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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

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'
INITIAL RESPONDENT'S BRIEF**

**(RESPONDING TO SOUTH CAROLINA DEPARTMENT OF NATURAL RESOURCES'
INITIAL APPELLANT'S BRIEF AS RESPONDENT/CROSS-APPELLANT)**

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STATEMENT OF ISSUES ON APPEAL

- I. **Whether Paragon's bid submitted in the exact name under which its General Contractor's license (CLG.100190) and Mechanical Contractor's license (CLM.111292) are held by the South Carolina Department of Labor, Licensing and Regulation was *void ab initio* under S.C. Code Ann. § 40-11-370, thereby depriving the Chief Procurement Officer, the Procurement Review Panel, or this Court of jurisdiction.**
- II. **Whether Paragon, an actual bidder aggrieved by DNR's rejection of its low bid, has standing under S.C. Code Ann. § 11-35-4210(1)(b) to protest and appeal DNR's non-responsibility determination.**
- III. **Whether Paragon's protest and subsequent appeals adequately exhausted Paragon's administrative remedies notwithstanding Paragon's use of the term "non-responsive" in describing DNR's licensing-based rejection of its bid.**
- IV. **Whether Paragon's appeal is moot.**
- V. **Whether relief remains available to Paragon notwithstanding DNR's execution of a contract with Haren Construction Co., Inc. during the pendency of this appeal.**

STATEMENT OF THE CASE

DNR issued a solicitation for Project No. P24-6052-PG, the Beaufort-Waddell Mariculture Maturation Ponds Maintenance – Re-Bid, on August 12, 2025. Bids were opened September 23, 2025. Paragon submitted the apparent low bid. On October 17, 2025, DNR determined Paragon non-responsive on two grounds: (1) that Paragon's Plumbing (PB) subclassification did not qualify it to perform the predominant scope of work, which DNR assigned to the Water and Sewer Lines (WL) subclassification; and (2) that Paragon bid in the name "Paragon Inc. of South Carolina, LLC" rather than the trade name "Paragon Builders" appearing on the face of its license certificates. DNR posted a Notice of Intent to Award to Haren Construction Co., Inc. on October 20, 2025.

Paragon timely protested. On November 19, 2025, the CPO sustained Paragon's protest on both grounds, finding that the project's scope fell within Paragon's PB subclassification and that

the name variance was, at most, a minor informality under S.C. Code Ann. § 11-35-1520(13) that did not affect Paragon's ability to perform the work.

Haren appealed the CPO's decision to the Panel. Haren's appeal challenged only the licensing-subclassification ruling; it did not challenge the CPO's disposition of the name issue. DNR did not itself appeal the CPO's November 19, 2025 decision within the ten-day period prescribed by S.C. Code Ann. § 11-35-4210(6).

On March 13, 2026, the Panel reversed the CPO on the licensing-subclassification question, applying Kiawah-style deference to DNR's selection of the WL subclassification, but affirmed the CPO's finding that the name variance did not affect Paragon's responsibility and was not a valid basis for disqualification. Paragon, the CPO, and DNR each moved for reconsideration. Paragon and the CPO argued the Panel had failed to apply de novo review to a pure question of statutory interpretation and had improperly deferred to an agency — DNR — that does not administer Title 40's contractor-licensing provisions. DNR's own motion asked the Panel to reverse itself and hold that the name variance should have disqualified Paragon after all. The Panel denied all three motions on April 6, 2026.

Paragon moved before the Panel for a stay pending appeal; the Panel denied that motion on April 14, 2026. Paragon filed its Notice of Appeal on April 9, 2026; the CPO joined as an appellant on April 13, 2026; DNR filed a Notice of Cross-Appeal on April 21, 2026. Paragon separately moved this Court for a stay and expedited briefing, which this Court addressed together with the parties' other motions in its May 20, 2026 Order, directing the parties to brief the status and effect of DNR's contract award with Haren. DNR executed that contract with Haren effective May 22, 2026, after briefing on the underlying licensing and name issues had already concluded before the Panel.

DNR filed a Motion to Dismiss raising the same four threshold arguments — void ab initio/jurisdiction, standing, exhaustion, and mootness — that it now repeats as Issues I through IV of its Initial Appellant's Brief, together with a new argument, Issue V, that no relief remains available following the contract's execution. Paragon and the CPO each filed a Return opposing that motion. This Court's disposition of the Motion to Dismiss is reflected in its May 20, 2026, Order granting Paragon's Motion to Stay enforcement of the Panel's order, preserving the parties' prior motion arguments for consideration in connection with the merits briefing. Paragon respectfully incorporates, and further develops below, the arguments made in its May 7, 2026, Return and in the CPO's May 5, 2026, Return to DNR's Motion to Dismiss.

