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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
Willie D. Franks, Chairman

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

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In Re: Haren Construction, Co., Inc.

Project No. P24-6052-PG Beaufort-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.

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# FINAL REPLY BRIEF OF SCDNR, RESPONDENT-APPELLANT

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## FACTS[1]

The record in this appeal contains no evidence of a contractor's license being issued by the South Carolina Department of Labor Licensing and Regulation ("LLR") to Paragon Inc. of South Carolina, LLC ("Paragon"). Instead, the "License," "pocket card," online license database report, and citation issued by LLR that are in the record were issued to "Paragon Builders." (R.p.1017, 1019, 1021, 1047, 1461). Furthermore, the header on the page containing the pocket card and license states:

> *** THIS LICENSE EXPIRES ON [date] ***
> VERIFY the QUALIFYING PARTY ("Qualifier") name(s) on this license is accurate. If a Qualifier ceases to serve this license, …

(R.p.1017, 1019, 1021). Additionally, the license document even contains the note: "WARNING – THIS DOCUMENT CONTAINS SECURITY FEATURES LISTED ON REVERSE SIDE."(R.p.1021). These notations consistently point to the physical certificate as being the license issued by LLR.

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

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[1] The Chief Procurement Officer's ("CPO") and Paragon's brief present factual assertions that do not reference documents in the record or are not otherwise documented in the record. See, for example, the CPO's speculation about LLR license issuance practices (CPO Respondent's Brief p. 6) and Paragon's repeated claims that "licenses were issued" to "Paragon, Inc. of South Carolina, LLC." (Paragon Respondent's Brief p. 4 &5). Accordingly, the Department objects to such which should be closely reviewed and disregarded. S.C. Code Ann. § 1-23-380(4)(1976 & Supp. 2025)("The review must be conducted by the court and must be confined to the record."); Rules 208(b)(4) & 210(c), SCACR; *S.C. Dep't of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) ("Arguments made by counsel are not evidence.") Additionally, Paragon makes reference to "Doc. 165" in its initial brief which does not correspond to a Procurement Review Panel Record page number or record otherwise identified as such in Paragon's Designation of Matter and precludes evaluation by the Department. (Paragon Respondent's Brief p.4); s*ee* Rule 208(b)(4), SCACR, (prescribing references to the record in briefs).

## ARGUMENTS

**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.**

The South Carolina Department of Natural Resources ("SCDNR" or "Department") contends that it has adequately briefed this and the following issues for the Court but offers a few comments in reply to the Appellants-Respondents' briefs.

Section 40-11-370

First, Appellants-Respondents seek to contort the elements of section 40-11-370 in a failed effort to escape its grasp. They attempt to distinguish "licensed" and "unlicensed" offenders and narrow the meaning of "engage in construction." Returning to the actual language of the statute reveals the subsections withstand such challenges given the overlapping and complimentary nature of the provisions.

> **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 (1976 & Supp. 2025)(emphasis added). "Paragon Inc. of South Carolina, LLC" does not have a "license issued pursuant to this chapter." No such license is present in the record before this Court. As such, each of the subsections of 40-11-370 are activated in this case. Additionally, the Appellants-Respondents treat the statutory expansion of "engaging in construction" as a limiting list rather than merely a list of examples clearly expanding it beyond specific construction activities. In addition to the basic concept of "engaging in construction," the examples provided extend the continuum from marketing / advertising to "submitting contracts" and "using site signs." The structure of subsection B reflects a protective and broad general rule which was expressly expanded by further examples and followed by the narrow exception of "advertising on vehicles."

In a related challenge, the CPO claims "[w]hile [licensed contractors] may not 'engage in construction' under an inexact name, there is no express prohibition against bidding using an inexact name" (CPO Respondents Brief p. 5, see also p. 12). The Department would highlight that "submitting contracts" certainly appears to align with "an offer to furnish labor, equipment, or materials or other services regulated by this chapter," which is the definition of "bid" contained in S.C. Code Ann. § 40-11-20(3). Additionally, the terms of the CPO/OSE bid template amount to "submitting contracts." As a reminder, those documents include the following provisions:

> **<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.

(R.pp. 1086-1091). 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 invitation for bids."); (R.p. 1076 - section 4.2.2). Therefore, Paragon's submission of a bid upon the CPO/OSE form SE-330 was a binding offer contract, *i.e.* – an option contract in favor of the Department, that would be subject to the subsections of 40-11-370.

