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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
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.

FINAL APPELLANT'S BRIEF OF SCDNR, RESPONDENT-APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Whether Paragon is statutorily barred from participating in SCDNR's procurement action which deprives the Chief Procurement Officer, the Procurement Review Panel, and this Court of jurisdiction.

II. Whether Paragon lacks standing to initiate or maintain an appeal of SCDNR's determination of non-responsibility.

III. Whether Paragon's failure to exhaust administrative remedies deprived the Chief Procurement Officer, the Procurement Review Panel, and this Court of jurisdiction.

IV. Whether Paragon's appeal is moot because the construction contract can't be awarded to Paragon due to statutory prohibition.

V. Whether relief sought by Paragon is available when SCDNR already made the contract award.

STATEMENT OF THE CASE

On October 20, 2025, the South Carolina Department of Natural Resources ("SCDNR" or "Department") posted a notice of intent to award the Waddell Mariculture Center renovation solicitation to Haren Construction Co., Inc. ("Haren"). On October 27, 2025, Paragon Inc. of South Carolina, LLC ("Paragon") filed a notice of intent to protest with the Chief Procurement Officer ("CPO") and, on October 30, 2025, filed a formal protest with the CPO. The CPO rendered a decision on November 19, 2025 overturning the Department's decision. Haren challenged the CPO decision on November 26, 2025 and the Procurement Review Panel ("Panel") rendered a decision on March 13, 2026 reversing the CPO and reinstating the Department award to Haren. The CPO, Paragon, and SCDNR filed motions for reconsideration which the Panel denied on April 6, 2026, leaving the March 13, 2026 disposition unchanged. On April 9, 2026, Paragon moved for a stay which was opposed by the Department and Haren before the Panel denied it on April 14, 2026.

Paragon filed a notice of appeal on April 9, 2026 and the CPO joined in that on April 13, 2026. The Department filed a notice of cross-appeal on April 21, 2026. The parties subsequently filed several motions which prompted the Court to issue an order on May 7, 2026 instructing the parties to provide a memorandum addressing the status of the solicitation award. The Department and Haren filed the requested memoranda and, on May 20, 2026, the Court addressed all motions then pending, preserved for briefing arguments made in the prior motions, and instructed the parties to brief the "award" arguments in the memoranda. On May 27, 2026 the Department filed a motion to supplement which the Court granted on June 12, 2026.[1]

[1] On May 29, 2026, Haren filed a Petition for review of the Court's stay pending this appeal to which the Department filed a response in support and Paragon filed a response in opposition. The CPO filed no response and Haren filed a reply. Haran's petition was pending at the time this initial brief was prepared.

STANDARD OF REVIEW

The basic standard of review in the appeal from an administrative body is established in the South Carolina Administrative Procedures Act. S.C. Code Ann. § 1-23-380 (1976 & Supp. 2025). Although the Consolidated Procurement Code creates a unique standard for the CPO and Panel in the proceedings below, the Procurement Code specifies that section 1-23-380 controls for appeals beyond the Panel. S.C. Code Ann. § 11-35-4410(6) (1976 & Supp. 2025). Therefore, the relevant standard of review is as follows:

> 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).

FACTS

In South Carolina, a contractor intending to undertake construction work being solicited by a state agency must satisfy tiered legal requirements. First, contractors must be licensed appropriately by the South Carolina Department of Labor Licensing and Regulation (LLR). *See* *generally,* S.C. Code Ann. § 40-11-5, *et seq*. (1976 & Supp. 2025). Next, a contractor must comply with the South Carolina Consolidated Procurement Code under which the solicitation for construction services is made by a state agency. *See generally,* S.C. Code Ann. § 11-35-10, *et seq*. (1976 & Supp. 2025).

I. Exact Name Requirement

As will be discussed more fully herein, LLR has adopted licensing standards for contractors and prescribed how contractors may conduct themselves when advertising, bidding, contracting, or seeking enforcement of contract. *See generally*, S.C. Code Ann. § 40-11-20(3), -30, -200, and 370(B). Among those requirements, the statute provides that "[i]t is unlawful to engage in construction under a name other than the exact name which appears on the license issued pursuant to this chapter. 'Engaging in construction' includes marketing, advertising, using site signs, and submitting contracts." S.C. Code Ann. § 40-11-370(B).

Paragon submitted a bid to the Department in response to the Department's August 12, 2025 solicitation for Project No. P24-6052-PG Beaufort-Waddel Mariculture Maturation Ponds Maintenance – Re-Bid. (R.p. 1045-1046, 1062-1065, 1067). Paragon failed to provide the Department a contractor license for "Paragon Inc. of South Carolina, LLC." On October 17, 2025, the Department determined Paragon was "non-responsible" on the basis, among others, that Paragon did not satisfy the "exact name" license requirement of S.C. Code Ann. § 40-11-370. (R.p. 229, 1017, 1019, 1021, 1032, 1046, 1049, 1053-1056. Taking into consideration the non-responsibility determination about Paragon, the Department, with the concurrence of the Office of State Engineer concurring on October 17 and October 20, did not award the contract to Paragon. (R.p. 229, 1046, 1049, 1053-1056.

In its November 19, 2025 Protest Decision, the CPO acknowledged that Paragon "bid in the name of Paragon Inc. of South Carolina, LLC rather than the exact name appearing on its license – Paragon Builders." (R.p. 998-1004). Similarly, the Panel acknowledged the "name variation on Paragon's bid." (R.p. 72, 79).

II. Failure to Exhaust Administrative Remedies

Among other requirements of the Procurement Code, the Department is required to make a determination on whether a bidder is responsible or non-responsible. *See* S.C. Code Ann. §11-35-1810; S.C. Code Regs. 19-445.2125(D). As noted above, the Department reviewed the bid submission of Paragon and determined Paragon was non-responsible. (R.p. 229, 1017, 1019, 1021, 1032, 1046, 1049, 1053-1056). "Non-responsible" is a defined term in the Procurement Code and is materially distinct from "non-responsive." In its October 27, 2025 Notice of Intent to Protest (R.p. 1037-1044) and November 4, 2025 Formal Protest (R.p. 1007-1015), Paragon consistently asserted it was appealing the Department's decision that Paragon's bid was "non-responsive." (R.p. 1007-1008, 1011-1012, 1014, 1038, 1042).

