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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
PROCUREMENT REVIEW PANEL

Willie D. Franks, Chairman

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Appellate Case No. 2026-000914

Case No. 2025-5

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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.

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**PARAGON INC. OF SOUTH CAROLINA, LLC’S RETURN TO  
RESPONDENT HAREN CONSTRUCTION CO., INC.’S PETITION FOR  
REVIEW OF THE COURT’S ORDER DATED MAY 20, 2026  
GRANTING APPELLANT’S MOTION TO STAY**

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**INTRODUCTION**

Haren Construction Co., Inc. (“Haren”) petitions this full Court to reverse the May 20, 2026, Order granting Paragon’s Motion to Stay and lift the stay entered by Chief Judge Williams. The Petition should be denied.

The Court’s May 20, 2026, Order is well-grounded in law and equity. The Court correctly exercised its authority under Rule 241(c)(3), SCACR to grant a stay and restrain contract

performance pending resolution of this appeal, which presents unresolved questions of first impression regarding contractor license classification requirements under South Carolina law. The Order was entered after full briefing by all parties on the motion to stay and after the Court received supplemental memoranda addressing the contract execution timeline—the very issue Haren now raises in its Petition.

Haren’s Petition is largely a re-argument of its opposition to the stay—the same positions the Court considered and rejected. Its core contention is that because the contract was “awarded” before the stay was entered, the pre-award remedies of S.C. Code Ann. § 11-35-4310(2) are foreclosed and the stay is unnecessary. But this argument misses the point of the stay. The stay preserves this Court’s ability to grant complete relief—including contract rescission and re-procurement—by preventing performance of the disputed contract during the pendency of an appeal presenting substantial questions of law. None of the post-award remedies Haren identifies—termination, ratification, bid preparation costs—can substitute for that relief. If the stay is lifted and construction proceeds to completion, this Court’s ability to Order effective remedies will be extinguished as a practical matter. As it stands now, no construction has begun, and this Court’s ability to grant full relief is preserved.

The Petition also fails on its own terms. Even assuming the contract was “awarded” by May 4, 2026, as Haren contends, that does not resolve the equitable question before this Court. SCDNR transmitted contract documents to Haren on April 22, 2026—the same day Paragon filed its Motion to Stay—and the contract was entered while a judicial request for relief was pending. A Court asked to exercise equitable discretion is not required to turn a blind eye to the sequence of events that gave rise to the need for the relief it is being asked to provide.

The stay should remain in place. The Petition for review should be denied.

## **ARGUMENT**

### **I. THE FULL COURT SHOULD DECLINE TO REVIEW THE MAY 20, 2026, ORDER BECAUSE HAREN PRESENTS NO BASIS FOR RECONSIDERATION.**

Rule 241(d)(2), SCACR permits a party aggrieved by the decision of an individual judge to petition the full Court for review. But a petition for review is not an appeal from every interim ruling with which a party disagrees. The standard governing the original stay motion—whether the stay is “necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot”, Rule 241(c)(2), SCACR—remains the controlling inquiry. Haren identifies no error of law in the Court’s May 20, 2026, Order and no new facts that the Court did not consider. Its Petition recycles arguments already presented and rejected.

Before issuing the May 20, 2026, Order, the Court received full briefing on the motion to stay, including Paragon’s opening motion, returns in opposition from SCDNR and Haren, and Paragon’s reply. The Court then issued a temporary stay and directed the parties to submit memoranda on the contract award status. SCDNR and Haren submitted those memoranda on May 14 and May 15, 2026. The May 20, 2026, Order was entered after consideration of all that material. The Court specifically noted in its Order that “SCDNR sent Haren contract documents on April 22, 2026, following Paragon filing its motion to stay, and that the contract was entered into as of May 22, 2026.” The timing of contract execution—the centerpiece of Haren’s Petition—was directly before the Court when it acted.

Because Haren presents no legal error and no new basis for relief, the Petition should be denied.

### **II. THE STAY IS NECESSARY TO PRESERVE THIS COURT’S ABILITY TO GRANT COMPLETE RELIEF.**

Haren’s central argument is that the stay serves no purpose because, once the contract was awarded, Paragon’s only available remedies are post-award remedies under S.C. Code Ann. §§ 11-35-4310(3) and (4)—contract termination or bid preparation costs—neither of which requires preserving the status quo. Haren is wrong for two reasons.

First, Haren assumes the conclusion it needs to establish. Whether SCDNR’s exclusion of Paragon was lawful—and therefore whether the resulting “award” to Haren is valid—is the central question on appeal. If this Court determines that the Procurement Review Panel erred in reversing the Chief Procurement Officer’s decision, the consequence is not merely that Paragon receives bid preparation costs. The consequence is that the procurement was conducted unlawfully and that Paragon, the apparent low responsible bidder, was wrongfully excluded. Under those circumstances, the South Carolina Procurement Code and this Court’s equitable authority authorize rescission of the unlawfully awarded contract and re-procurement. See S.C. Code Ann. § 11-35-4310(3)(b) (providing that a contract may be terminated when the award violated the law).

Second, Haren’s reading of § 11-35-4310 is too narrow. Even under the post-award framework, a contract “may be terminated.” That remedy presupposes that there is a contract to terminate—a live obligation that has not been fully performed. Once construction at the Waddell Mariculture facility is completed, there will be nothing left to terminate and no practical way to order re-procurement. The stay preserves that option. Lifting the stay would extinguish it.

