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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case No. 2026-000914

In Re: Haren Construction Co., Inc.

Project No. P24-6052-PG
Beaufort-Waddel Mariculture
Maturation Ponds Maintenance – Re-Bid

Paragon Inc. of South Carolina, LLC, Chief Procurement Officer, State Fiscal Accountability Authority, and South Carolina Department of Natural Resources,

of which Paragon Inc. of South Carolina, LLC and Chief Procurement Officer, State Fiscal Accountability Authority are the Appellants/Respondents, South Carolina Department of Natural Resources is the Respondent/Appellant, and Haren Construction Co., Inc. is the Respondent.

**FINAL RESPONSE BRIEF OF APPELLANT/RESPONDENT CHIEF PROCUREMENT
OFFICER TO DNR'S CROSS APPEAL**

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STATEMENT OF THE ISSUE ON CROSS APPEAL

Whether the Procurement Review Panel correctly found that Paragon's failure to bid under the exact name listed on its license certificate did not affect its responsibility and ability to perform the contract?

STATEMENT OF THE CASE

[Note: The Chief Procurement Officer's "Statement of the Case" below is the Statement of the Case found in its Appellant's Brief. Except for two footnotes not relevant to the cross appeal, it is restated here almost verbatim for ease of reference.]

This is an appeal from an order by the Procurement Review Panel (Panel), reversing a decision by Chief Procurement Officer (CPO) and finding that the Department of Natural Resources (DNR) had properly disqualified Paragon Inc. of South Carolina, LLC (Paragon) for lacking the proper contractor-license subclassification.

The dispute's genesis arose out of DNR's disqualification of the apparent low bidder to a construction project for the renovation and rehabilitation of the Waddell Mariculture Center in Beaufort. On August 12, 2025, DNR published an invitation for bids for construction work involving the rehabilitation of its rearing ponds, yard piping, and electrical work at the center. (R. p. 48). After three contractors submitted bids, Paragon was the lowest bidder. (R. p. 49). On October 17, DNR disqualified Paragon on the basis that it (1) lacked the proper contractor license subclassification and (2) failed to bid in its exact name. (R. p. 52). DNR concluded that 80% of the project required a license with a "General Contractors-Public Utility" classification and a "Water and Sewer Lines" (WL) subclassification, and that Paragon, which holds a license with a "Mechanical Contractors" classification and a "Plumbing" (PB) subclassification, was unqualified. Three days later, on October 20, DNR issued an intent to award the contract to the second-lowest bidder, Haren Construction Co., Inc. (Haren). (R. p. 53).

Paragon challenged its disqualification through a bid protest filed with the CPO pursuant to § 11-35-4210(1)(b). It filed an intent to protest on October 27 and a formal protest on November 4. (R. pp. 10-18, 40-47). After completing his administrative review, the CPO granted the protest on November 19. (R. pp. 1-9). He concluded that the scope of the project fit within the language of the PB subclassification, and that a contractor holding a license with either a PB or WL subclassification was qualified. *Id.* The CPO also found that Paragon's failure to bid in its exact name was a minor infraction not affecting its ability to perform the work.

On November 26, Haren appealed the CPO's decision to the Panel pursuant to §§ 11-35-4210(6) and -4410. Haren argued that DNR properly disqualified Paragon (1) "because more than 51% of the work does not fall under Paragon's PB license" and (2) because "correspondence with the LLR and the citation issued to Paragon." (R. pp. 984-97). Haren, however, chose not to appeal the part of the CPO's decision finding Paragon's failure to bid in its exact name was immaterial and did not affect its ability to perform the contract.

On February 25, 2026, the Panel deliberated the matter without oral argument. On March 13, the Panel issued its order reversing the CPO's decision, re-instating DNR's determination of non-responsibility, and remanding the procurement back to DNR. (R. pp. 62-76). While the Panel found that Paragon's failure to use its exact name did not affect its responsibility and was not a basis for disqualification, the Panel otherwise deferred to DNR and reversed the CPO. The Panel concluded that DNR's disqualification of Paragon was not clearly erroneous, arbitrary, capricious, or contrary to law under § 11-35-2410(A).

On March 23, Paragon and the CPO, and DNR filed motions to reconsider with the Panel. (R. pp. 120-28, 129-36, 137-41). Paragon and the CPO argued that, not only had the Panel failed to interpret the scope of the PB subclassification under § 40-11-410(5)(f)—an issue of law subject

to de novo review—but it had also improperly deferred to an agency not charged with administering the contractor-licensing laws. They further argued that the Panel had failed to consider whether DNR’s interpretation of § 40-11-410(5)(f) was contrary to law. DNR’s motion to reconsider argued that the Panel should have also upheld DNR’s disqualification of Paragon for failing to bid in its exact name. The Panel denied the motions on April 6. (R. pp. 77-9).

On April 9, Paragon filed a Notice of Appeal with this Court, and a motion to stay with the Panel. (R. pp. 162-95). The CPO filed a Notice of Appeal on April 13. On April 14, the Panel denied Paragon’s motion to stay. (R. pp. 80-1). On April 21, DNR filed its Notice of Cross Appeal.

STANDARD OF REVIEW

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

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

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

S.C. Code Ann. § 1-23-380(5).

ARGUMENT

I. The Procurement Review Panel correctly found that Paragon's failure to bid under the exact name listed on its license certificate did not affect its responsibility and ability to perform the contract.

DNR argues that it properly disqualified Paragon for failing to bid under the exact name listed on its license certificate. Both the CPO and the Panel, however, concluded that this issue was a minor variance not affecting Paragon's ability to perform the contract.¹ (R. pp. 6-7, 72). The CPO found that, not only had Paragon provided its license number "clearly identifying it as Paragon Builders," but also that Paragon's failure to bid in its exact name was "not a bar to the contractor performing work on which they bid[.]" (R. pp. 6-7).