In an equally sad attempt to avoid responsibility, the Appellants-Respondents suggest that "the exact-name requirements of § 40-11-370(B) are merely designed to prohibit shady contractors from hiding their identity or licensing status."[2] (CPO Respondents Brief p. 5; see also Paragon Respondents Brief p. 6) and then propose "[w]hen it is time to execute the contract, the licensed contractor can then place its exact name on the contract." (CPO Respondents Brief p. 6). In procurement and all matters, the Department strives to comply with legal requirements and conduct itself in a transparent manner so the proposed "bait and switch" solution proposed by Appellants-Respondents is concerning. At a minimum, such a practice would conflict with or confound statutory mandates in LLR's contractor licensing and transparency framework, the Procurement Code's responsibility evaluations, and the State Ethics Act's requirement for

[2] On August 5, 2025, LLR cited "Paragon Builders" 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 it $500. (R.p.1461).

screening conflicts of interest. S.C. Code Ann. §§ 40-11-200(B); 40-11-370; 11-35-1810(establishing requirement for responsibility determination of bidders and offerors); 11-35-4220(2)(f)(designating violations of the Ethics Act as a basis for contractor suspension or debarment); 8-13-775 (1976 & Supp. 2025)(Ethics Act provision addressing conflicts of interest in state contracts); S.C. Code Regs. 19-445.2125(D) ("the procurement officer must be satisfied that the prospective contractor is responsible"). Recall the identity-specific requirements in the OSE manual:

> **6.11 DETERMINATION OF BIDDER'S RESPONSIBILITY**
> Before posting the SE-370, *the Agency must satisfy itself that the apparent low Bidder meets the State's Standards of Responsibility*.
>
> **6.11.1 Criteria for Determining Responsibility**
> *Criteria the Agency should use in determining whether the Bidder meets the State's Standards of Responsibility include whether the Bidder has*:
>
> *A. The appropriate financial, material, equipment, facility, and personnel resources and expertise (or the ability to obtain them) necessary to meet all contractual requirements.*
>
> B. *A satisfactory record of performance.*
>
> C. *A satisfactory record of integrity.*
>
> D. *The necessary legal qualifications to contract with the State (includes being properly licensed)*.
>
> E. Supplied all necessary information in connection with the inquiry concerning responsibility; and
>
> F. *No record of debarment* from participation in construction projects in past 3 years from any state or Federal agency as recorded in the federal government's System for Award Management (SAM). This can be found at https://www.SAM.gov .
>
> **6.11.2 Verify Proper Contractor Licensing and License Limitations**:
> A. Before posting the SE-370, the Agency *must verify that the Bidder* and its listed Subcontractors *have the proper contractor's license and license limitations*, and they were in effect at the time of bidding.

> B. *If the Agency determines that a Bidder or one of its listed Subcontractors does not have the proper license and license limitations, the Agency must declare the Bidder is non-responsible*. The Agency should notify the SC Contractors' Licensing Board that the Bidder or Subcontractor is offering to perform work without a proper license. The Agency may contact the Contractors' Licensing Board at: https://llr.sc.gov/clb/ .

Office of State Engineer OSE Manual "MANUAL FOR PLANNING AND EXECUTION OF STATE PERMANENT IMPROVEMENTS" (2023)(https://procurement.sc.gov/manual - last visited July 17, 2026)(emphasis added). More narrowly in application, the CPO's proposal would conflict with its own CPO/OSE bid certifications that bidders must make to allow procuring agencies to perform prudent due diligence and make a proper responsibility evaluation. (R.p.1070-1073). How is the name switch done if "Acme, Inc. of South Carolina, LLC" is screened during a procurement solicitation but later wants to sign a contract as "Acme Builders"? How is the procuring entity protected with such misaligned names or even worse if there are also "Acme Builders of Charleston," "Acme Builders of Myrtle Beach," *etc*.? How does the name switch that Appellants-Respondents seek to excuse fulfill a basic expectation of transparency in the public procurement process? Finally, the CPO suggests the protections of LLR's licensing standards are for homeowners and don't apply when a "contractor merely bids on a government contract." (CPO Respondent Brief p. 6). No legal justification is provided for that assertion and the plain language of sections 40-11-30, -200, and -370, as well as sound public policy, provide the Department the protections of LLR's licensing standards. *See* S.C. Code Ann. § 40-11-200(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."). It is unfortunate to see the CPO advocating against the State's interests in the protections that are afforded by LLR's statutory mandates and efforts.

