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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.

INITIAL BRIEF OF APPELLANT/RESPONDENT CHIEF PROCUREMENT OFFICER

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STATEMENT OF THE ISSUES ON APPEAL

This appeal arises from an agency's disqualification of an apparent low bidder to a State construction project and concerns a dispute regarding the scope of a contractor-licensing law. The issues on appeal are as follows:

- I. Whether the Procurement Review Panel improperly deferred to DNR, an agency not charged with administering the contractor-licensing laws, regarding the scope and application of § 40-11-410(5)(f)?
- II. Whether the Procurement Review Panel was required to conduct a de novo review of an issue of law regarding the scope of § 40-11-410(5)(f)?
- III. Whether Paragon, Inc. of South Carolina, LLC is properly licensed under the plain meaning of § 40-11-410(5)(f)?

PARTIES

Appellant/ Respondent Paragon Inc. of South Carolina, LLC (Paragon) – Paragon, the low bidder on the project, was disqualified by DNR for allegedly lacking the proper contractor's license and failing to bid in its exact name.

Appellant/Respondent Chief Procurement Officer (CPO) – The CPO is the Chief Procurement Officer for Construction and the State Engineer. He oversees State permanent improvement projects pursuant to § 11-35-845. He is a quasi-judicial officer who performed the administrative review when Paragon protested its disqualification by DNR. Pursuant to § 11-35-4420, he has joined Paragon in appealing the Panel's decision.

Respondent/Appellant South Carolina Department of Natural Resources (DNR) – DNR is the procuring agency that published an invitation for bids for the rehabilitation and renovation of its fishpond research facility. After receiving bids, it disqualified Paragon. While DNR is a respondent to the appeals filed by Paragon and the CPO, it has also filed a cross appeal.

Respondent Haren Construction Co., Inc. (Haren) – Haren, the second lowest-bidder on the project, received an intended award of a contract after Paragon's disqualification.

STATEMENT OF THE CASE

This is an appeal from an order by the Procurement Review Panel, reversing a decision by CPO and finding that DNR had properly disqualified Paragon for lacking the proper contractor-license subclassification.

The dispute's genesis arose out of DNR's disqualification of the apparent low bidder to a construction project for the renovation and rehabilitation of the Waddell Mariculture Center¹ in Beaufort. On August 12, 2025, DNR published an invitation for bids for construction work involving the rehabilitation of its rearing ponds, yard piping, and electrical work at the center. (PRP000062). After three contractors submitted bids, Paragon was the lowest bidder. (PRP000063). On October 17, DNR disqualified Paragon on the basis that it (1) lacked the proper contractor license subclassification and (2) failed to bid in its exact name. (PRP000066-67). DNR concluded that 80% of the project required a license with a "General Contractors-Public Utility" classification and a "Water and Sewer Lines" (WL) subclassification, and that Paragon, which holds a license with a "Mechanical Contractors" classification and a "Plumbing" (PB) subclassification, was unqualified.² Three days later, on October 20, DNR issued an intent to award the contract to the second-lowest bidder, Haren. (PRP000067). A more thorough discussion of the procurement process and DNR's rationale for Paragon's disqualification is found in the "Statement of Facts," below.

Paragon challenged its disqualification through a bid protest filed with the CPO pursuant to § 11-35-4210(1)(b). It filed an intent to protest on October 27 and a formal protest on November 4. (PRP000024-32, 54-61). After completing his administrative review, the CPO granted the

¹ See <https://www.dnr.sc.gov/marine/mrri/waddell/index.html> (last visited June 16, 2026).

² A description of the license subclassifications, including their statutory language, is found in the section titled "The Relevant License Subclassifications," below.

protest on November 19. (PRP000015-23). He concluded that the scope of the project fit within the language of the PB subclassification, and that a contractor holding a license with either a PB or WL subclassification was qualified. (PRP000015-21). The CPO also found that Paragon's failure to bid in its exact name was a minor infraction not affecting its ability to perform the work.

On November 26, Haren appealed the CPO's decision to the Panel pursuant to §§ 11-35-4210(6) and -4410. Haren argued that DNR properly disqualified Paragon (1) "because more than 51% of the work does not fall under Paragon's PB license" and (2) because "correspondence with the LLR and the citation issued to Paragon." (PRP000001-14). Haren, however, chose not to appeal the part of the CPO's decision finding Paragon's failure to bid in its exact name was immaterial and did not affect its ability to perform the contract.

