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.

PARAGON INC. OF SOUTH CAROLINA, LLC
d/b/a PARAGON BUILDERS' RETURN TO SOUTH CAROLINA DEPARTMENT OF NATURAL RESOURCES' MOTION TO DISMISS

BACKGROUND

Appellant/Respondent Paragon Inc. of South Carolina, LLC d/b/a Paragon Builders ("Paragon") submits this Return to the Motion to Dismiss filed by Respondent/Appellant South Carolina Department of Natural Resources ("DNR"). DNR's Motion presents issues more suitable for resolution through briefing and oral argument than through threshold motion practice.

Furthermore, DNR's Motion relies on arguments it failed to timely raise before the Procurement Review Panel, misreads the applicable statutes, and asks this Court to summarily foreclose review of legal questions that remain genuinely unresolved.

This dispute arises from DNR's disqualification of Paragon as the apparent low bidder on the Beaufort-Waddell Mariculture Maturation Ponds Maintenance project (Project No. P24-6052-PG). Paragon submitted the lowest bid. DNR disqualified Paragon on two grounds: (1) that Paragon allegedly lacked the proper contractor license subclassification, and (2) that Paragon failed to bid under the exact name appearing on its license certificate. Both grounds are legally deficient.

Paragon protested to the Chief Procurement Officer ("CPO"), who sustained the protest on both grounds. The CPO found that the scope of work fell within Paragon's Plumbing (PB) subclassification, and that the name discrepancy was a minor informality not affecting Paragon's ability to perform the contract. Haren Construction Co., Inc. ("Haren") appealed to the Procurement Review Panel ("Panel"), which reversed the CPO on the licensing issue while agreeing with the CPO (and the CPO's earlier ruling) that the name issue was immaterial. Paragon and the CPO have appealed. DNR cross-appealed.

DNR now moves to dismiss on four grounds. None has merit, and each is addressed in turn below.

ARGUMENT

1. None of the Issues Raised by DNR Justify Dismissal.

A. DNR's Jurisdictional Argument That Paragon's Bid Was Void Ab Initio Is Without Merit.

DNR contends that Paragon's bid was void from the outset because Paragon bid under the name "Paragon Inc. of South Carolina, LLC" rather than the trade name "Paragon Builders"

printed on the face of its license certificate. DNR argues this deprived the CPO, the Panel, and this Court of jurisdiction. The argument fails at every level.

First, the factual predicate is incorrect. Paragon did not bid under a "different" name. It bid under its exact legal entity name — the name under which it is organized as a South Carolina limited liability company, registered with the Secretary of State, and under which it applied to LLR for its contractor's licenses. The license application (DOC 165) filed with LLR identifies the Licensee/Legal Name as "Paragon Inc. of South Carolina, LLC" with "Paragon Builders" listed as the trade name (DBA). That both contractor's licenses (General Contractor CLG.100190 and Mechanical Contractor CLM.111292) are legally held by and issued to "Paragon Inc. of South Carolina, LLC" is demonstrated by the LLR records. That the physical license certificates display only the trade name "Paragon Builders" reflects an administrative formatting practice of LLR, not any action or omission by Paragon.

Second, DNR's reading of S.C. Code Ann. § 40-11-370(B) stretches the statute beyond its text and purpose. That provision prohibits a contractor from "egag[ing] in construction under a name other than the exact name which appear on the license." As the CPO correctly found, the "name that appears on [the] license" includes the legal entity name—the name under which the license was issued. Paragon bid in exactly that name. Moreover, § 40-11-370(C) provides that a contractor using the wrong name "may not bring or maintain an action" on a contract entered under the wrong name—a consequences-based provision applicable to contracts, not to bids. Paragon has not entered a contract under any name. It submitted a bid.

Third, the purpose of § 40-11-370 is to prevent an unlicensed entity from fraudulently operating under a licensed contractor's name or misrepresenting its licensure. That concern is wholly absent here. Paragon correctly identified itself as the licensed entity, provided its exact

license numbers, and designated its qualifying parties. DNR was not confused, misled, or prejudiced. The CPO and the Panel both so found, and DNR's attempt to resurrect this issue as a jurisdictional bar should be rejected.