For the sake of presentation beyond these introductory facts, further facts are presented within the following arguments.

ARGUMENTS[2]

I. Paragon is statutorily barred from participating in SCDNR's procurement action which deprives the Chief Procurement Officer, the Procurement Review Panel, and this Court of jurisdiction.

[2] Given the nature of the Department's arguments and that they individually could dispose of the appeal, they are presented in the alternative and assuming arguendo that the other arguments have not already established that jurisdiction is lacking or that the appeal is otherwise disposed.

Paragon failed to comply with a statutory licensing requirement in attempting to submit a bid to the Department. Compliance is a mandatory prerequisite to lawful bids and Paragon's failure to comply renders Paragon's bid void *ab initio*.

The statutory provisions that Paragon failed to obey require a contractor to use the exact name that appears on its license when submitting bids. Those provisions include the following:

> **SECTION 40-11-30. Licensing requirement.**
>
> *No entity or individual may practice as a contractor by performing or offering to perform contracting work* for which the total cost of construction is greater than ten thousand dollars for general contracting or greater than ten thousand dollars for mechanical contracting *without a license issued in accordance with this chapter*.

S.C. Code Ann. § 40-11-30 (1976 & Supp. 2025) (emphasis added).

> **SECTION 40-11-200. Unlawful practice; penalty.**
>
> ***
>
> (B) It is a violation of this chapter for an awarding authority, owner, contractor, or an agent of an authority, owner, or contractor *to consider a bid*, sign a contract, or allow a contractor to begin work *unless the bidder or contractor has first obtained the licenses required by this chapter*. Bids or contracts submitted by contractors may not be reconsidered or resubmitted to an awarding authority, contractor, or owner if the contractor was not properly licensed at the time the initial bid or contract was submitted.

S.C. Code Ann. § 40-11-200(B) (emphasis added). "Bid" is defined as "an offer to furnish labor, equipment, or materials or other services regulated by this chapter." S.C. Code Ann. § 40-11-20(3).

> **SECTION 40-11-370. License required to use term "licensed contractor"; engaging in construction under assumed name; enforcement of contract.**
>
> (A) It is unlawful to use the term "licensed contractor" or to perform or *offer to perform general or mechanical construction without first obtaining a license as required by this chapter*.
>
> (B) *It is unlawful to engage in construction under a name other than the exact name which appears on the license issued pursuant to this chapter.* "*Engaging in construction" includes* marketing, advertising, using site signs, *and submitting contracts*. This requirement does not include advertising on vehicles, which may use an abbreviated version of the license name so long as the advertising is not misleading.

> (C) An entity which does not have a valid license as required by this chapter may not bring an action either at law or in equity to enforce the provisions of a contract. *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 (emphasis added).

Therefore, the requirement of section 40-11-370 unequivocally requires a contractor to obtain a license in the "exact name" in which it intends to "engage in construction." *See State v. Bridges*, 329 S.C. 11, 14, 495 S.E.2d 196, 198 (1997) ("[W]here a statute uses a term that has a well-recognized meaning in the law, the presumption is that the General Assembly intended to use the term in that sense."). That term is further explained to include "submitting contracts" and even "marketing, advertising, using site signs." S.C. Code Ann. § 40-11-370(B). To the extent a different trade name might be used, section 40-11-370(B) only allows such abbreviations for "advertising on vehicles … so long as the advertising is not misleading." The importance of this statutory requirement is demonstrated where the General Assembly clearly declared that "[i]t is *unlawful* to engage in construction [or market, advertise, use site signs, or submit contracts] under a name other than the exact name which appears on the license issued pursuant to this chapter." S.C. Code Ann. §40-11-370(B).[3] Likewise, a further consequence of a contractor entering "into a contract to engage in construction in a name other than the name that appears on its license" is that the contractor "may not bring an action either at law or in equity to enforce the provisions of the

[3] With respect to this issue, the fact that "Paragon Builders" was cited by SCLLR on August 5, 2025 for "engaging or offering to engage in contracting work or submitting a bid when not properly licensed or while a license was under suspension or revocation" and fined $500 by SCLLR further demonstrates the importance of this requirement. (R.p. 1461).

contract." S.C. Code Ann. §40-11-370(C)[4]. Both of these consequences are substantial and demonstrate the legislative intent that contractors obtain and utilize licenses in the exact name specified by LLR. There is no ambiguity on this legal mandate.

Turning now to the facts of this case, the Department received a bid from "Paragon Inc. of South Carolina, LLC." (R.p. 204-216, 998-1004, 1032, 1046, 1049, 1051-1056). Paragon has not provided a contractor's license issued in the name of "Paragon Inc. of South Carolina, LLC." The only licenses Paragon provided to the Department are in the name of "Paragon Builders." (R.p. 1017, 1019, 1021). Therefore, Paragon Inc. of South Carolina, LLC did not hold a license from LLR in that name as clearly required by statutory mandate before offering to perform general or mechanical construction services. Given the statutory mandate of conducting business in the "exact name" on the license, the Department asserts it is Paragon's responsibility to seek and obtain a license from LLR in the correct legal name. *See generally*, *Smothers v. United States Fid. & Guar. Co.,* 322 S.C. 207, 210–211, 470 S.E.2d 858, 860 (1996) ("Everyone is presumed to have knowledge of the law and must exercise reasonable care to protect his interests."); *LaBruce v. City of North Charleston*, 268 S.C. 465, 467, 234 S.E.2d 866, 867 (1977) ("Citizens are charged with knowledge of existing law."). Paragon's license application provides, in part, immediately above the Licensee / Legal Name field: "[I]ndividual or company listed in this section will be designated as the "License Holder." You must sign contract for permits, conduct business, and advertise in this name only (See SC Code of Laws Section 40-11-20, 130, […] 240 and 370(B))." (R.p.1023). Quite simply, the requirements of "exact name" or "this name" reflect an obligation to only use a singular name, not two names or a "doing business as" alternative name. Additionally, LLR's