On February 25, 2026, the Panel deliberated the matter without oral argument. On March 13, the Panel issued its order reversing the CPO's decision, re-instating DNR's determination of non-responsibility, and remanding the procurement back to DNR. (Panel Order). While the Panel found that Paragon's failure to use its exact name did not affect its responsibility and was not a basis for disqualification, the Panel otherwise deferred to DNR and reversed the CPO. The Panel concluded that DNR's disqualification of Paragon was not clearly erroneous, arbitrary, capricious, or contrary to law under § 11-35-2410(A).

On March 23, Paragon and the CPO, and DNR filed motions to reconsider with the Panel. (Paragon, CPO, and DNR Motions to Reconsider). Paragon and the CPO argued that, not only had the Panel failed to interpret the scope of the PB subclassification under § 40-11-410(5)(f)—an issue of law subject to de novo review—but it had also improperly deferred to an agency not charged with administering the contractor-licensing laws. They further argued that the Panel had failed to consider whether DNR's interpretation of § 40-11-410(5)(f) was contrary to law. DNR's

motion to reconsider argued that the Panel should have also upheld DNR's disqualification of Paragon for failing to bid in its exact name. The Panel denied the motions on April 6. (Panel Order on Mot. to Reconsider).

On April 9, Paragon filed a Notice of Appeal with this Court, and a motion to stay with the Panel. (Mot. to Stay). The CPO filed a Notice of Appeal on April 13. On April 14, the Panel denied Paragon's motion to stay. On April 21, DNR filed its Notice of Cross Appeal.

THE RELEVANT LICENSE SUBCLASSIFICATIONS

Both Haren and Paragon are licensed contractors.³ Haren holds a license that includes a "General Contractors-Public Utility" classification with a "Water and Sewer Lines" (WL) subclassification, while Paragon holds a license that includes a "Mechanical Contractors" classification with a "Plumbing" (PB)⁴ subclassification. Both subclassifications are as follows:

(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.

S.C. Code Ann. § 40-11-410(3)(c).

(f) **"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

³ Unless an exemption applies, all contractors must be properly licensed when performing a project with a total cost of construction exceeding \$10,000. S.C. Code Ann. § 40-11-30.

⁴ The Contractor's Licensing Board publishes a list of abbreviations that include the WL and PB abbreviations. See <https://lir.sc.gov/clb/PDFFiles/CLBCClassificationAbbreviations.pdf> (last visited June 3, 2026).

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.

Id. at § 40-11-410(5)(f).

While the WL subclassification is part of a public-utility classification and seems to contemplate municipal water supply and sewer systems, the PB subclassification seems to contemplate plumbing at commercial, residential, and similar facilities “within property lines.” Nothing in the contractor licensing laws, however, suggests that the subclassifications are mutually exclusive. Thus, some water-system projects may fall within the scope of both subclassifications.

Finally, a contractor holding a “General Contractor-Public Utility” classification may act as a sole prime contractor if at least 40% of the project’s total cost of construction falls under its classification or its subclassifications. S.C. Code Ann. § 40-11-340. A contractor holding a “Mechanical Contractor” classification may act as sole prime contractor if 51% of the project’s total cost of construction falls under its classifications or its subclassifications. *Id.*

STATEMENT OF FACTS

The facts are undisputed. On August 12, 2025, DNR published an advertisement for an invitation for bids for a construction project at its Waddell Mariculture Center for the “rehabilitation of rearing ponds, replacement of yard piping and electrical.” (PRP000062). This was DNR’s third advertisement for the project. (PRP000069). The project, identified as Project No. P24-6052-PG, had an estimated cost range between \$4.5 million to \$7 million and would be solicited pursuant to the South Carolina Procurement Code. *Id.* The solicitation included an

invitation for bids, project plans and drawings, along with standard Office of State Engineer documents such as AIA Document A101 (standard form agreement) and AIA Document A201 (general conditions). (PRP000080). Three contractors submitted bids: Paragon (\$5,323,600 base bid), Haren (\$5,682,000 base bid), and BRW Construction Group LLC (\$6,414,000 base bid). (PRP000063).

After bid opening, DNR's next step was to determine whether Paragon, the lowest bidder, was properly licensed and therefore "responsible" prior to awarding it the contract.⁵ As part of this process, DNR reached out to the Contractor's Licensing Board (Board) to ask whether Paragon's PB subclassification was appropriate for the project.

