

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2026-000914
Panel Case No. 2025-5

In Re: Haren Construction Co., Inc.

Project No. P24-6052-PG Beaufort-Waddell Mariculture Maturation Ponds Maintenance - Re-Bid

Paragon Inc. of South Carolina, LLC, Chief Procurement Officer, State Fiscal Accountability Authority, and South Carolina Department of Natural Resources,

of which Paragon Inc. of South Carolina, LLC and Chief Procurement Officer, State Fiscal Accountability Authority are the Appellants/Respondents, South Carolina Department of Natural Resources is the Respondent/Appellant, and Haren Construction Co., Inc. is the Respondent.

RESPONDENT HAREN CONSTRUCTION CO., INC'S MOTION TO STRIKE

Pursuant to Rules 210(c) and 240, SCACR, Respondent Haren Construction Co., Inc. (“**Haren**”) respectfully moves to strike (the “**Motion**”) Exhibit 2 to Appellant Paragon Inc. of South Carolina, LLC d/b/a Paragon Builders’ (“**Paragon**”) Reply in Support of Motion to Stay and Request for Expedited Briefing Schedule (the “**Reply**”).

The South Carolina Appellate Court Rules are clear: matter that was not presented to the lower tribunal must not be included in the Record on Appeal. Rule 210(c), SCACR. Appellate review “*must* be confined to the record.” S.C. Code Ann. § 1-23-380(4) (emphasis added); *see also Argabright v. Argabright*, 398 S.C. 176, 179, 727 S.E.2d 748, 750 (2012) (“We are, of course, bound by the record established at trial.”).

In Exhibit 2 to its Reply, Paragon attempts to circumvent these rules by introducing new material—handwritten annotations to the engineer of record’s cost opinion and allocation of project costs by license classification (the “**Design Cost Estimate**”). These annotations, and the arguments relying on them,¹ were *never* presented to either the Chief Procurement Officer (“**CPO**”) or the South Carolina Procurement Review Panel (the “**Panel**”).

Instead, the Panel expressly found that “[a]lthough 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.” *In re: Haren Construction Co., Inc.*, Panel Case No. 2025-5, 2026 WL 1091940, at *2 (S.C. Procure. Rev. Panel Mar. 13, 2026) (emphasis added). It further determined that Paragon “did *not* submit independent engineering analysis contradicting the agency’s estimate.” *Id.* at *9 (emphasis added).² In fact, the percentage calculations in Exhibit 2, raised for

¹ See Paragon’s Reply at 7 n.1.

² Paragon, without any citation or support, claims that the South Carolina Department of Natural Resources (“**DNR**”) “bore the burden of demonstrating that its non-responsibility determination was legally and factually supported.” See Paragon’s Reply at 7. Before both the CPO and the Panel, Paragon, not DNR, had the sole burden to demonstrate that DNR’s responsibility determination was erroneous, including by presenting competent evidence that a majority of the Project fell within its asserted licensing subclassification. See S.C. Code Ann. § 11-35-2410(A); *In re: Protest of Value Options, et al.*, Panel Case No. 2001-7 at 7 (“The burden of proof is on the appellants to demonstrate by a preponderance of the evidence that the determination made by the procurement officer is clearly erroneous, arbitrary, capricious or contrary to law.”). Having failed to do so at the administrative level, Paragon now attempts to cure that evidentiary deficiency by creating its own after-the-fact analysis under S.C. Code Ann. § 40-11-410 and presenting it for the first time on appeal. The appellate process does not permit a party to reconstruct the evidentiary record after an adverse ruling, which is the purpose of Rule 210(c), SCACR.

the first time on appeal, are inconsistent with the percentages Paragon asserted in its initial bid protest.³

Exhibit 2 is newly created and not part of the administrative record. Through handwritten annotations, selective highlighting, and calculations, Paragon reclassifies individual line items from the Design Cost Estimate and assigns them to specific contractor licensing subclassifications under § 40-11-410. This exercise of mapping project components to statutory licensing categories, aggregating costs, and calculating percentage allocations represents the very technical and legal analysis that was never presented to the CPO or the Panel. That is precisely the type of evidence the Panel found to be absent from the record. As the Panel expressly found, Paragon “did not submit independent engineering analysis” and provided “no competing... line-item cost analysis.” *In re: Haren Construction Co., Inc.*, Panel Case No. 2025-5, 2026 WL 1091940, at *2, *9. Exhibit 2 is an attempt to supply that missing analysis for the first time on appeal, which Rule 210(c) squarely prohibits.

To the extent Paragon now recognizes the deficiencies in its case and attempts to challenge the sufficiency of the Design Cost Estimate, those arguments are both unpreserved and untimely. *See Doe v. Doe*, 370 S.C. 206, 212, 634 S.E.2d 51, 54 (Ct. App. 2006) (issues must be raised to and ruled upon by the lower tribunal to be preserved for appellate review). *See also In Re: Protest of Logisticare Solutions, LLC*, Panel Case No. 2011-1, 2011 WL 7068066, at *1 (S.C. Procure. Rev. Panel May 11, 2011) (“The Panel has consistently held that the issues to be decided by the CPO and the Panel are established by the protest letter, and that issues raised for the first time in an appeal letter are untimely under the time constraints of S.C. Code Ann. section 11-35-4210.”).

³ See Ex. 1 to Paragon’s Reply at 4.

Given that Paragon plainly did not preserve these arguments or timely supplement the record, these apparently attorney-created annotations to the Design Cost Estimate should be struck.

In addition, permitting Paragon to introduce Exhibit 2 into the record at this late juncture would allow Paragon to bypass the administrative process, withhold necessary evidentiary support, and then construct a new record on appeal after reviewing the Panel's reasoning. Because Exhibit 2 was never submitted to the CPO or the Panel, it is not part of the record; therefore, it must be stricken from Paragon's Reply pursuant to Rule 210(c), SCACR, and S.C. Code Ann. § 1-23-380(4).

Respectfully submitted,

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May 5, 2026

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PROOF OF SERVICE

The undersigned hereby certifies that on April 30, 2026, a copy of **Respondent Haren Construction Co., Inc's Motion to Strike** was served on all counsel of record via email to counsels' individual AIS email addresses:

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May 5, 2026