[4] In addition to the direct effect of section 40-11-370(C), it also undermines Paragon's ability to satisfy the "substantial rights of the appellant have been prejudiced" requirement of 1-23-380(5).

revision application form specifically includes a "name change" action item which demonstrates the remedy for Paragon's exact name deficiency being readily available. (R.p.1025-1028). In the absence of doing so, Paragon must bear the consequences of not complying with applicable law. As the Panel previously declared, "the lack of a proper license to do the work solicited in a state contract will always render a bidder nonresponsible." *In re: Protest of Roofco, Inc.,* Panel Case No. 2000-14(I), 2001 WL 34058940 (S.C.Procure.Rev.Panel Dec. 5, 2001).

Finally, to the extent the CPO dismissed Paragon's lack of holding a license in the correct name as a mere informality and minor infraction, stating, "[i]n past years, the Contractors Licensing Board staff have advised the CPOC that this is a minor infraction not affecting a contractor's ability to perform the work" and characterizing it as being a "minor informality" under South Carolina Code Ann. § 11-35-1520(13) (1976 & Supp. 2025), neither are sufficient legal grounds to overcome the statutory mandates of sections 40-11-30, 40-11-200 and 40-11-370. (R.p.1003-1004). The legislature has mandated that contractors conduct business in the exact name appearing on any license and explained this requirement is to be broadly applied with limited exception. S.C. Code Ann. § 40-11-370(B). The Department is legally barred by section 40-11-200 and S.C. Code Regs. 19-445.2125(A)(3) from considering the bid from Paragon and a staff opinion of LLR cannot nullify those requirements. *See Quail Hill, L.L.C. v. County of Richland*, 387 S.C. 223, 236-38, 692 S.E.2d 499, 506-07 (2010) (finding a governmental entity is not estopped from enforcing its ordinances where its employee gives erroneous information or acts in contradiction to an ordinance). Furthermore, the "minor informalities" exceptions in the Procurement Code simply do not release this obligation. S.C. Code Ann. § 11-35-1520(13). In fact, exception (l3) provides:

> (13) Minor Informalities and Irregularities in Bids. A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation

> from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders. The procurement officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the State. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:
>
> …
>
> (l)*Notwithstanding Title 40*, the failure of a bidder to indicate his contractor's license number or *other evidence of licensure, except that a contract must not be awarded to the bidder unless and until the bidder is properly licensed under the laws of South Carolina.*

S.C. Code Ann. § 11-35-1520(13)(l) (emphasis added). Likewise, the statutory requirement that "Bids or contracts submitted by contractors may not be reconsidered or resubmitted to an awarding authority, contractor, or owner if the contractor was not properly licensed *at the time the initial bid or contract was submitted*," also neutralizes any notion that the exact name requirement may be shrugged off as close enough. S.C. Code Ann. § 40-11-200(B). Despite the above authorities, the Panel similarly erred after acknowledging the "name variation" and then ignoring the prohibitions established in sections 40-11-30, 40-11-200 and 40-11-370. (R.p.72, 79, 96-108, 137-140, 154-160).

Therefore, Paragon Inc. of South Carolina, LLC, under sections 40-11-30, 40-11-200, and 40-11-370, was prohibited as a matter of law from bidding on the Department's solicitation. Likewise, it would be unlawful for the Department or any other "awarding authority, owner, contractor, or an agent of an authority, owner, or contractor *to consider a bid*, sign a contract, or allow a contractor to begin work *unless the bidder or contractor has first obtained the licenses required by this chapter*." S.C. Code Ann. § 40-11-200 (emphasis added). In the absence of a lawful bid, Paragon had no underlying rights or legal basis for challenging the Department's rejection of the bid. That failure and statutory barrier deprived the CPO, Panel and this Court of jurisdiction to hear this appeal. *See Chet Adams Co. v. James F. Pedersen Co*., 307 S.C. 33, 36, 413 S.E.2d 827, 828 (1992) ("Acts by a court as to a matter over which it has no jurisdiction are void.").

II. Paragon lacks standing to initiate or maintain an appeal of SCDNR's determination of non-responsibility.

Consistent with the foregoing discussion, the failure of Paragon to comply with statutory licensing requirements may also be treated as a lack of standing upon the express statutory terms of section 40-11-370.

"Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." *Powell ex rel. Kelley v. Bank of Am*., 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008) (alteration and internal quotation marks omitted). "Standing is ... that concept of justiciability that is concerned with whether a particular person may raise legal arguments or claims." *Id*. (alteration in original) (internal quotation marks omitted). "It concerns an individual's sufficient interest in the outcome of the litigation to warrant consideration of [the person's] position by a court." *Id*. (alteration in original) (internal quotation marks omitted). "Standing is a fundamental requirement for instituting an action." *Brock v. Bennett*, 313 S.C. 513, 519, 443 S.E.2d 409, 413 (Ct. App. 1994).