In response, the Board refused to give answers. Instead, Rhonda Jackson, a Board program coordinator, directed DNR to §§ 40-11-370 and -420 and stated that, "We/staff [are] not qualified to review plans to determine the appropriate licensing needed." (PRP000071). After DNR pressed for more guidance, Ms. Jackson said that while a WL subclassification is "more than likely what is required," she again refused to answer. She instead directed DNR to the relevant building official "to determine if a license is required, and if so, the license type and/or license classification(s)." (PRP000070).

On October 17, DNR issued a written "Determination of non-responsibility" and disqualified Paragon from receiving the contract award. (PRP000066). DNR determined that "per SCLLR" Paragon lacked the proper license classifications and subclassifications to act as sole

⁵ Under the Procurement Code, an agency cannot award a contract unless the bidder is both responsive (i.e., it unequivocally agrees to perform) and responsible (i.e. it has the capability to perform). S.C. Code Ann. §§ 11-35-1410(8) and (9), -1520(10), and -3015(2)(b). A contractor that lacks a proper license is non-responsible, because a contractor cannot legally perform work unless licensed, and it is unlawful for the State to consider a bid from, or sign a contract with, an unlicensed contractor. *Id.* at §§ 40-11-30 and -200(B).

prime contractor. *Id.* DNR attached Ms. Jackson's email correspondence in support and referenced a cost estimate purportedly showing that 80% of the work required a WL classification. *Id.* The cost estimate contained two categories, "Yard Piping" and "Piping and Valves," that represented 66.8% of the work requiring a license. (PRP000074). The line items in those categories consisted entirely of pipes (HDPE or PVC) or pipe connectors or attachments (valves, tees, elbows, reducers, tees, and knife gates). *Id.*

Three days after disqualifying Paragon, DNR issued an intent to award the contract to the second-lowest bidder, Haren. (PRP000067). The total contract award was \$6,207,000, which included Haren's base bid of \$5,682,000 and an additional alternate bid of \$525,000. In response to the intent to award, Paragon protested to the CPO, arguing it was properly licensed, and its disqualification was improper. (PRP000024-61).

Replying to the intent to protest, DNR submitted a written response to the CPO further explaining its reasons for disqualifying Paragon. (PRP000068-69). According to DNR, its analysis had relied on correspondence with LLR, the project manager from the Office of State Engineer, and the law found in §§ 40-11-340 and -370. DNR further asserted that Ms. Jackson's email "confirmed that a Water and Sewer Line (WL) classification was appropriate." DNR also relied on its own interpretation of the PB subclassification found in § 40-11-410(5)(f):

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

Id.

As noted in the "Statement of the Case," the CPO conducted an administrative review pursuant to § 11-35-4210 and considered the written materials submitted by Paragon and DNR.

He granted the protest on November 19. (PRP000015-21). The Panel then reversed the CPO on March 13, 2026, giving rise to this appeal.

STANDARD OF REVIEW

This appeal concerns two administrative reviews applying a standard of review found in § 11-35-2410(A) of Procurement Code: the CPO's protest determination dated November 19, 2025, and the Panel's order dated March 13, 2026. The CPO and the Panel reviewed DNR's disqualification of Paragon to determine if it was "clearly erroneous, arbitrary, capricious, or contrary to law." S.C. Code Ann. § 11-35-2410(A).

Although the Administrative Procedures Act does not apply to administrative reviews by the CPO or the Panel, § 1-23-380 governs appeals from the Panel to the court of appeals. S.C. Code Ann. § 11-35-4410(4) and (6). That standard is as follows:

(5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5).

Finally, “[q]uestions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below.” *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

ARGUMENT

I. The Panel improperly deferred to DNR regarding the scope and application of § 40-11-410(5)(f).

The Panel improperly deferred to DNR’s interpretation and application of § 40-11-410(5)(f). The Panel relied on an improper application of the deference doctrine and seemed to treat DNR’s choice of the licensing subclassifications as an issue of discretion and judgment rather than an issue of law.

A. The Panel improperly deferred to an agency’s interpretation of a statute it is not charged with administering.

Under the deference doctrine, a court may defer to an agency’s interpretation of an ambiguous statute, but only if the agency is charged with administering the statute. As the Court has held, “our deference doctrine provides that courts defer to an administrative agency’s interpretations *with respect to the statutes entrusted to its administration or its own regulations* ‘unless there is a compelling reason to differ.’” *Kiawah Dev. Partners, II v. S.C. Dept. of Health & Env’tl Ctrl.*, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014) (emphasis added). The doctrine’s rationale rests on the idea that agencies possess special expertise regarding statutes they administer and regulations they promulgate. An administering agency has officers that are “masters of the subject” and often draftsmen of the laws in dispute. *Id.* at 34, 766 S.E.2d at 718. Deference, however, is inappropriate if the agency does not administer the statute.