Turning now to the "License" itself, the Appellants-Respondents repeatedly claim the physical certificate designated as "license" by LLR is not really the license referred to in the various LLR statutory provisions or the Procurement Code. However, they provide no legal authority or factual proof to justify such a position. An application is not a "license issued pursuant to [Title 40 Chapter 11]." S.C. Code Ann. § 40-11-370(B). Furthermore, if a procuring entity asks for proof of licensure from a contractor, it is going to look at the physical license certificate issued by LLR, or even LLR's online database, for confirmation. In this case, the record contains no evidence of a contractor's license being issued by the South Carolina Department of Labor Licensing and Regulation ("LLR") to Paragon Inc. of South Carolina, LLC ("Paragon").

<u>Timeliness, Preservation, and Ripeness of Jurisdictional Challenge</u>

Among the arguments of Appellants-Respondents, they argue the Department's jurisdictional challenge based upon Paragon not holding a license are either untimely, unpreserved, or not ripe. (CPO Respondents Brief p. 7; Paragon Respondents Brief pp. 5 & 7). First, a challenge to jurisdiction may be raised at any time and courts or other reviewing bodies are obligated to address jurisdiction as a threshold issue, even *sua sponte*. "The lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the court." *Town of Hilton Head Island v. Godwin*, 370 S.C. 221, 223, 634 S.E.2d 59, 60-61 (Ct. App. 2006); *see also City of Columbia v. South Carolina Pub. Serv. Commn.,* 242 S.C. 528, 533, 131 S.E.2d 705, 707 (1963); *Riddle v. Reese*, 53 S.C. 198, 31 S.E. 222 (1898); *Bell v. Fludd*, 28 S.C. 313, __, 5 S.E. 810, 811(1888)(when facing a jurisdictional challenge it "would be not only premature, but improper, for [the court] to consider or determine" the merits); *Hardie v. United States*, 367 F.3d 1288, 1290 (Fed. Cir. 2004) (explaining jurisdiction is a threshold issue that a court must resolve before proceeding to the merits). This broader concept is directly applicable in the context of administrative law, including the actions related to the Consolidated Procurement Code. *Amisub of S.C., Inc. v. S.C. Dep't of Health & Envtl. 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."); *Allison v. W.L. Gore & Assocs*., 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011)("A court's subject matter jurisdiction is determined by whether it has the authority to hear the type of case in question. [] This same principle applies to administrative agencies.")(internal citation omitted); *Hitachi Data Systems Corp. v. Leatherman*, 309 S.C. 174, 178-179, 420 S.E.2d 843, 846 (1992)(discussing statutory limitations upon the Procurement Review Panel's authority); *Forman v. S.C. Dep't of Labor*, 419 S.C. 64, 74, 796 S.E.2d 138, 143 (Ct. App. 2016). Additionally, there are no time limits associated with compliance with LLR's licensing provisions. See S.C. Code Ann. §§ 40-11-30, -200, & -370.

Next, as to the ripeness argument, the Appellants-Respondents claim there is no contract to be barred by section 40-11-370(C). (CPO Respondents Brief p. 7; Paragon Respondents Brief p. 5). "Paragon has not entered into any contract on this project, under any name. It submitted a bid." (Paragon Respondents Brief p. 5). "It is undisputed that Paragon has not entered a contract with DNR." (CPO Respondent Brief p. 10). Whether the Court concludes a contract exists or not, Paragon's position affords no relief. To the extent the bid by Paragon constitutes a binding option contract in favor of the Department, as discussed above, then any claims by Paragon related to its bid are expressly barred by section 40-11-370(C). Alternatively, to the extent Paragon's bid is not deemed a contract, then Paragon is a naked complainant – *i.e.*- not a lawful "actual bidder … who is aggrieved" - who lacks standing in this procurement challenge. S.C. Code Ann. §§ 11-35-

4210(1)(b); 40-11-30, -200, & -370; *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008). To find Paragon has standing in this procurement matter, the Court would have to disregard the bidding prohibitions in LLR's licensing framework.

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

The Department again contends that it has adequately briefed this issue for the Court through prior briefs and arguments above but offers a few comments in reply to the Appellants-Respondents' briefs.