STANDARD OF REVIEW

The standard of review is set forth in S.C. Code Ann. § 1-23-380(5), made applicable to this appeal by S.C. Code Ann. § 11-35-4410(6). This Court may reverse or modify the decisions below if Paragon's substantial rights have been prejudiced because the administrative findings, inferences, conclusions, or decisions are in violation of statutory provisions, in excess of statutory authority, made upon unlawful procedure, affected by other error of law, clearly erroneous in view of the record, or arbitrary or capricious. *Id.* Whether a bid is void as a matter of law thereby depriving the CPO, the Panel, and this Court of subject matter jurisdiction, whether a protester has standing, whether administrative remedies were exhausted, and whether an appeal is moot are questions of law reviewed de novo. *Pearson v. Richland Cnty.*, 445 S.C. 246, 249, 912 S.E.2d 286, 288 (Ct. App. 2025); *Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Plan. Comm'n*, 426 SC 97, 825 SE2d 721 (Ct. App. 2019).

STATEMENT OF FACTS

Paragon's license application filed with LLR designates "Paragon Inc. of South Carolina, LLC" as the Licensee/Legal Name and "Paragon Builders" as the trade name (d/b/a). (Doc. 165). Both of Paragon's contractor's licenses — General Contractor's License No. CLG.100190 and Mechanical Contractor's License No. CLM.111292 — are issued to and legally held by Paragon Inc. of South Carolina, LLC. (Doc. 165; Ex. C). Paragon's bid on Project No. P24-6052-PG was submitted in the name "Paragon Inc. of South Carolina, LLC," together with both license numbers referenced above, correctly identifying Paragon as the licensed entity submitting the bid.

That the physical license certificates issued by LLR display the trade name "Paragon Builders" rather than the legal entity name is a function of LLR's own administrative certificate-formatting practice, not any act or omission by Paragon. Both the CPO and the Panel found, as a factual matter, that the name variance did not create any confusion regarding the identity of the bidder and did not affect Paragon's capability to perform the contracted work.

ARGUMENT

I. Paragon's Bid Was Not *Void Ab Initio*, and Section 40-11-370 Does Not Deprive the CPO, the Panel, or This Court of Jurisdiction.

DNR's jurisdictional theory rests on a factual premise the record does not support: that Paragon bid under a name "other than the exact name which appears on the license." S.C. Code Ann. § 40-11-370(B). Paragon did no such thing. Paragon 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 both of its contractor's licenses were applied for and issued. (Doc. 165). That LLR's certificate displays only the trade name is an artifact of LLR's own

administrative practice; it does not change the fact that the licenses are legally held by, and were issued to, "Paragon Inc. of South Carolina, LLC."

The CPO reached this same conclusion in the very order DNR asks this Court to disregard: "Paragon Inc. of South Carolina, LLC, does appear on Paragon's license application as its legal name and Paragon Builders as its trade name." The Panel agreed that the name variance did not affect Paragon's responsibility. No party appealed that finding to the Panel except DNR, and DNR did so 48 days after the CPO's decision — well outside the ten-day window in S.C. Code Ann. § 11-35-4210(6). See Argument I.C, *infra*.

A. Section 40-11-370 Does Not Reach a Bid Submitted in the Bidder's Exact Legal Entity Name.

Section 40-11-370(B) prohibits "engag[ing] in construction under a name other than the exact name which appears on the license issued pursuant to this chapter," and defines "engaging in construction" to include marketing, advertising, using site signs, and submitting contracts. Paragon's licenses were issued to "Paragon Inc. of South Carolina, LLC"; Paragon submitted its bid in that same name. There is no variance between the name on which the license was issued and the name on which Paragon bid — only a variance between the trade name printed on the physical certificate and the legal entity name reflected in LLR's own licensing records.

Subsection (C) confirms that the statute's operative consequence attaches to contracts, not bids: an entity that "enters into a contract to engage in construction in a name other than the name that appears on its license may not bring an action either at law or in equity to enforce the provisions of the contract." S.C. Code Ann. § 40-11-370(C). Paragon has not entered into any contract on this project, under any name. It submitted a bid. Whatever force subsection (C) might have once a contract is signed, it has none here, and it certainly does not operate to strip the CPO, the Panel, or this Court of jurisdiction over a bid protest.