In its order, the Panel relied heavily on *Kiawah*, citing it four times. (Order, pp. 7 and 12). According to the Panel:

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.

Id. at 12.

The Panel's deference to DNR was inappropriate because the Contractors Licensing Board, not DNR, is charged with administering § 40-11-410(5)(f). *See* S.C. Code Ann. § 40-11-10 (establishing that the Board is responsible for "the administration and enforcement of this chapter"). While DNR may be a "master of the subject" of natural resources, it has no specialized knowledge or skill regarding contractor licensing.

After both the CPO and Paragon filed motions to reconsider, the Panel tried to soften its reliance on the deference doctrine, explaining, "[t]o the extent the [original] Order referenced DNR's technical expertise, that discussion pertained to DNR's selection of licensing subclassifications for the Project, not the Panel's interpretation of those statutes." (Order Mot. to Reconsider, p. 2). This explanation, however, does not resolve the problem. First, it is hard to reconcile this explanation with the Panel's initial order, where the Panel first cited *Kiawah* under the heading "Statutory Interpretation," and spent two-thirds of that section discussing the deference doctrine. (Order, p. 7). Second, the deference doctrine is one of statutory interpretation, not one of factual deference. *Kiawah*, 411 S.C. at 34, 766 S.E.2d at 718 ("our deference doctrine provides that courts defer to an administrative agency's *interpretations with respect to the statutes* entrusted to its administration") (emphasis added). Finally, determining that a contractor's license subclassification is inappropriate for a project requires an agency to reach a legal conclusion regarding the scope of the license subclassification. And determining the scope of a statute is a matter of statutory interpretation. *See CFRE v. Greenville Cnty. Assessor*, 395 S.C. 67, 75-6, 716 S.E.2d 877, 882 (2011) (applying the statutory construction to the scope of tax statute). There is

simply no reason to cite and rely on the deference doctrine except as an aid to statutory construction.

To compound the Panel's misplaced deference, DNR's interpretation was flawed. First, DNR relied on a non-opinion from LLR staff. DNR's determination concluded that, "per SCLLR" Paragon lacked the proper license subclassification. (PRP000066). This was based on an email exchange with a program coordinator for the Contractor's Licensing Board. While the program coordinator said a WL subclassification was "more than likely what is required," she was clear that the Board's staff was not qualified to review plans and determine the appropriate license subclassification. (PRP000071). She refused to give an opinion and instead directed DNR to the relevant building official "to determine if a license is required, and if so, the license type and/or license classifications(s)." (PRP000070). By misplacing its reliance on the program coordinator's non-opinion, DNR's interpretation lacked a rational basis. And by relying on DNR's faulty interpretation, the Panel effectively delegated the determination of an issue of law to a LLR program coordinator.

Second, DNR's interpretation focused on a single part of the statute and ignored the rest. It supported its determination by concluding that, because "[t]here are no buildings being built or renovated in this project, therefore the PB classification is not appropriate for the work." (PRP000069). The problem with this interpretation is that it ignores that § 40-11-410(5)(f) contains seven categories of "plumbing," and nothing in the statute confines its application solely to projects that involve a building.⁶ The statute's broad scope includes—

- "the installation, replacement, alteration, and repair of all plumbing . . . when performed solely within property lines" and

⁶ A full discussion of § 40-11-410(5)(f)'s plain meaning and its seven categories is found in Part III, below.

- “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[.]”

S.C. Code Ann. § 40-11-410(5)(f). It is impossible to measure the scope of the statute without first considering the categories that do not involve a building.

Finally, even if DNR was charged with administering § 40-11-410(5)(f), deference is not warranted if an agency’s interpretation contradicts a statute’s plain language. *Duke Energy Corp. v. S.C. Dept. of Revenue*, 445 S.C. 499, 507, 914 S.E.2d 873, 877 (Ct. App. 2025). Here, the Panel failed to consider the statute’s plain meaning and simply deferred to DNR.

The Panel, therefore, improperly deferred to DNR’s interpretation of a statute (1) that DNR does not administer, (2) that DNR had misinterpreted, and (3) that was inconsistent with its plain meaning. Further, the Panel seemed to stretch the deference doctrine beyond its judicially recognized borders, taking a hands-off approach to DNR’s choice of subclassifications and application of the law.