The Department asserts that LLR's licensing framework expressly prohibits Paragon from initiating or maintaining this appeal. The Appellants-Respondents look to section 11-35-4210(1)(b) to provide Paragon with standing. Paragon cannot reach relief under section 11-35-4210 when it failed to overcome the threshold barriers of sections 40-11-30, -200, and -370. The Department's position honors both statutory provisions by framing them sequentially – the LLR licensing framework is the first hurdle before an applicant can reach the Procurement Code - but the Appellants-Respondents' position on section 11-35-4210(1)(b) simply disregards sections 40-11-30, -200, and -370. *Chris J. Yahnis Coastal, Inc. v. Stroh Brewery Co.*, 295 S.C. 243, 247, 368 S.E.2d 64, 66 (1988)("Statutes in apparent conflict should, if reasonably possible, be construed so as to allow both to stand and to give effect to each.").

## 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 and can rely on prior briefs and arguments on this point, subject to a few additional comments in reply to Appellants-Respondents' briefs.

"[A] bid protest is not judged by highly technical or formal standards" according to the CPO who also opines that "if the Panel, CPO, and procurement staff have confused responsiveness and responsibility in the context of contractor licensing, it is hard to fault a protest that does the same." (CPO Respondents Brief pp. 10 & 11(note 7)). Similar to the Department's rejection of the "bait and switch" suggestion, the Department holds a view that accountability and transparency also exist in the context of administrative review of procurement actions.

As has been discussed extensively in this appeal, the State of South Carolina has adopted a complex administrative framework for procurement of construction by state agencies, which includes the provisions of the Consolidated Procurement Code, the associated regulations, the OSE Manual, OSE solicitation and procurement forms, *etc*. With respect to the construction project underlying this appeal, the CPO in his capacity as State Engineer, is charged to faithfully administer this framework. *See generally* S.C. Code Ann. §§ 11-35-830, -1010, -1220, -2010(2)(b); and S.C. Code Regs. § 19-445.2145(F)("Part II of this manual, covering the procurement of construction for the projects, will be the responsibility of the Office of the State Engineer."). In their capacity as part of the executive branch of government, the CPO and Panel are charged by law to "faithfully execute" statutory enactments of the General Assembly. *State ex rel. Condon v. Hodges*, 349 S.C. 232, 246, 562 S.E.2d 623, 631 (2002)("the Governor and other members of the executive branch were required to faithfully execute" legislative enactments). "Executive agencies are required to comply with the General Assembly's enactment of a law until it has been otherwise declared invalid." *Edwards v. State*, 383 S.C. 82, 91, 678 S.E.2d 412, 417 (2009). Alternatively, with respect to their quasi-judicial functions in performing administrative review, they are obligated to uphold the "rule of law." The South Carolina Supreme Court has explained: "As judges, our solemn duty is to uphold the rule of law; we must maintain judicial discipline, refrain from acting as a super-legislature, and respect the plenary authority of the South Carolina General Assembly." *Planned Parenthood South Atlantic v. State,* 440 S.C. 465, 484, 892 S.E.2d 121, 132 (2023). Subsequently that Court also stated, "The particular 'rule of law' we commit to in this case is the principle of statutory construction that a court's singular task in interpreting a statute is to identify and give effect to the intent of the legislature." *Id.,* 445 S.C. at 606, 916 S.E.2d at 302. "We prefer to view it as rescuing the rule of law by fulfilling our responsibility to ensure that our government officials and courts act within their authority." *State v. Price*, 441 S.C. 423, 449, 895 S.E.2d 633, 647 (2023).

The Procurement Code, construction solicitations, and associated administrative review are technical and formal. They are not mushy like common law and are prescribed by statute and the CPO and Panel are "creatures of statute" who should respect the prescribed standards. S.C. Code Ann. §§ 11-35-4210 & -4410; *Captain's Quarters Motor Inn, Inc. v. S.C. Coastal Council*, 306 S.C. 488, 490, 413 S.E.2d 13, 14 (1991)(an agency, "[a]s a creature of statute, ... is possessed of only those powers expressly conferred or necessarily implied for it to effectively fulfill the duties with which it is charged."). Appellants-Respondents suggest a view of pliability in the "pleading" process before the CPO and Panel. However, in contrast, administrative reviews are simply not the same as a standard civil action initiated with summons and complaint, followed by discovery, motions practice, trial, etc. *See* S.C. Code Ann. §§ 11-35-4210 & -4410; Panel Procedures (undated)( https://prp.sc.gov/procedures - last visited July 22, 2026). As those authorities and the record reflect, none of the parties enjoyed the attributes of a civil action in this administrative review process.