In contrast to a statute providing standing, section 40-11-370 expressly prohibits Paragon from initiating or maintaining this appeal. This point is demonstrated in *Youngblood v. South Carolina Department of Social Services* where the Supreme Court explained: "while the family court found statutory standing pursuant to section 63–9–60, we hold that statute does not give the Youngbloods standing; *instead, it specifically deprives them of standing*." 402 S.C. 311, 318, 741 S.E.2d 515, 518 (2013) (emphasis added). That Court then concluded: "Because the statute *does* *not permit any exceptions and plainly states* that the section 63–9–60(A) grant of *standing does not apply* to children placed by DSS, the *family court erred in grounding standing on* section 63–9–60." *Id*., 402 S.C. at 319, 741 S.E.2d at 519 (emphasis added). *See also Jowers v. S.C. Dep't of Health & Env't Control*, 423 S.C. 343, 353, 815 S.E.2d 446, 451 (2018) ("Our courts will not address the merits of any case unless it presents a justiciable controversy."); *Youngblood*, 402 S.C. at 317, 741 S.E.2d at 518 ("Standing, a fundamental prerequisite to instituting an action, may exist by statute, through the principles of constitutional standing, or through the public importance exception."); *James v. Anne's Inc*., 390 S.C. 188, 193, 701 S.E.2d 730, 732 (2010) (stating appellate courts have "the inherent authority to consider justiciability); *Peoples Fed. Sav. & Loan Ass'n v. Res. Plan. Corp*., 358 S.C. 460, 477, 596 S.E.2d 51, 60 (2004) ("A threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy." (quoting *Lennon v. S.C. Coastal Council*, 330 S.C. 414, 415, 498 S.E.2d 906, 906 (Ct. App. 1998))); *Carolina All. for Fair Emp. v. S.C. Dep't of Labor, Licensing, & Reg*., 337 S.C. 476, 486-87, 523 S.E.2d 795, 800-01 (Ct. App. 1999) (raising the issue of standing sua sponte in a declaratory judgment action and affirming the grant of summary judgment under Rule 56(c) because the appellant lacked standing).

Therefore, again, this appeal should be dismissed on the basis of Paragon not having standing to initiate or maintain the appeal pursuant to unique and express prohibitions in section 40-11-370.

III. Paragon's failure to exhaust administrative remedies deprived the Chief Procurement Officer, the Procurement Review Panel, and this Court of jurisdiction.

The Department asserts Paragon did not adequately protest the Department's non-responsibility determination and thus failed to exhaust administrative remedies which deprived the CPO, Panel, and this Court of jurisdiction.

Upon review of the bid submission of Paragon, the Department determined Paragon was non-responsible. (R.p. 229, 1046, 1049, 1051-1056). "Non-responsible" is a defined term in the Procurement Code and is not interchangeable with "non-responsive." However, in its October 27, 2025 Notice of Intent to Protest (R.p.1037-1044) and November 4, 2025 Formal Protest (R.p.1007-1015), Paragon consistently asserted it was appealing the Department's decision that Paragon's bid was "non-responsive." (R.p.1007-1008, 1011-1012, 1014, 1038, 1042). As addressed more fully herein, Paragon did not properly raise the "non-responsible" issue in a manner by which it can be addressed by this Court because the CPO should not even have considered it.

In the context of the Procurement Code, the terms "responsible" and "responsive" are frequently stated as dual requirements and have specific meanings. For example, "Responsible bidder or offeror" is defined as "a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance." S.C. Code Ann. § 11-35-1410(8). In contrast, "Responsive bidder or offeror" is "a person who has submitted a bid or proposal which conforms in all material aspects to the invitation for bids or request for proposals." S.C. Code Ann. § 11-35-1410(9). The Department is specifically charged by statute to make a determination of responsibility. S.C. Code Ann. §11-35-1810; S.C. Code Regs. 19-445.2125(D) ("the procurement officer must be satisfied that the prospective contractor is responsible"); *see also* S.C. Code Regs. 19-445.2145(F) and Office of State Engineer "MANUAL FOR PLANNING AND EXECUTION OF STATE PERMANENT IMPROVEMENTS" (2023) (https://procurement.sc.gov/manual - last visited December 31, 2025) – Section 6.11 Determination of Bidder's Responsibility("the Agency must satisfy itself that the apparent low Bidder meets the State's Standards of Responsibility").

In applying those requirements, a bid is only to be awarded to a party that is both responsive and responsible. S.C. Code Ann. § 11-35-1810; s*ee e.g*. S.C. Code Ann. §11-35-1520(10) ("Unless there is a compelling reason to reject bids as prescribed by regulation of the board, notice of an award or an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids must be given by posting the notice on the date and at a location specified in the invitation for bids."). Consequently, there is a material legal distinction between challenging responsiveness and responsibility. In this instance, Paragon's protests pursued the legal theory of responsiveness and did not adequately raise a challenge to the Department's non-responsibility determination.

Building upon this foundation, the Panel is statutorily mandated to conduct a *de novo* review of a challenged procurement decision. S.C. Code Ann. § 11-35-4410(1) (1976 and Supp. 2025) ("There is created the South Carolina Procurement Review Panel which is charged with the responsibility to review and determine de novo: (a) requests for review of written determinations of the chief procurement officers pursuant to Sections 11-35-4210(6), …); *see generally Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Off.*, 346 S.C. 158, 551 S.E.2d 263 (2001). As such, the Panel is generally disregarding the decision of CPO and making a new decision as to the propriety of the Department's procurement decision. *See generally Nat'l Health Corp. v. S.C. Dep't of Health and Envtl. Control*, 298 S.C. 373, 378, n. 1, 380 S.E.2d 841, 844, n. 1 (Ct. App. 1989) (trial de novo is defined as "a new trial or retrial had in which the whole case is tried as if no trial whatsoever had been had in the first instance.") (citation omitted). However, as the South Carolina Court of Appeals recognized in *National Health Corporation*, some administrative reviews are "quasi-de novo, quasi-appellant." *Id*., 298 S.C. 378, n. 1, 380 S.E.2d 844, n. 1; *see also Richards v. Spicer*, 445 S.C. 514, 520, 915 S.E.2d 486, 489 (2025) ("the circuit court also ruled that … the Procurement Code gives appellate review of the CPO's decision to the Procurement Review Panel"); *Milliken and Co. v. S.C. Dept. of Labor*, 275 S.C. 264, 266, 269 S.E.2d 763, 764 (1980) ("In our view, administrative review of the issuance of [an OSHA] citation is intended to be essentially appellate in nature: it should be undertaken only upon information which was available to the officer or examiner responsible for issuing the citation in the first place."). Furthermore, the Panel has previously explained that a protestant is limited by section 11-35-4210 to the established issues in its protest letter. *In re: Protest of Volume Services,* Panel Case No. 1994-8, p. 4, 1994 WL 16006483 (S.C.Procure.Rev.Panel Aug 31, 1994)**.** In discussing this point, Panel Order explained:

> Section 11-35-4210 provides the right to protest. Subsections (1) and (2) require a protestant to state its grounds for protest in writing to the CPO within a time limit. Thus, the issues in the case are established in the protest letter. The letter appealing to the Panel cannot add issues. If new issues were allowed to be included in the appeal letter to the Panel, no effect would be given to the requirements of subsection (1) and (2). Although, the Panel hearing is a de novo hearing under Code Section 11-35-4410(1), it is only new as to evidence. The Panel may allow new evidence to be admitted, but only evidence concerning the established issues.