B. The Panel improperly treated DNR’s statutory interpretation as if it were a matter of discretion and judgement rather than an issue of law.

The Panel’s order seemed to treat the matter as if DNR could simply exercise its discretion to disqualify Paragon solely based on the licensing issue. The Panel’s order made this clear when it reversed the CPO and concluded that—

By selecting a different licensing classification, the CPO substituted his judgement 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.

(Order, p. 14). The CPO, however, did not substitute his judgment for DNR’s judgment because there was no judgment to substitute. DNR could not simply choose between the two classifications after bid opening. If the work fell within the scope of both the WL and PB subclassifications, then

both Haren and Paragon were qualified, and the contract should have been awarded to the lowest bidder.

If a contractor lacks the proper license, it is forbidden by law from performing the work, and the State is forbidden from accepting the contractor's bid. S.C. Code Ann. §§ 40-11-30 and -200. Similarly, if a contractor meets the statutory requirements for licensure, it is a licensed contractor under the law. The issue is binary, black-or-white. Just as an agency lacks discretion to qualify an unlicensed contractor, it also lacks discretion to disqualify a licensed contractor on its licensing status. It cannot override the will of the General Assembly and pick and choose non-statutory criteria for determining licensure.⁷

Similarly, an agency cannot disqualify the lowest bidder and award the contract to the second-lowest bidder simply because the agency prefers one license subclassification over another. Not only is such a post-bid-opening choice contrary to law, but allowing an agency to choose a licensing subclassification between two otherwise qualified contractors introduces potential for abuse. For example, this could allow an agency to avoid awarding the contract to the lowest bidder by disguising that decision as a "choice" between license subclassifications.

⁷ The only reasonable explanation for the Panel's improper application of a discretionary standard is that agencies *do* have discretion for most responsibility determinations not involving contractor licensing. Under the Procurement Code, agencies must determine whether a contractor is "responsible" before awarding it a contract. S.C. Code Ann. § 11-35-1810. This is essentially a due-diligence review about a contractor's ability to perform the contract, and it typically means an agency must evaluate a contractor's financials, record of performance, and its "capacity to meet the terms of the contracts." *Id.*; Reg. 19-445.2125(A)(1). These are purely *factual* determinations resting on whether an agency is comfortable with a contractor's capitalization and record of performance. For those factual determinations, a discretionary standard is usually appropriate, because agencies must live with the consequences of choosing an undercapitalized or incompetent contractor. And such a determination will be upheld so long as it is not clearly erroneous, arbitrary, capricious, or contrary to law. S.C. Code Ann. § 11-35-2410(A). But DNR's non-responsibility determination was devoid of anything requiring a discretionary review. DNR simply found that, based on its interpretation of the licensing laws, awarding Paragon a contract would violate those laws.

In any event, the Panel’s application of a discretionary standard is surprising considering DNR never treated its licensing opinion as an exercise in discretion. On the contrary, DNR simply concluded that Paragon “does not have the proper license classifications or subclassifications to act as a sole prime contractor[.]” (PRP000066). DNR drew this legal conclusion from “correspondence with SC LLR,” which refused to interpret the statute, and from DNR’s own analysis of the statute:

Paragon Inc. [sic] 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.’ . . . There are no buildings being built or renovated in this project, therefore *the PB classification is not appropriate* for the work.

(PRP000069) (emphasis added).

DNR’s determination, therefore, was a pure legal conclusion resting on an “interpretation of the work that can be performed under a PB license” and on a finding that “the PB classification is not appropriate for the work.” The Panel erred when it failed to consider whether DNR’s legal conclusion was an error of law.

C. The Panel’s reliance on DNR’s application of a “cost estimate” does not relieve it of its duty to interpret the scope of § 40-11-410(5)(f).

The Panel’s order seems to have placed special reliance on a cost estimate “indicating that eighty percent of the Project required WL licensure.” (Order, p. 13). It further concluded that, “[t]he administrative record contains no competing engineering estimate or technical analysis demonstrating that DNR’s allocation lacked a rational basis or was artificially structured.” *Id.* The Panel, however, put the cart before the horse. In any legal analysis, the correct rule or law must first be established; otherwise, facts exist in a vacuum. Rather than first interpreting the scope § 40-11-410(5)(f) and *then* applying the cost estimate to the statute, the Panel simply deferred to DNR’s legal conclusion about both the facts and the law.

