following sections of the Panel’s March 13, 2026 Order in which it clearly expressed its application of the “contrary to law” standard:

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). (p.1)

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*. (p. 1)

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).(p.5)

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).(p. 7)

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). (pp.8-9)

Such determinations are “final and conclusive, unless clearly erroneous, arbitrary, capricious, or *contrary to law*.” S.C. Code Ann. § 11-35-2410(A).(p.9)

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*.(p. 11)

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*.(p. 13)

The party challenging such a determination bears the burden of proving it was clearly erroneous, arbitrary, capricious, or *contrary to law*.(p. 13)

Rather, the Panel holds only that DNR’s determination was not clearly erroneous, arbitrary, capricious, or *contrary to law*. (p. 15)

(emphasis added).

Therefore, the Panel repeatedly acknowledged the “contrary to law” standard of review and clearly applied it in reaching its conclusion. As such, the assertions of error by Paragon and CPOC fall short.

Conclusion

The Department respectfully requests that the Panel deny the Paragon and CPOC Motions for Reconsideration and lift the Panel’s March 25, 2026 stay.

Respectfully submitted,

s/ Van Whitehead

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April 1, 2026

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

**BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL**

In Re: Appeal by Haren Construction Co.,
Inc

Certificate of Service

Project No. P24-6052-PG

Case No. 2025-5

Beaufort-Waddell Mariculture Maturation
Ponds Maintenance - Re-Bid

I do hereby certify that I have caused the SCDNR Response to Paragon and CPOC Motions to Reconsider in the above matter to be served via email on the following:

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April 1, 2026

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Apr 27 2026

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

PROOF OF SERVICE

I certify that I have served the SCDNR's Motion to Dismiss 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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April 25, 2026

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