Id. *See also In re: Appeal by United Way Assoc. of South Carolina, Inc.,* Panel Case No. 2017-2(I), p. 10 and n 7, 2017 WL 5589152 (S.C.Procure.Rev.Panel Sept. 14, 2017). Accordingly, the Department believes that whether the Panel's review is framed as an administrative *de novo* review or appellate review, Paragon failed to properly raise the non-responsibility issue for the CPO or Panel to consider.

To initiate a timely protest, Paragon was statutorily required to "set forth both the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided." S.C. Code Ann. § 11-35-4210(2). Here, the Department very clearly gave notice of its non-responsibility determination in the October 17, 2025 memorandum (R.p.1049, 1053-1056). Thereafter and prior to Paragon submitting its formal protest, the Department stated in its October 30, 2025 memorandum: "Just to clarify, SCDNR deemed Paragon Inc. "Non- Responsible" and not Non-Responsive as noted in their notice of intent to protest." (R.p.1051-1052). However, in its November 4, 2025 formal protest, Paragon declared the grounds for protest to be:

> Paragon protests the Agency's determination that its bid was non-responsive based on alleged violations of South Carolina Code Sections 40-11-270, 40-11-340, and 40-11-370. The Agency's determination is erroneous, arbitrary, and contrary to law. Specifically, Paragon contends:
>
> …
>
> Issue: The Agency allegedly found Paragon's bid non-responsive due to licensing deficiencies.
>
> …
>
> Issue: The Agency may have concerns regarding Paragon's ability to properly subcontract portions of the work.
>
> …
>
> Issue: The Agency cited Section 40-11-370(B) regarding engaging in construction under a name other than the exact name on the license.

(R.p.1008-1009). In its own words, Paragon only challenged the issue of non-responsiveness. Paragon's protest issues do not identify non-responsibility or the legal standard for such adopted under the Procurement Code. *See* S.C. Code Ann. §11-35-1810; S.C. Code Regs. 19-445.2125(D) ("the procurement officer must be satisfied that the prospective contractor is responsible"); *see also* S.C. Regs. 19-445.2145(F) and Office of State Engineer "MANUAL FOR PLANNING AND EXECUTION OF STATE PERMANENT IMPROVEMENTS" (2023)(https://procurement.sc.gov/manual - last visited December 31, 2025) – Section 6.11 Determination of Bidder's Responsibility. Therefore, Paragon failed to meet that statutory standard for stating the grounds for appeal with its initial and final protests as to the non-responsible determination. This flaw is fatal to Paragon's protest and the continuing appeals to the Panel and this Court as further explained below.

Under a *de novo* standard, Paragon failed to exhaust a statutory administrative prerequisite to CPO or Panel review. As the United States Supreme Court explained in the *Woodford v. Ngo*:

> Because exhaustion requirements are designed to deal with parties who do not want to exhaust, administrative law creates an incentive for these parties to do what they would otherwise prefer not to do, namely, to give the agency a fair and full opportunity to adjudicate their claims. Administrative law does this by requiring proper exhaustion of administrative remedies, which "means using all steps that the agency holds out, and doing so *properly* (so that the agency addresses the issues on the merits)." *Pozo*, 286 F.3d, at 1024 (emphasis in original). This Court has described the doctrine as follows: " "[A]s a general rule ... courts should not topple over administrative decisions unless the administrative body not only has erred, *but has erred against objection made at the time appropriate under its practice*." *United States v. L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 37, 73 S.Ct. 67, 97 L.Ed. 54 (1952) (emphasis added in *Woodford*). See also *Sims v. Apfel*, 530 U.S. 103, 108, 120 S.Ct. 2080, 147 L.Ed.2d 80 (2000); *id.*, at 112, 120 S.Ct. 2080 (O'Connor, J., concurring in part and concurring in judgment) ("On this underlying principle of administrative law, the Court is unanimous"); *id.*, at 114-115, 120 S.Ct. 2080 (BREYER, J., dissenting); *Unemployment Compensation Comm'n of Alaska v. Aragon*, 329 U.S. 143, 155, 67 S.Ct. 245, 91 L.Ed. 136 (1946); *Hormel v. Helvering*, 312 U.S. 552, 556-557, 61 S.Ct. 719, 85 L.Ed. 1037 (1941); 2 K. Davis & R. Pierce, Administrative Law Treatise § 15:8, pp. 341-344 (3d ed.1994). Proper exhaustion demands compliance with an agency's deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings.

Woodford v. Ngo, 548 U.S. 81, 90-92 (2006); *accord Brown v. James*, 389 S.C. 41, 48, 697 S.E.2d 604, 608 (Ct. App. 2010). Furthermore, in administrative law, procedural prerequisites can become jurisdictional. The United States Court of Appeals for the District of Columbia has explained in addressing exhaustion of administrative remedies under federal administrative law that:

> the word "exhaustion" now describes two distinct legal concepts. The first is a judicially created doctrine requiring parties who seek to challenge agency action to exhaust available administrative remedies before bringing their case to court. We will call this doctrine "non-jurisdictional exhaustion." ...
>
> The second form of exhaustion arises when Congress requires resort to the administrative process as a predicate to judicial review. This "jurisdictional exhaustion" is rooted, not in prudential principles, but in Congress' power to control the jurisdiction of the federal courts. Whether a statute requires exhaustion is purely a question of statutory interpretation.