Further, when reviewing DNR's application of the cost estimate, the Panel went beyond mere deference and crossed into an improper *laissez-faire* approach to its de novo review. Although the Panel stressed that the record contained "no competing engineering estimate or technical analysis," the order was devoid of any analysis of whether DNR had correctly applied the cost estimate. (Panel Order) The Panel's order contained no discussion of the cost estimate (other than to say DNR could rely on it), no analysis of its line items, and no analysis of how the work's subcategories fit within the scope of the statute. Indeed, as shown below in Part III, a review of the cost estimate supports rather than refutes that the project fell within the scope of the PB subclassification, because almost all the line items that DNR classified as "WL" are for piping and piping attachments and connectors. (PRP000074). Yes, a WL subclassification is appropriate for that work, but so too is a PB subclassification.

In sum, the Panel cannot simply claim that DNR is an expert on its pond system and then take a hands-off review of DNR's interpretation of the law and its application of facts to that law. Had the Panel taken the initial step and interpreted the statute, the CPO believes it would have found that DNR had misinterpreted the scope § 40-11-410(5)(f) and that its application of the cost estimate was poisoned by this misinterpretation.

II. The Panel was required to conduct a de novo review of an issue of law regarding the scope § 40-11-410(5)(f).

The Panel is a reviewing tribunal charged with resolving protest appeals under a de novo standard of review. S.C. Code Ann. § 11-35-4410(1). Given that statutory interpretation is an issue of law subject to de novo review, *Barton v. S.C. Dep't of Prob. Parole & Pardon Servs.*, 404 S.C. 395, 414, 745 S.E.2d 110, 120 (2013), the Panel cannot defer its responsibility to resolve issues of law. Like an appellate court, the Panel has a "duty to interpret statutes when a controversy over interpretation arises[.]" *S.C. Pub. Int. Found. v. Wilson*, 447 S.C. 203, 217, 924 S.E.2d 163, 170

(2025); *see also Eargle v. Horry Cnty.*, 344 S.C. 449, 456 n. 5, 545 S.E.2d 276, 280 n.5 (2001) (noting courts “do not have that luxury” of foregoing its duty to interpret statutes).

Throughout its order, the Panel touched on many subjects, including the interpretation of the WL subclassification—an issue not necessary to resolve the dispute. But when it came to interpreting the very statute necessary to resolve whether DNR had improperly disqualified Paragon, the Panel was silent. Indeed, the Panel believed that interpreting the statute was outside the scope of its responsibility. It stated that, in a procurement protest, “*the relevant inquiry is not whether the reviewing body would 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).” (Panel Order, p. 7) (emphasis added). It further added that, “[t]he mere possibility that the PB subclassification could have been selected does not render DNR’s actual determination clearly erroneous under § 11-35-2410(A).” *Id.* at 13.

The interpretation of the statute, however, was the paramount issue before the Panel. The whole point was to determine whether DNR had improperly interpreted the scope of the PB license subclassification. If DNR’s interpretation was wrong, its legal conclusion was wrong and therefore the disqualification of Paragon was contrary to law. Therefore, the Panel had a duty to determine whether Paragon’s disqualification was contrary to law. The Panel simply failed to interpret the statute.

The Panel’s failure to interpret the scope of § 40-11-410(5)(f) is puzzling considering the statute had been interpreted at every stage prior to reaching Panel. At the first stage, DNR interpreted the statute and found that Paragon’s PB subclassification was insufficient. At the second stage, the CPO interpreted the statute and found that DNR’s interpretation was inconsistent with the language of the statute and contrary to law. But when the issue reached the third stage,

the Panel deferred entirely to DNR's interpretation and rubber-stamped its legal conclusion. By expressly abandoning its duty to conduct a de novo review and interpret the statute, the Panel abdicated its statutory responsibility.

III. Paragon is properly licensed under the plain meaning of § 40-11-410(5)(f).

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Words "must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operation." *Hitachi Data Sys. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

Here, the plain meaning of § 40-11-410(5)(f) shows that it encompasses, and does not exclude, the work in the project. The statute has seven categories of "plumbing." The bold, bracketed numbers are added to enumerate the different categories:

(5) "Mechanical Contractors" which includes work under these subclassifications:

* * *

(f) "Plumbing" which includes [1] 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 [2] 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; [3] venting and sanitary drainage systems for all fluid and semi-fluid and organic wastes; [4] roof leaders; [5] water-conditioning equipment; [6] piping and equipment for swimming pools; and [7] 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) (internal numbering and underlining added).