DNR cites Section 40-11-200(B) and the Panel decision in *Protest of Roofco*, Panel Case No. 2000-14(II), as support. But Section 40-11-200(B) addresses contractors who lack a license entirely—it does not address contractors, like Paragon, that are fully licensed and simply bid under their legal entity name. *Roofco* similarly involved a contractor that lacked the required license, not one that used its legal entity name on a bid. Neither authority supports DNR's jurisdictional theory. Finally, DNR's argument that this Court "lacks jurisdiction" because the bid was *void ab initio* is itself incorrect. The statutes conferring jurisdiction on the CPO (§ 11-35-4210(1)(B)), the Panel (§ 11-35-4410(a)(1)), and this Court (§ 11-35-4410(6)) do not condition jurisdiction on the merits of the underlying bid protest. Paragon submitted a bid, was disqualified, and filed a timely protest by an actual bidder "aggrieved in connection with the intended award." That is all the statute requires.

B. Paragon Has Standing to Contest DNR's Non-Responsibility Determination.

DNR argues Paragon lacks standing to protest the non-responsibility determination because, it claims, Paragon's bid was void. This argument depends entirely on the jurisdictional theory addressed above and fails for the same reasons.

S.C. Code Ann. § 11-35-4210(1)(b) confers standing on any "actual bidder" who is "aggrieved in connection with the intended award or award of a contract." Paragon is an actual bidder—it submitted a timely bid and was the apparent low bidder before DNR disqualified it. Paragon was unquestionably aggrieved when DNR bypassed its lower bid in favor of Haren's higher one. The statutory standing requirement is satisfied.

DNR's argument that a bid submitted under a contractor's legal entity name is "void" such that the contractor lacks standing to protest is unsupported by any authority and would produce an anomalous result: a fully licensed contractor that bid in good faith and holds the lowest price would be stripped of any recourse because the state licensing authority printed a trade name on the face of its license certificate. South Carolina courts have consistently declined to apply statutory provisions in ways that produce results contrary to their evident purpose.

C. Paragon's Protest Adequately Exhausted Administrative Remedies.

DNR argues that Paragon's formal protest failed to exhaust administrative remedies because it used the word "responsiveness" rather than "responsibility." This hyper-technical pleading argument has no basis in the Procurement Code and was correctly rejected by the CPO and the Panel.

Under S.C. Code Ann. § 11-35-4210(2), a protest must set forth "the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided." The standard is one of notice, not technical precision. Paragon's formal protest expressly challenged DNR's disqualification determination, identified the contractor licensing statutes at issue, rebutted DNR's conclusions regarding both licensing and the name discrepancy, and specified the relief sought—reversal of the non-responsibility determination and award of the contract. (PRP000024-32.) Nobody was confused. All parties were on notice of the issues to be decided.

As the CPO and Panel recognized, there is a well-documented history of confusion in South Carolina procurement practice between the terms "responsive" and "responsible" when applied to contractor licensing issues. The Panel itself has used these terms interchangeably. *See Protest of Roofco*, Panel Case No. 2001-14(II) ("Technically this is an issue of nonresponsibility."). It would

be anomalous to fault Paragon for a terminological imprecision that the CPO, the Panel, and procurement staff have historically shared.

South Carolina's notice pleading standard does not require a protester to correctly characterize its legal theory. *Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 419, 143 S.E.2d 803, 806 (1965) ("[H]e is not required to characterize the facts stated, or to give his cause of action a name; that being the province of the court."). The protest stated the facts, identified the legal violations, and requested the relief to which Paragon claimed entitlement. That is sufficient.

Paragon filed a timely written protest challenging the agency's rejection of its bid and the licensing rationale offered for that rejection. *See* S.C. Code Ann. § 11-35-4210(1)-(2). DNR's bid tabulation form identified Paragon as the low bidder, but in the notes section the word "Non-responsible*" was inserted, without any further explanation. However, in a footnote, adjacent to the asterisks, the following is written "*South Carolina Code of Laws Section 40-11-220,270,340, &370. 40% or more of the work as measured by the total cost of construction does not fall under one or more of the licensee's license classifications or subclassifications."

Although the protest used the term "non-responsive," rather than "non-responsible," Paragon addressed Sections 40-11-200, 270, 340 & 370 in its protest, and argued before the CPOC that Paragon had the appropriate licenses to perform the work—issues that go to bidder responsibility under the Procurement Code. *See* S.C. Code Ann. § 11-35-1410(8); S.C. Code Ann. § 11-35-1810. The protest repeatedly asserted that Paragon was properly licensed, legally qualified, and capable of performing the contract. The protest also references Paragon as a "responsible" bidder in several places and uses "responsible" language in the conclusion, underscoring that the dispute was about Paragon's qualifications even if the protest did not label the issue with perfect precision. Paragon identified the relief being sought:

> 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.
>
> Paragon's Formal Protest p. 8.