Avocados Plus Inc. v. Veneman, 370 F.3d 1243, 1247-48 (D.C. Cir. 2004) (internal citations omitted). "[T]he avenue of written protest remains the sole procedure by which a matter is brought before the Panel for consideration." *Hitachi Data Systems Corp. v. Leatherman*, 309 S.C. 174, 179, 420 S.E.2d 843, 846 (1992) (discussing statutory limitations on Panel's authority); *accord Amisub of S.C., Inc. v. S.C. Dep't of Health & Env't Control*, 403 S.C. 576, 585, 743 S.E.2d 786, 791 (2013) ("The General Assembly has the authority to limit the subject matter jurisdiction of a court it has created; therefore, it can prescribe the parameters of the ALC's powers."). Applying these principles to the instant matter, the CPO and Panel, as administrative agents outside of the judiciary, are likewise creatures of statute and subject to legislative limitations on jurisdiction. Where Paragon failed to timely raise the issue of non-responsibility pursuant to section 11-35-4210, it cannot maintain a challenge on that issue before the CPO, Panel or this Court.

Alternatively, under an appellate standard, Paragon both failed the statutory prerequisite and did not properly preserve the non-responsibility determination.[5] As in other appellate matters, the requirements of issue preservation apply in administrative appeals. *See Carson v. South Carolina Dep't of Natural Res.*, 371 S.C. 114, 120, 638 S.E.2d 45, 48 (2002) (court sitting in appellate capacity may not consider issues not raised or ruled on by administrative agency); *Gatewood v. S.C. Dep't of Corr.*, 416 S.C. 304, 324, 785 S.E.2d 600, 611 (Ct. App. 2016) ("An issue that is not raised to an administrative agency is not preserved for appellate review by the ALC."). Here, Paragon raised responsiveness that, as discussed above, is materially distinct from the non-responsibility determination. To preserve a matter for appellate review, it must both be

[5] "The appellate court must always take notice of the lack of subject matter jurisdiction." *Town of Hilton Head Island v. Godwin*, 370 S.C. 221, 224, 634 S.E.2d 59, 60 (Ct.App.2006).

raised to and ruled upon by the trial court, or here the CPO. Paragon did not adequately raise the non-responsiveness issue to the CPO or Panel.[6]

In summary, under the administrative challenge / appeal framework of the Procurement Code, Paragon did not timely or appropriately raise a challenge to the Department's non-responsibility determination thereby precluding the CPO and Panel from reviewing or modifying the Department's determination. That failure to comply with statutory prerequisites is a jurisdictional defect.

IV. Paragon's appeal is moot because the construction contract can't be awarded to Paragon due to statutory prohibitions.

Building upon the prior discussion, Paragon's failure to obtain a license in the exact name of Paragon Inc. of South Carolina, LLC precludes the Department from being able to award the construction job to Paragon. Stated differently, it would be illegal for the Department "to consider a bid, sign a contract, or allow a contractor to begin work" when the contractor has not complied with sections 40-11-30, 40-11-200, and 40-11-370. S.C. Code Ann. § 40-11-200(B) (1976 & Supp. 2025). Therefore, Paragon's efforts to prevail will only lead to a dead end where the Department cannot award or authorize Paragon to begin work. Such an outcome would render this appeal moot. *See Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 602-03, 567 S.E.2d 514, 517 (Ct. App. 2002) ("An appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." (quoting *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001))); *see also Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474,

[6] To the extent the CPO's decision rules on non-responsibility, the issue was not properly presented by Paragon in compliance with S.C. Code Ann. § 11-35-4210(2) as discussed above and should be deemed void. *See Chet Adams Co. v. James F. Pedersen Co.*, 307 S.C. 33, 36, 413 S.E.2d 827, 828 (1992) ("Acts by a court as to a matter over which it has no jurisdiction are void.").

477 (2006) ("A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court."). Therefore, Paragon's challenges to the Department's non-responsibility determination and rejection of Paragon's bid are moot and can have no practical effect.

V. Relief sought by Paragon is not available when SCDNR already made the contract award.

The Department has awarded the contract to Haren for Project No. P24-6052-PG Beaufort-Waddel Mariculture Maturation Ponds Maintenance – Re-Bid as permitted by the March 13, 2026 and April 6, 2026 orders of the Panel and the South Carolina Consolidated Procurement Code, S.C. Code Ann. § 11-35-10, *et seq*. (1976 & Supp. 2025). (R.p. 62-79).

In the context of the Procurement Code and this appeal, the "date the contract was awarded" might be subject to different meanings.[7] In the Department's view, the Procurement Code creates a process for awarding a contract as compared to a discrete instant that might exist in the formation of a simple contract outside of the formal procurement process. As such, the Department will highlight the key steps and instruments in the solicitation and award process.

<u>August 12, 2025</u> (Solicitation by SCDNR)

Invitation for Design-Bid-Build Construction Services (SE-310) Advertised (R.p. 204-216, 1045, 1067). The Department advertised the desired services on the State Fiscal Accountability

[7] The Department is not trying to be evasive in this explanation but merely trying to be transparent and thorough in addressing this topic.

Authority's Division of Procurement Services[8] website (https://scbo.sc.gov/online-edition?s=59690, last visited May 8, 2026). The advertisement (R.p. 214-216, 1045, 1067) includes a link to the Invitation for Design-Bid-Build Construction Services (SE-310) form (R.p. 204-216, 1067) that was prepared by the Department and approved by the Office of State Engineer (OSE)[9]. The invitation provides in part that "Bidders must obtain Bidding Document / Plans" from the Department. The Bidding Document / Plans[10] were prepared for the Department by Schnabel Engineering and include the following elements:

i) SE-310, Invitation for Design-Bid-Build Construction Services.

ii) AIA Document A701 Instructions to Bidders

iii) Bid Bond (AIA A310 reference)

iv) SE-330, Lump Sum Bid Form

v) AIA Document A101 Standard Form of Agreement between Owner and Contractor

vi) AIA Document A201 General Conditions of the Contract for Construction

vii) SE-355, Performance Bond

viii) SE-357, Labor & Material Payment Bond

ix) SE-380, Change Order to Design-Bid-Build Construction Contract

x) Technical Specifications

xi) Engineered Plans

[8] As reflected on the letterhead of the Chief Procurement Officer's Protest Decision, the Division of Procurement Services is within the State Fiscal Accountability Authority and the Chief Procurement Officer is also nested within that Division. (R.p. 998).