While the statute is not elegantly drafted, it broadly focuses on water service to commercial, residential, and similar facilities “within property lines.” The project here involves work within property lines on the water supply tank, the water supply lines, and the drainage lines—all part of a series of fishponds used solely for research purposes. Thus, under at least the first two categories, the project fits within the definition of “Plumbing” and is within the scope of a PB subclassification. Indeed, the project plans list the design criteria as a “Water Supply System,” a hatchery supply disk filter, and rearing ponds. (PRP000075). A “water supply system” is exactly what § 40-11-410(5)(f)’s second category encompasses. The project also involves work on drainage pipes for “fluid and semi-fluid and organic wastes” (fish waste) that fits within the third category. Finally, none of the statute’s exclusions apply. The work will not be performed in a public easement or right of way, nor does it involve public utility or municipal water supply.⁸

Finally, while the Panel’s order relies heavily on the project’s cost estimate, the estimate supports rather than refutes that Paragon was properly licensed to perform the work. (PRP000074). The cost estimate shows that most of the licensed work involves piping. The estimate is broken down by category and line item, showing that \$3,0871,009 of the work required some form of license. While DNR’s analysis concluded that a WL license subclassification was required for the “Head Tower Rehab,” the site’s “Yard Piping,” and the ponds’ “Piping and valves,” this analysis was based on DNR’s misreading of § 40-11-410(5)(f).

⁸ That the PB subclassification focuses on work within property lines while excluding work on municipal and utility lines suggests a line of demarcation between the PB subclassification and the WL subclassification. Unlike the PB subclassification, the WL subclassification is part of a public-utility license classification, and applies to “work on water mains, water service lines, water storage tanks, sewer mains, sewer lines . . .” S.C. Code Ann. § 40-11-410(3)(c). Nevertheless, nothing in Title 40, Chapter 11 suggests that the PB and WL subclassifications are mutually exclusive. In uncommon water-system projects, such as this one, both subclassifications may be appropriate.

Admittedly, the “Head Tower Rehab” arguably includes some line items falling outside the scope of a PB subclassification, but this represented only \$405,000, or 13.1% of the estimate. The “Yard Piping” category, however, contains the following line items, representing \$797,904 or 25.9% of the estimate:

Yard Piping						
10" DR17 HDPE	6,000	LF	\$	108	\$ 648,000	
8" DR17 HDPE	256	LF	\$	90	\$ 23,040	
6" DR17 HDPE	512	LF	\$	72	\$ 36,864	
10" Butterfly Valve	12	EA	\$	7,500	\$ 90,000	\$ 797,904 WL

The “Piping and Valves” category for the four medium ponds shows the following line items, representing \$1,260,260 or 40.9% of the work.

Piping and Valves						
8" PVC Pipe	125	LF	\$	80	\$ 10,000	
4" PVC Pipe	50	LF	\$	40	\$ 2,000	
8" HDPE 45 Elbow	2	EA	\$	200	\$ 400	
8" Tee	2	EA	\$	800	\$ 1,600	
8" 90 elbow	2	EA	\$	550	\$ 1,100	
8" 45 elbow	2	EA	\$	550	\$ 1,100	
8" butterfly valve	3	EA	\$	5,000	\$ 15,000	
8" Pinch Valve	1	EA	\$	5,000	\$ 5,000	
8" to 4" reducer	1	EA	\$	500	\$ 500	
4" 90 elbow	6	EA	\$	100	\$ 600	
4" Tee	1	EA	\$	140	\$ 140	
4" Pinch Valve	2	EA	\$	1,500	\$ 3,000	
10" Dia Knife Gate	2	EA	\$	15,000	\$ 30,000	
Subtotal					\$ 1,260,260	WL

Together, the “Yard Piping” and “Piping and Values” categories represent 66.8% of the work. Each line item consists of pipes (HDPE or PVC) or pipe connectors or attachments (valves, tees, elbows, reducers, tees, and knife gates). The pipes, connectors, and attachments qualify as “piping, fixtures, and appliances related to water supply” installed solely within property lines and fit squarely within the scope of § 40-11-410(5)(f)’s first and second categories, as shown above.

DNR already determined that 17% of the work required an “Electrical” (EL) subclassification, which Paragon possesses. (PRP000066). When you combine this with the 66.8% of the estimate suitable for a PB subclassification, Paragon’s license classifications and subclassifications cover 83.3% of the work. Given that a contractor holding a Mechanical Contractor’s license can act as a sole prime contractor if at least 51% of the project falls within its

license subclassifications, S.C. Code Ann. § 40-11-340, Paragon was always qualified to act as sole prime contractor on the project.