The Procurement Code requires a protest to state its grounds and requested relief with enough particularity to give notice of the issues to be decided. S.C. Code Ann. § 11-35-4210(2).[1] Here, there is no dispute that the CPOC understood Paragon to be challenging its licensing-based rejection. The CPOC framed the issue as following:

> 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.
>
> Decision p. 1.

The CPOC analyzed the issue of non-responsibility and overruled DNR's determination that Paragon was a non-responsible bidder. The Procurement Review Panel likewise rejected SCDNR's hyper technical pleading argument.

D. DNR's Mootness Argument Is Premature and Factually Disputed.

DNR argues the appeal is moot because it is "statutorily prohibited" from awarding the contract to Paragon due to the name discrepancy. For the reasons stated in Section 1.A above, this argument lacks merit.

Moreover, no contract has been awarded to Paragon, so this issue is premature. If this Court sustains Paragon's appeal and orders re-procurement or contract award, DNR can ensure the contract is executed under whatever name is appropriate—including, as the CPO noted, the legal entity name "Paragon Inc. of South Carolina, LLC," which is both the name Paragon used on its

[1] DNR's brief references S.C. Code Ann. § 11-35-4210(2)(b); the protest content requirement is set out in § 11-35-4210(2), which is not subdivided into lettered subsections.

bid and the name under which its licenses are held. Any concern about the name on the contract document is a ministerial matter, not a jurisdictional bar.

Critically, Paragon notes that DNR's position that a contract with Paragon would be "statutorily prohibited" contradicts its own prior conduct: DNR sought and presumably evaluated bids from "Paragon Inc. of South Carolina, LLC d/b/a Paragon Builders," the same entity, without any concern that awarding to this entity would be unlawful. DNR's mootness argument is a post-hoc litigation position, not a principled statutory interpretation.

2. DNR's Motion Should Be Denied Because It Raises Issues That Were Not Timely Appealed to the Procurement Review Panel.

Even if DNR's arguments had merit—which they do not—this Court should decline to entertain them because DNR failed to timely appeal the CPO's decision. Under the Procurement Code, a "person adversely affected" by a CPO decision may appeal to the Panel within ten days. S.C. Code Ann. § 11-35-4210(6). Although DNR, as a state agency, had standing to appeal the CPO's November 19, 2025 decision, it did not do so. Haren appealed to the Panel, but Haren's appeal was limited to the licensing subclassification question; it did not challenge the CPO's resolution of the name-discrepancy issue. With no party timely appealing that issue, the CPO's name-discrepancy ruling became "final and conclusive" under § 11-35-4210(6).

DNR later attempted to raise the name issue in a brief filed 48 days after the CPO's decision—well outside the ten-day deadline. Even if the Panel had discretion to address issues not raised in a timely appeal in certain circumstances, those circumstances are not present here. *See Protest of Kodak*, Panel Case No. 1988-15 ("[I]f the time limitations on appeal are to have any meaning, DMH must be bound by its decision to accept the CPO's findings."). This Court should

similarly decline to reward DNR's failure to observe the statutory appeal deadlines by entertaining arguments that were never timely placed before the administrative tribunal.

DNR's cross-appeal on these issues is therefore jurisdictionally defective. The issues raised in DNR's Motion—which are drawn from DNR's cross-appeal—should not be reached by this Court

CONCLUSION

For the foregoing reasons, Paragon Inc. of South Carolina, LLC d/b/a Paragon Builders respectfully requests that this Court deny DNR's Motion to Dismiss.

Respectfully submitted,

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PROOF OF SERVICE

I, Jaime Harmon, legal assistant at Griffin Humphries LLC, attorneys for the Appellant, located at 8906 Two Notch Road, Suite 200, Columbia, South Carolina 29223, hereby certify that on May 7, 2026, I have served all counsel in this action a copy of the **Paragon Inc. of South Carolina, LLC d/b/a Paragon Builders' Return to South Carolina Department of Natural Resources' Motion to Dismiss** by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System.

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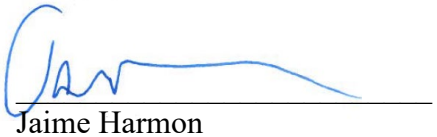

Jaime Harmon

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