[9] The OSE is also a part of the State Fiscal Accountability Authority. S.C. Code Ann. §§ 11-35-310(2) (defining "Board" as SFAA) and 11-35-830(creating the Office of State Engineer within the Board).

[10] The complete Bidding Document / Plans are voluminous (Panel Record pages 75-477) but the excerpt demonstrates the elements (R.p. 204-216, 1062-1065).

The Bidding Document / Plans include a robust compilation of technical contract terms built upon American Institute of Architects (AIA) model documents that have been modified by the OSE for use by state agencies.[11]

<u>September 23, 2025</u> (Bid by Haren)

Haren Lump Sum Bid Form (SE-330) (R.p.218-223 and *SCDNR Bid Tabulation* (R.p.1046). Haren submitted a bid to the Department on the OSE's required Lump Sum Bid Form. (R.p. 204-216, 218-223, 1046). Among other provisions, that bid provides:

> **<u>OFFER</u>**
> **§ 1.** In response to the Invitation for Construction Services and in compliance with the Instructions to Bidders for the above-named Project, the undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Contract with the Agency on the terms included in the Bidding Documents, and to perform all Work as specified or indicated in the Bidding Documents, for the prices and within the time frames indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.
>
> ***
>
> **§ 4**. Bidder accepts all terms and conditions of the Invitation for Bids, including, without limitation, those dealing with the disposition of Bid Security. Bidder agrees that this Bid, including all Bid Alternates, if any, may not be revoked or withdrawn after the opening of bids, and shall remain open for acceptance for a period of 60 Days following the Bid Date, or for such longer period of time that Bidder may agree to in writing upon request of the Agency.
>
> ***
>
> **§ 10**. **AGREEMENTS**
> a) Bidder agrees that this bid is subject to the requirements of the laws of the State of South Carolina.

In effect, the Procurement Code and the solicitation / bid instruments create a binding offer by the bidder, subject to acceptance by the SCDNR. *See* S.C. Code Ann. § 11-35-3030(1)(d) (1976 & Supp. 2025) ("After the bids are opened, they must be irrevocable for the period specified in the

[11] See the Bidding Document / Plans table of contents indicating "South Carolina Division of Procurement Services, Office of State Engineer Version." (R.p.204-216, 1062-1065).

invitation for bids."). Upon submission of all bids, the Department's Engineering staff open, compile and make initial determinations on eligibility and ranking pursuant to applicable law, including the Procurement Code, associated regulations, and guidance manuals of the OSE. (R.p.204-216, 1046). The outcome of that process was a determination that the project should be awarded to Haren. (R.p.204-216, 1046).

<u>October 17, 2025</u> (Request for Concurrence by OSE)

Request for Concurrence in Posting Notice of Intent to Award Design-Bid-Build Contract (SE-360) *with supporting documentation*. (R.p.204-216, 229, 1049, 1053-1056). Having reviewed the bids presented, the Department gave notice on the above form to the OSE that Haren was the "intended awardee." (R.p. 204-216, 229, 1049, 1053-1056). In addition to submitting the form itself to OSE, the Department was required to provide supporting documentation which included the October 17, 2025 SCDNR Determination of Non-responsibility for Paragon Inc. of South Carolina, LLC (Paragon). (R.p.204-216, 1049, 1053-1056). *See generally* S.C. Code Ann. §11-35-1810; S.C. Code Regs. 19-445.2125(D) ("the procurement officer must be satisfied that the prospective contractor is responsible"); *see also* S.C. Regs. 19-445.2145(F) and Office of Sate Engineer "MANUAL FOR PLANNING AND EXECUTION OF STATE PERMANENT IMPROVEMENTS" (2023) (https://procurement.sc.gov/manual - last visited December 31, 2025) – Section 6.11 Determination of Bidder's Responsibility. The OSE approved the Department's request on October 17, 2025 and provided concurrence regarding the award to Haren. (R.p.204-216, 229).

October 20, 2025 (Notice of Intent to Award)

Notice of Intent to Award- Design-Bid-Build Contract (SE-370) (R.p.1050). Similar to the Concurrence approval above, the Department again gave notice of the intended awardee to the OSE and, on October 20, 2025, the OSE approved the Department posting the Notice of Intent to Award. (R.p.204-216, 1050). At this stage, the Department conditionally awarded the project to Haren. *See* S.C. Code § 11-35-3015(2)(b) ("Construction. Competitive sealed bidding, as provided in Section 11-35-1520 (Competitive Sealed Bidding), must be used to procure construction in design-bid-build procurements.") and § 11-35-1520(10) (discussing "Award" notice procedures). The Notice of Intent to Award was provided to all bidders. (R.p. 204-216, 1050).

October 27, 2025 to April 6, 2026 (Administrative Review by CPO and Panel)

On October 27, 2025 Paragon submitted a Notice of Intent to Protest to the CPO to initiate an administrative review of the Department's award determination. (R.p.1037-1044). That administrative review process concluded when the Panel issued an Order Denying Motions to Reconsider on April 6, 2026. (R.p.77-79). The Procurement Code imposes an automatic stay upon procurement actions while an administrative review is pending before the CPO and Panel. S.C. Code Ann. §§ 11-35-4210(7) and -4410(6). As expressed by the Panel in its March 13, 2026 order:

1. The CPO's November 19, 2025, protest decision is **REVERSED**.
2. DNR's determination that Paragon is non-responsible is **REINSTATED**.
3. This matter is **REMANDED** to DNR for further action consistent with this Order and the South Carolina Consolidated Procurement Code.