AVAILABLE REMEDIES IF THE COURT REVERSES THE PANEL

In its Order dated May 20, 2026, this Court asked the parties to further brief the “award” arguments raised in the memoranda submitted to the Court and the remedies available under the Procurement Code. Unlike the contractors involved in this appeal, the CPO has no direct interest in the award of the contract. He favors neither Paragon nor Haren and only wants to ensure the process is fair and consistent with the Procurement Code and the law.

When was the contract “awarded”?

When an agency seeks a construction contract with a “design-bid-build” project-delivery method, such as in this case, award becomes final after the contract is entered. S.C. Code Ann. § 11-35-3020(c). Thus, after an agency issues a “Notice of Intent to Award” to the lowest responsive and responsible bidder, the intended awardee submits documents, such as performance and payment bonds, and the parties then execute the contract. Once the contract is executed, the award is final. *Id.*

What remedies are available if the Court reverses the Panel?

Appeals from the Panel are governed by § 1-23-380. S.C. Code Ann. § 11-35-4410(6). Under § 1-23-380(5), the court may affirm the decision of the agency, remand the case for further proceedings, or reverse or modify the decision if substantial rights of the appellant have been prejudiced.⁹ The ability to modify an agency’s decision, rather than simply affirming or reversing

⁹ While Haren has argued to this Court that § 11-35-4310 governs the remedies available in this appeal, (*See* Haren Petition dated May 29, 2026, p.6), the CPO is unsure whether this statute applies outside the context of an administrative review by the CPO or the Panel. Subsection (1) states that the “provisions of this section apply” when the CPO or the Panel, upon administrative review, finds that a solicitation or award is illegal. It further states that the “remedies set forth herein *may be granted*” by the CPO or the Panel.

it, suggests that the court has some flexibility in fashioning the appropriate remedy. *See, e.g. Russell v. Wal-Mart Stores, Inc.*, 445 S.C. 387, 395, 914 S.E.2d 838, 842 (2025) (reversing decision of appellate panel of Workers Compensation Commission and remanding for an “immediate order granting benefits.”); *Porter v. S.C. Pub. Serv. Comm’n*, 338 S.C. 164, 170, 525 S.E.2d 866, 869 (2000) (reversing circuit court and remanding to the PSC to hold hearings, notify customers, re-evaluate rate increases, and adjust future scheduled rate increases if necessary); *Hamm v. S.C. Pub. Serv. Comm’n*, 291 S.C. 119, 123, 352 S.E.2d 476, 478 (1987) (reversing PSC and “remanding for entry of an order disallowing the additional fuel costs from the base rate.”).

A decision by this Court reversing the Panel’s order and finding that DNR’s disqualification of Paragon was in error will render Haren’s contract award illegal, as a contract must be awarded to the lowest responsive and responsible bidder. The CPO, therefore, believes the proper remedy is to reverse the Panel, find DNR’s disqualification of Paragon in error, and remand the procurement back to DNR. Upon remand, DNR can then determine how to proceed under Regulation 19-445.2015,¹⁰ which directly addresses how an agency proceeds with an illegal award.

CONCLUSION

The Panel’s order represents an impermissible shift in the amount of deference given to a procuring agency for licensing determinations. Unless this precedent is challenged, an agency will be free to interpret contractor licensing laws with almost a “hands-off” level of discretion, leaving

Section 1-23-380(5), on the other hand, expressly states the remedies available upon judicial review of an agency decision.

¹⁰ This regulation was promulgated pursuant to § 11-35-4315. While, at first blush, the regulation is a bit confusing, agencies addressing an illegal award are encouraged to review the FAQ at https://procurement.sc.gov/files/Unauthorized-Illegal%20Procurements%20FAQ_0.pdf (last viewed June 18, 2026).

a disqualified contractor with no effective recourse. The Panel's order also unwittingly introduces the potential for abuse. Agencies could use this precedent to avoid awarding to the lowest bidder by "choosing" between licensing subclassifications after bid opening. The CPO believes this is contrary to both the law and purpose of the Procurement Code, which was designed in part to ensure broad-based competition and promote public confidence in the procurement process. S.C. Code Ann. § 11-35-20.

The CPO, therefore, respectfully requests that the Court reverse the Order of Panel regarding the interpretation and application of § 40-11-410(5)(f); find that DNR's award of the contract to Haren was illegal; and remand the matter back to DNR.

Respectfully submitted,

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