Section 40-11-200(B), which DNR also invokes, is likewise inapposite. That subsection bars an awarding authority from considering a bid or signing a contract with a bidder that has not "first obtained the licenses required by this chapter," and separately bars reconsideration of a bid "if the contractor was not properly licensed at the time the initial bid ... was submitted." S.C. Code Ann. § 40-11-200(B). Paragon was licensed — fully and properly — at the time of its bid. DNR's argument conflates the wholly unlicensed contractor addressed by Section 40-11-200(B) and by *In re: Protest of Roofco, Inc.*, Panel Case No. 2000-14(I), 2001 WL 34058940 (S.C. Procure. Rev. Panel Dec. 5, 2001), with a fully licensed contractor that used its legal entity name rather than a trade name printed on a certificate. *Roofco* held that a contractor lacking any license in the required classification is nonresponsible; it says nothing about a licensed contractor's choice between its legal name and its trade name.

B. The Purpose of Section 40-11-370 Confirms That It Does Not Apply Here.

Section 40-11-370's exact-name requirement exists to prevent an unlicensed or improperly licensed entity from trading on another's license, concealing its identity, or misleading an awarding authority about who is actually performing the work. That concern is entirely absent here. Paragon identified itself by its correct legal name and supplied both of its license numbers with its bid. DNR was never confused about the identity of the bidder, and DNR does not contend otherwise. The CPO and the Panel — the two tribunals that actually reviewed the record — both found the variance immaterial. This Court should decline DNR's invitation to read Section 40-11-370 more broadly than its text or purpose supports, particularly where doing so would strip jurisdiction over an otherwise properly protested bid.

C. DNR's Failure to Timely Appeal the CPO's Ruling on the Name Issue Independently Bars DNR From Raising It Now.

Even if the name issue had merit — which it does not — DNR forfeited its right to raise it. Under S.C. Code Section 11-35-4210(6), a CPO decision is "final and conclusive" unless a person adversely affected appeals to the Panel within ten days. DNR had standing to appeal the CPO's November 19, 2025, decision but did not do so within that window; it raised the name issue for the first time in a brief filed with the Panel 48 days later. Haren's appeal, the only timely appeal filed, did not challenge the CPO's disposition of the name issue at all. With no party timely appealing that discrete ruling, it became final under the statute's own terms.

II. Paragon Has Standing to Protest and Appeal DNR's Non-Responsibility Determination.

DNR's standing argument is derivative of, and fails for the same reasons as, its jurisdictional argument. Standing to protest is conferred by S.C. Code Section 11-35-4210(1)(b) on any "actual bidder" "aggrieved in connection with the intended award or award of a contract." Paragon submitted an actual, timely bid; it was the apparent low bidder; and it was aggrieved when DNR passed over that low bid in favor of Haren's higher bid. Nothing more is required.

DNR's reliance on *Youngblood v. S.C. Dep't of Soc. Servs.*, 402 S.C. 311, 741 S.E.2d 515 (2013), is misplaced. *Youngblood* involved a statute, S.C. Code Section 63-9-60, that by its express terms withholds standing from anyone seeking the adoption of a child placed for adoption by DSS. Section 40-11-370 contains no comparable exclusion; it is a licensing-compliance provision that attaches specific, textually defined consequences — a penalty for unlawful practice, and a bar on contract-enforcement actions — to specific conduct. It does not purport to withdraw the independent grant of protest standing that S.C. Code Section 11-35-4210(1)(b) confers on aggrieved bidders. Paragon has that interest, and the statute DNR cites does not say otherwise.

Moreover, even accepting DNR's premise that Section 40-11-370 could theoretically bear on standing in some circumstance, it could only do so if Paragon actually violated the statute —

which, for the reasons set out in Argument I, it did not. DNR's standing argument therefore collapses into, and rises or falls with, its jurisdictional argument.

III. Paragon's Protest Adequately Exhausted Administrative Remedies.

DNR contends Paragon failed to exhaust its administrative remedies because Paragon's protest and Notice of Intent to Protest used the word "non-responsive" rather than "non-responsible." This argument holds Paragon's protest to a standard of technical precision the Procurement Code does not impose and that DNR's own procurement staff, the CPO, and the Panel have not observed in their own decisions.

Section 11-35-4210(2) requires only that a protest "set forth ... the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided." That is a notice standard, not a pleading-labels standard, and it mirrors the liberal construction South Carolina courts apply to civil pleadings generally: a party "is not required to characterize the facts stated, or to give his cause of action a name; that being the province of the court." *Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 419, 143 S.E.2d 803, 806 (1965). The Panel applies the same liberal pleading standard to protests. *Protest of Oakland Janitorial Serv., Inc.*, Panel Case No. 1988-13, 1988 WL 1022378.