Given the statutory and material distinction between responsive and responsible, the Department should not be subjected to a "close enough" or another "bait and switch" appeal between the substantially different standards and issues those two terms / principles establish. Likewise, as the CPO noted, the Panel highlighted the distinction between responsive and responsible almost 25 years ago in *Protest of Roofco*, Panel Case No. 2000-14, but still doesn't expect procurement staff, the CPO, Panel, or protestants to get it right. (CPO Respondent Brief p. 11(note 7); see also Paragon Respondents Brief p. 9). *In re: Protest of Roofco, Inc.*, Panel Case No. 2000-14(I), 2001 WL 34058940 (S.C. Procure.Rev.Panel Dec. 5, 2001). However, "[e]veryone is presumed to have knowledge of the law and must exercise reasonable care to protect his interests." *Smothers v. U.S. Fid. & Guar. Co.,* 322 S.C. 207, 210–211, 470 S.E.2d 858, 860 (1996); *see also 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."). Additionally past errors by the CPO or Panel should not excuse current or future errors on the basis that "administrative officers of the state cannot estop the state through mistaken statements of law." *Quail Hill, L.L.C. v. County of Richland*, 387 S.C. 223, 237, 692 S.E.2d 499, 506 (2010).

Finally, Paragon curiously alleges the Department's bid tabulation form "is the source of the ambiguity." (Paragon Respondent Brief pp. 8-9). On October 15, 2025, the Department designated Paragon as non-responsible on the bid tabulation form which includes footnotes citing to sections 40-11-200, -270, -340 & -370. (R.p.1046). On October 17, 2025, the Department again communicated that Paragon was non-responsible. (R.p.1049). Paragon, through legal counsel, did not file its notice of intent to protest until October 27, 2026. (R.p.1037-1044). The Department was perfectly clear in its non-responsibility determination and designation. Any mistake in understanding the difference between responsible and responsive falls on Paragon or its counsel and responsibility for such cannot be assigned to the Department. *Smothers,* 322 S.C. at 210–211, 470 S.E.2d at 860; *LaBruce*, 268 S.C. at 467, 234 S.E.2d at 867(“Citizens are charged with knowledge of existing law.”).

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

The Department has adequately briefed this issue for the Court as supplemented further with additional arguments above confirming Paragon has not “obtained the licenses required by [Title 40 Chapter 11].” S.C. Code Ann. § 40-11-200(B).

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

The Department stands by arguments it has already briefed, as both Appellant and Respondent, subject to two points in response to new arguments raised by Paragon.

Paragon, without explanation or basis, asserts the Department “ignores the Court’s May 20, 2026 Order.” (Paragon Respondent’s Brief p. 10). First, the Department is fully honoring the Court’s order in all respects. The procurement action and any work thereunder have been and will remain stayed until the Court directs otherwise, the Department has presented arguments as permitted by the Court’s order, and the Department has specifically addressed the “award” issue as directed by the Court.

Next, Paragon looks to section 11-35-1520(7) and regulation 19-445.2085(C) as a basis for claiming the “contract must be cancelled and ‘re-awarded’ to Paragon.” (Paragon Respondent’s Brief p. 10). Section 11-35-1520(7) provides:

> (7) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation

> and re-award of awards or contracts, after award but before performance, *may be permitted* in accordance with regulations promulgated by the board. After bid opening, *changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition must not be permitted*. *After opening, bids must not be corrected or withdrawn except in accordance with the provisions of this code and the regulations promulgated pursuant to it*. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts, after award but before performance, *must be supported by a written determination of appropriateness made by the chief procurement officers or head of a purchasing agency*.

S.C. Code Ann. § 11-35-1520(7)(1976 & Supp. 2025)(emphasis added). Similarly, the regulation provides, in part:

> C. Cancellation Of Award Prior To Performance. 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: …

S.C. Code Regs. § 19-445.2085(C)(emphasis added). Those authorities do not support Paragon's position because the more specific authorities addressed by the Department and even the CPO fit the post-administrative review posture of this appeal. *Wooten ex rel. Wooten v. S.C. Dep't of Transp*., 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999) (a specific statutory provision prevails over a more general one); *Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp*., 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995) (general rule of statutory construction is that a specific statute prevails over a more general one). Additionally, even if the authorities cited by Paragon were applicable, they do not mandate the outcome sought by Paragon but provide for a discretionary determination by the chief procurement officers or head of a purchasing agency.

## CONCLUSION

Based upon the arguments already briefed by the Department and those above, 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 Construction Co., Inc. should stand.

Respectfully submitted,
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