Thereafter, the Panel denied the motions for reconsideration on April 6, 2026 and affirmed the "Panel's Order dated March 13, 2026, remains unchanged." (R.p.77-79). Therefore, the

Department's prior award determination would be deemed released from the automatic stay by April 6, 2026 and was no longer conditional.[12]

<u>April 22, 2026</u> <u>to May 4, 2026</u> (Execution of Contract)

On April 22, 2026, SCDNR emailed contract and bond forms to Haren for execution. (R.p.204-216). On April 28, SCDNR received the: 1) contract signed by Haren, 2) Performance and Labor & Material Payment Bonds, and 3) certificate of insurance for Haren. (R.p.204-216, 236-297). On May 1, SCDNR executed the contract documents and mailed Haren duplicate original contract documents on May 4, 2026. (R.p.204-216, 236-297, 299). Consistent with procurement[13] and industry practice, the contract has a delayed effective date of May 22, 2026 which afforded Haren time to obtain and produce to the Department the required construction bonds with a date concurrent with the contract date. (R.p.204-216, 236-297). As noted above, Haren provided the required bonds and certificate of insurance to the Department prior to May 14, 2026. (R.p.204-216).

<u>May 7, 2026</u> (Building / Construction Permit issued by OSE)

Building / Construction Permit (SE-580) (R.p.301). As further "support evidencing the contract award," the OSE issued the building / construction permit for the Waddell project to the

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[12] Paragon did file a Motion to Stay with the Panel but it was denied by the Panel on April 14, 2026. (R.p. 80-81).

[13] See generally, S.C. Regs. 19-445.2145(F) and Office of State Engineer "MANUAL FOR PLANNING AND EXECUTION OF STATE PERMANENT IMPROVEMENTS" (2023) (https://procurement.sc.gov/manual - last visited May 14, 2026) – Section 6.20 - SUBMITTING THE CONTRACT TO CONTRACTOR FOR EXECUTION and Section 6.21 - REVIEWING CERTIFICATE OF INSURANCE AND PERFORMANCE AND PAYMENT BONDS(requiring in section 6.21.3 that "After confirming that all bonds and insurance are valid and in place, the Agency shall sign the contract and send one copy back to the Contractor").

Department on the morning of May 7, 2026. (R.p. 204-216, 301). That permit also specifies Haren as being the prime contractor to whom the project has been awarded. (R.p.204-216, 301).

In summary, the Department made a conditional award of this contract to Haren on October 20, 2025 that was stayed by operation of law until April 6, 2026 and, consistent with the solicitation process and bid commitments, the formality of executing the contract between SCDNR and Haren was complete on May 1, 2026.

Per the Court's request and as an alternative to the foregoing arguments, the Department does further assert that having awarded the contract to Haren, the relief sought by Paragon is not available under the Procurement Code.

The Procurement Code provides specific limitations on remedies which include the following.

> SECTION 11-35-4340. Rights and remedies.
>
> There is no remedy against the State other than those provided in this chapter in any case involving a procurement subject to this code. The rights and remedies granted in this article are to the exclusion of all other rights and remedies against the State for matters arising out of or related to this code.

S.C. Code Ann. § 11-35-4340 (1976 and Supp. 2025).

> SECTION 11-35-4310. Solicitations or awards in violation of the law.
>
> (1) Applicability. The provisions of this section apply where it is determined by either the appropriate chief procurement officer or the Procurement Review Panel, upon administrative review, that a solicitation or award of a contract is in violation of the law. The remedies set forth herein may be granted by either the appropriate chief procurement officer, only after review under Section 11-35-4210, or by the Procurement Review Panel, only after review under Section 11-35-4410(1).
>
> (2) Remedies Prior to Award. If, prior to award of a contract, it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award may be:
>
> (a) canceled;

> (b) revised to comply with the law and rebid; or
>
> (c) awarded in a manner that complies with the provisions of this code.
>
> (3) Remedies After Award. If, after an award of a contract, it is determined that the solicitation or award is in violation of law:
>
> (a) the contract may be ratified and affirmed, provided it is in the interest of the State; or
>
> (b) the contract may be terminated and the payment of such damages, if any, as may be provided in the contract, may be awarded.
>
> (4) Entitlement to Costs. In addition to or in lieu of any other relief, when a protest submitted under Section 11-35-4210 is sustained, and it is determined that the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, then the protesting bidder or offeror may request and be awarded a reasonable reimbursement amount, including reimbursement of its reasonable bid preparation costs.

S.C. Code Ann. § 11-35-4310 (1976 and Supp. 2025).

Paragon claims "the only meaningful remedy is an award of the contractor or re-procurement." (R.p.308). As discussed above, the Department made the procurement award on April 6, 2026 prior to Paragon filing the notice of appeal on April 22, 2026. Section 11-35-4340 declares the remedies of the Procurement Code are limited and offers substantially different options before and after award. S.C. Code Ann. § 11-35-4310. Assuming arguendo there was a violation of law, the only remedies available after award are: "a) the contract may be ratified and affirmed, provided it is in the interest of the State; or b) the contract may be terminated and the payment of such damages, if any, as may be provided in the contract, may be awarded." S.C. Code Ann. § 11-35-4310(3). Therefore, the relief sought by Paragon is not available under the Procurement Code given that the Department has already made the award.

CONCLUSION

Based upon the foregoing arguments, the Department respectfully asserts that the Department lawfully and properly performed the solicitation and award underlying this appeal and that Paragon has no substantial rights that have been prejudiced or show any defect under section 1-23-380(5). Furthermore, given that this appeal is not properly before the Court and that the Panel and CPO lacked jurisdiction for the administrative review below, the Court should vacate the March 13, 2026 and April 6, 2026 orders of the Panel and the underlying November 19, 2025 decision of the CPO. As such the Department's award to Haren should stand.

Respectfully submitted,
s/ Van Whitehead

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[14] On behalf of the Department, I would like to acknowledge and thank our volunteer Law Clerk Caroline Koontz for her valuable contributions to the preparation of this brief.