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May 28 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. 2026-000914

In Re: Haren Construction Co., Inc.

Project No. P24-6052-PG
Beaufort-Waddel 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.

THE CHIEF PROCUREMENT OFFICER’S RETURN TO DNR’S MOTION TO
SUPPLEMENT THE RECORD

Appellant/Respondent Chief Procurement Officer (CPO) does not understand why Respondent/Appellant DNR filed a motion to supplement the record. The CPO and Appellant/Respondent Paragon both agreed to DNR’s request to supplement the record to include DNR’s and Haren’s memoranda to the Court including all exhibits, except the Affidavit of Jeff Boyer. Including this matter does not require a motion under SCACR 212(b). A motion is only required if DNR wants to include the Affidavit of Jeff Boyer. And knowing this is the only document that is disputed, DNR should have explained to the Court why this affidavit, executed

after the appeal was filed and not considered in the proceedings below, should be included in the Record on Appeal.

On May 7, 2026, this Court instructed the parties to provide the following information:

Within ten days of the date of this order, the parties shall serve and file memorandum informing this court if SCDNR has indeed awarded the contract to Haren; if SCDNR has awarded the contract, the parties are to provide the date the contract was awarded and all documentation and support evidencing the contract award.

In response, DNR and Haren provided memoranda to the court with contract documents attached. DNR also included an affidavit of Jeff Boyer, which is discussed below.

On May 20, this Court issued another order, with the following statement:

Nothing in this order precludes the parties from briefing the arguments raised in the motions in their respective briefs. Indeed, the parties shall further brief the “award” arguments raised in the memorandums submitted in response to the May 7, 2026 order and the resultant remedies under the South Carolina Procurement Code.

While the CPO did not object to DNR including the contract documents in the record, the Affidavit of Jeff Boyer, executed on May 14, goes too far. For example, he attested that he “regularly [applies]” the Procurement Code; that he has been involved in 100 capital construction projects; that he once worked for Richland County and provided design, development, and construction of the County’s municipal water and wastewater systems; and that this work included lined water treatment ponds, among other things. (Exhibit 1, ¶¶ 2 and 3).

South Carolina Appellate Court Rule 210(c) is clear that “[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal.” Including the affidavit in the record is improper because the affidavit, and the facts contained therein, was never presented to the CPO or the Procurement Review Panel and is not found in the administrative record below. None of this information was requested by this Court or relevant to the status of DNR’s contract with Haren.

Further, the CPO is unsure how and why DNR wants to use this affidavit. Because DNR is insisting on including the affidavit, DNR must have its reasons. Does DNR want to use the affidavit to argue that its engineer “regularly applies” the Procurement Code and that his interpretation of the Code should be afforded weight? Because DNR has offered no explanation, the CPO can only speculate.

The CPO believes the affidavit is irrelevant to this appeal. Even if the information had been considered below, nothing changes the nature of this appeal, which involves questions of law regarding the scope and interpretation of a contractor-licensing statute. Nevertheless, the CPO believes the inclusion of this affidavit is improper, and DNR should not use the Court’s request for the status of the contract to introduce new evidence into the record.

The CPO, therefore, respectfully requests that the Court deny DNR’s motion to include the Affidavit of Jeff Boyer.

Respectfully submitted,



Manton M. Grier, Jr.
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ATTORNEYS FOR THE CHIEF
PROCUREMENT OFFICER

Columbia, South Carolina

May 28, 2026

EXHIBIT 1

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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PROCUREMENT REVIEW PANEL
Willie D. Franks, Chairman

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

In Re: Haren Construction, Co., Inc.

Project No. P24-6052-PG Beaufort-Waddel 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.

Affidavit of Jeff Boyer

Personally appeared before me, the undersigned officer duly authorized to administer oaths, Jeff Boyer, who, being sworn according to law under oath, states as follows:

1. My name is Jeff Boyer. I am over 18 years of age and am competent to give this Affidavit. I have personal knowledge of the facts stated herein and they are true and correct. I have prepared and executed this affidavit to address the requirements of the May 7, 2026 Order of the South Carolina Court of Appeal in the above-referenced matter.

2. I began working for the South Carolina Department of Natural Resources (“SCDNR”) in 2006 and am currently employed by SCDNR as an Engineer III. As part of my work responsibilities for the SCDNR, I manage the engagement of professional services, design

Affidavit of Jeff Boyer

development and procurement of construction services for the SCDNR and regularly apply South Carolina's Consolidated Procurement Code while developing projects in collaboration with the Office of State Engineer (OSE). I estimate that I have been involved with the design and procurement of over 100 capital construction projects and numerous non-capital projects on behalf of the SCDNR.

3. Prior to employment with SCDNR, I was employed by Richland County for 19 years as Assistant Utilities Director where I provided oversight on the design, development and construction of the County's Municipal Water and Wastewater system. This work included lined water treatment ponds, concrete intake and discharge headworks, pumping stations and water and wastewater distribution systems.

4. With respect to Project No. P24-6052-PG Beaufort-Waddel Mariculture Maturation Ponds Maintenance – Re-Bid, I have served as the project manager for the SCDNR and have been the primary point of contact between Haren Construction Co., Inc. and the OSE.

5. I have reviewed the SCDNR Memorandum to Court to which this Affidavit is attached and attest that the facts contained therein, and incorporated as if restated herein, are true and accurate. Furthermore, I am personally familiar with the exhibits attached to the Memorandum and likewise attest to them being accurate copies of those created, received, or retained in hardcopy or electronically in the SCDNR's files for Project No. P24-6052-PG for which I am responsible.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on May 14, 2026, in Lexington County, South Carolina.

[Signature Page Follows]

Affidavit of Jeff Boyer

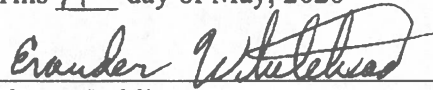


FURTHER AFFIANT SAYETH NOT.



Jeff Boyer

Sworn to and subscribed before me
This 14th day of May, 2026



Notary Public

My commission expires: January 23, 2024

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PROOF OF SERVICE

The undersigned certifies that I have served all counsel in this action with the Chief Procurement Officer's Return to DNR's Motion to Supplement by emailing a copy to each attorney listed below.

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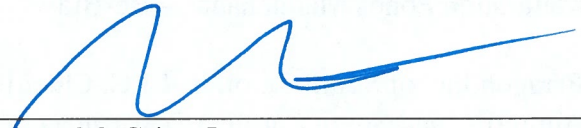
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