Third, Regulation 19-445.2085(C) provides that an award may be canceled before performance has begun, if an administrative error by the purchasing agency is discovered prior to performance. This regulation effectively makes performance a second trigger date. Thus, even if the contract has been “awarded” as Haren argues, Paragon still has remedies available including the issuance of the award it was wrongly denied.

Rule 241(c)(3), SCACR specifically authorizes a court to “order other appropriate relief” where a stay alone is “insufficient to afford complete relief.” The Court properly invoked this authority. Haren’s argument that bid preparation costs provide a sufficient remedy would, if accepted, mean that a procuring agency could always defeat meaningful appellate review by racing to execution while motion to stay is under consideration—and then to completion—before the appellate court could act. That result is inconsistent with the rule of law and with the purpose of appellate review.

### **III. HAREN’S ARGUMENT ABOUT THE CONTRACT AWARD DATE DOES NOT DEFEAT THE STAY.**

Haren contends that the contract was “awarded” no later than May 4, 2026 (when SCDNR returned executed documents to Haren), rather than May 22, 2026 (the effective date identified in the Court’s Order), and that this earlier award date forecloses pre-award remedies. Even if Haren is correct about the award date, that argument does not resolve the question before this Court.

The Court’s stay was not premised solely on the contract’s effective date. The stay was granted because this appeal presents unresolved questions of first impression regarding contractor license classification under S.C. Code Ann. § 40-11-410(5)(f), because Paragon faces irreparable harm if construction proceeds to completion before those questions are resolved, and because the Court’s equitable authority under Rule 241(c)(3) authorizes it to restrain performance to preserve meaningful appellate relief. None of those grounds is affected by whether the contract was awarded on May 4 rather than May 22, 2026.

More fundamentally, the contract documents were transmitted to Haren on April 22, 2026—the same day Paragon filed its Motion to Stay with this Court. That filing explicitly requested that SCDNR be directed to refrain from awarding the contract pending resolution of the appeal. SCDNR proceeded with contract execution notwithstanding the pending judicial request.

Whether the court characterizes the operative event as the transmission of contract documents on April 22, Haren's execution and return, or the May 22 effective date, the dispositive point is the same: the contract was entered into with full knowledge of the pending stay motion, and equity does not permit a party to benefit from that conduct by arguing that the very action taken over a pending judicial request now makes relief unavailable.

#### **IV. THE STAY FACTORS CONTINUE TO FAVOR PARAGON.**

Even evaluating the stay factors anew, they favor maintaining the stay.

Likelihood of Success on the Merits. Paragon's appeal presents genuine questions of first impression. Both the Chief Procurement Officer—acting under statutory authority to administer the Consolidated Procurement Code—and the Procurement Review Panel reviewed the same administrative record and reached opposite conclusions. The CPO determined that Paragon's Plumbing license (PB5) covered the yard piping work at the Waddell Mariculture facility because the plain language of S.C. Code Ann. § 40-11-410(5)(f) encompasses the installation of all piping related to water supply within property lines. The Panel reversed, deferring to SCDNR's characterization of the work as requiring a Water and Liquid Waste (WL) subclassification. Whether the Panel properly applied de novo review, and whether SCDNR's cost estimate—prepared for construction estimation purposes, not statutory classification analysis—provides a legally sufficient basis for a non-responsibility determination, are unresolved questions that this Court has not previously addressed. The disagreement among reasonable decision-makers applying the same statutory standard is itself evidence of a substantial question meriting appellate consideration.

Irreparable Harm. Paragon was determined by the Chief Procurement Officer to be the apparent low responsible bidder. Its bid was \$349,600 lower than the amount awarded to Haren.

The loss of a public contract to which Paragon was entitled—if it prevails on appeal—is not compensable through bid preparation costs alone. And as construction advances, the practical ability to order re-procurement diminishes. The loss of a contract opportunity constitutes irreparable harm where monetary damages do not make the aggrieved party whole.

Balance of Harms. The stay is subject to an expedited briefing schedule. Paragon and CPO’s initial briefs are due June 19, 2026, and SCDNR and Haren’s briefs are due July 20, 2026. The appeal will be heard and resolved on an accelerated timetable. Any delay to the project resulting from the stay is therefore bounded and limited. By contrast, the harm to Paragon from lifting the stay is irreversible: once construction proceeds to completion, there is no available remedy that can restore Paragon to its rightful position as the low responsible bidder entitled to the contract.

Public Interest. The public interest is not served by resolving procurement disputes through *faits accomplis*. The South Carolina Consolidated Procurement Code reflects a legislative judgment that public funds should be awarded to the lowest responsible bidder as determined by law, not by an agency’s preferred contractor. The public interest in correct procurement outcomes—and in preserving the integrity of the competitive bidding process—is at least as weighty as the interest in completing any particular project. An expedited resolution of this appeal on the merits serves the public interest better than allowing a potentially unlawful award to proceed to completion before the Court has had an opportunity to review it.

## **CONCLUSION**

For the foregoing reasons, Paragon respectfully requests that this Court deny Haren’s Petition for Review of the Court’s Order Dated May 20, 2026, affirm the stay pending resolution of this appeal.

Respectfully submitted,

s/ James M. Griffin  
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**PROOF OF SERVICE**

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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 June 8, 2026, I have served all counsel in this action a copy of the **Paragon Inc. of South Carolina, LLC's Return to Haren Construction Co., Inc.'s Petition for Review of the Court's Order Dated May 20, 2026 Granting Appellant's Motion to Stay** by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System.

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Columbia, South Carolina  
June 8, 2026