Paragon's Formal Protest expressly challenged DNR's rejection of its bid, identified the licensing statutes DNR relied upon (§§ 40-11-270, -340, and -370), rebutted DNR's conclusions on both the subclassification and the name issues, and requested that Paragon's bid be "deemed responsive and responsible" and the contract awarded to Paragon. (PRP000024-32.) DNR's own bid tabulation form is the source of the ambiguity DNR now presses against Paragon: it flagged Paragon's bid with the notation "Non-responsible*," but Paragon's protest tracked the statutory

citations in DNR's own footnote to that notation. No one — not DNR, not the CPO, not the Panel — was actually confused about what Paragon was protesting.

Nor is DNR's insistence on the responsive/responsible distinction consistent with the Panel's own history of treating the terms interchangeably in the licensing context. See *In re: Appeal by Palmetto Pavement Maint.*, Panel Case No. 1996-7, 1996 WL 33404910 (affirming a non-responsive finding based on lack of proper license); *In re: Protest of Roofco, Inc.*, Case No. 2001-14(II), 2001 WL 34058940 (correcting the CPO's use of "non-responsive" to "non-responsibility" while treating the substance as unchanged); *In re: Appeal by Midwest Maint.*, Panel Case No. 2004-3, 2004 WL 2516300 (agency representative agreeing at hearing that a licensing rejection was "one of responsibility instead of responsiveness"). If the Panel, the CPO, and procurement staff have themselves used these terms interchangeably in licensing disputes, Paragon cannot be faulted for doing the same, particularly where — as here — the substance of the challenge was unmistakable to every tribunal that considered it.

DNR's reliance on *Woodford v. Ngo*, 548 U.S. 81 (2006), does not assist it. *Woodford* holds that proper exhaustion requires giving the agency "a fair and full opportunity to adjudicate" the claim on the merits. *Id.* at 90. That is precisely what happened here: the CPO and the Panel both adjudicated, on the merits, whether Paragon's licenses qualified it to perform the contracted work and whether the name variance disqualified it. Nothing about Paragon's word choice deprived either tribunal of a fair and full opportunity to decide those questions — both tribunals, in fact, decided them. DNR's exhaustion argument, like its jurisdictional and standing arguments, is form over substance.

IV. This Appeal Is Not Moot.

DNR's mootness argument (Issue IV) depends entirely on its contention that Paragon is "statutorily prohibited" from receiving the contract because of the name variance. For the reasons set out in Argument I, no such prohibition exists: Paragon bid in its exact legal entity name, the licenses are legally held by that entity, and both the CPO and the Panel so found. DNR's mootness argument therefore fails with its underlying premise.

V. Relief Remains Available to Paragon Notwithstanding DNR's Execution of a Contract With Haren.

DNR's newest argument — that no relief is available because the contract has already been awarded and executed — ignores this Court's May 20, 2026, Order granting a stay, and restraining contract performance pending resolution of this appeal. This Court granted Paragon's Motion to Stay to prevent this appeal, which presents unresolved questions of first impression regarding contractor license classification requirements under South Carolina law, from becoming moot.

Furthermore, the South Carolina's Consolidated Procurement Code expressly contemplates review at the post-award, pre-performance stage, and South Carolina courts have consistently exercised jurisdiction over such challenges. S.C. Code Section 11-35-1520 specifically provides that "cancellation and re-award of awards or contracts, after award but before performance, may be permitted in accordance with regulations promulgated by the Board." The Board promulgated Regulation 19-445.2085(C) pursuant to this statute. Regulation 19-445.2085(C) provides:

After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing that: . . . (7) Administrative error of the purchasing agency discovered prior to performance.

(Emphasis added)

Wrongfully disqualifying a contractor is an administrative error. Thus, even if the contract has been "awarded" to Haren as argued, the contract must be cancelled and "re-awarded" to Paragon

since performance has not yet begun because of SCDNR's erroneously disqualifying rejecting Paragon's low bid. See, *Tall Tower, Inc. v. S.C. Procurement Rev. Panel*, 294 S.C. 225, 234, 363 S.E.2d 683, 688 (1987) (Where the Panel reversed the decision of the CPO denying a protest and awarded the contract to the protester; the Supreme Court reversed the Panel's decision, affirmed the CPO's ruling and ordered reinstatement of the contract to the Appellant).

CONCLUSION

For the foregoing reasons, Paragon Inc. of South Carolina, LLC d/b/a Paragon Builders respectfully requests that this Court reject each of the five arguments raised in DNR's Initial Appellant's Brief, decline to dismiss this appeal or narrow the relief available on any of the grounds DNR asserts, and proceed to resolve the merits of the licensing-subclassification question presented by Paragon's and the CPO's appeals

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