The CPO's and the Panel's findings are consistent with the language of § 40-11-370. The statute draws a distinction between (A) unlicensed contractors and (B) licensed contractors using an inexact name. While an *unlicensed* contractor is prohibited by law from bidding on a project, the same prohibition against bidding does not exist for *licensed* contractors that simply fail to use their exact name. The statute states:

(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.

¹ Haren did not even appeal this issue to the Panel. DNR raised it in a brief filed with the Panel well after the Panel's appeal deadline.

Section 40-11-370(A)'s prohibition against unlicensed contractors submitting a bid is consistent with § 40-11-200(B), which prohibits State agencies from considering a bid from an unlicensed contractor. Thus, if an *unlicensed* contractor submits a bid, the bid is illegal and the bidder is non-responsible.²

Licensed contractors, however, are treated differently. While they may not “engage in construction” under an inexact name, there is no express prohibition against *bidding* using an inexact name. The statute defines “engaging in construction” as “marketing, advertising, using site signs, and submitting contracts.” *Id.* at § 40-11-370(B). And the inclusion of the four named categories implies the exclusion of bidding from the definition of “engaging in construction.” *See Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (“The canon of construction ‘*expressio unius est exclusio alterius*’ or ‘*inclusio unius est exclusio alterius*’ holds that ‘to express or include one thing implies the exclusion of another, or of the alternative.’”). Further, had the General Assembly intended for “engaging in construction” to also include bidding on a project, it knew what words to use. Both § 40-11-370(A) and § 40-11-200(B) use clear language prohibiting unlicensed contractors from bidding on projects requiring a license, and the failure to include similar language in the definition of “engaging in construction” suggests the exclusion was deliberate.

Moreover, the definition of “engaging in construction” suggests that the exact-name requirements of § 40-11-370(B) are merely designed to prohibit shady contractors from hiding their identity or licensing status or fraudulently misappropriating another’s name. This makes

² The Procurement Code requires agencies to determine whether a contractor is “responsible” before awarding it a contract. S.C. Code Ann. § 11-35-1810. A “responsible bidder” is one who has the capability to perform the work. *Id.* at § 11-35-1410(8). As it is illegal for an unlicensed contractor to submit bids or perform work on projects requiring a license, such bidders are non-responsible.

sense because, while the General Assembly may have legitimate concerns about public confusion when a contractor submits a form contract to a homeowner bearing an inexact name, the same concern does not exist when a licensed contractor merely bids on a government contract. This is especially true where the contractor submits its license number along with its bid to clearly identify itself. In this scenario, the contractor did not “submit a contract” but instead merely agreed to perform a contract that was drafted and solicited by the government. When it is time to execute the contract, the licensed contractor can then place its exact name on the contract to ensure it can enforce its terms.

In this case, at some point prior to bidding, Paragon’s submitted its licensing application to the Contractor’s Licensing Board using the licensee/legal name of “Paragon, Inc. of South Carolina, LLC” with a d/b/a name of “Paragon Builders.” (R. pp. 26-31). The Board, however, failed to place Paragon’s licensee/legal name on the physical license certificate and instead placed the d/b/a name of “Paragon Builders” on the physical license. (R. p. 60). The Board’s placement of the d/b/a name on the license certificate was outside Paragon’s control and simply a function of the Board’s administrative practices.

When Paragon submitted its bid on the project, it used the same the licensee/legal name of “Paragon, Inc. of South Carolina, LLC” that it had used on its licensing application. (R. p. 60). Paragon also included its contractor license numbers with its bid. *Id.* After receiving Paragon’s bid, DNR was able to use Paragon’s license number and find it on the contractor-license website.³ *Id.* In fact, DNR knew that this was Paragon’s identity and acknowledged that “Paragon Builders” was simply a business name. *Id.*

³ <https://verify.llronline.com/LicLookup/Contractors/Contractor.aspx?div=69&AspxAutoDetectCookieSupport=1> (last visited July 16, 2026).

However, because Paragon clearly identified itself using its contractor license number, and because nothing in the contractor-licensing laws prohibits a licensed contractor from *bidding* under an inexact name, Paragon's failure to bid in its exact name did not affect its responsibility and ability to perform the contract. Thus, DNR's disqualification of Paragon on this basis was contrary to law. Ultimately, a statute meant to shield the public against shady contractors should not be weaponized by the State to disqualify the low bidder over perceived trivial non-compliance.

Finally, this issue is not ripe. While § 40-11-370(C) prohibits a contractor from enforcing a contract bearing the wrong name, Paragon has not entered a contract in this case. If DNR wanted to ensure that Paragon would have the ability to enforce the terms of a contract, it could have insisted that Paragon sign the contract using its exact name. But until Paragon "engages in construction" or signs a contract bearing an inexact name, this issue is not ripe.

II. Paragon's protest rights, and its entitlement to relief, are not extinguished by an award of the contract to Haren.

DNR's brief argues that, because it has already awarded a contract to Haren, Paragon no longer has a remedy available. However, if this Court finds that Paragon, the low bidder, was wrongfully disqualified and its bid improperly rejected, any contract that DNR has executed with Haren is an illegal contract in violation of the Procurement Code. Further, regardless of whether DNR and Haren have executed the contract, no performance has begun on the project.

Under § 11-35-4210(1)(b), any actual bidder "aggrieved in connection with the intended award or *award of the contract*" has standing to protest that contract award.⁴ The General

⁴ South Carolina's protest rights are consistent with protest rights under federal procurement law. Under the Tucker Act, the Court of Federal Claims and the district courts have jurisdiction over actions by interested parties for "a proposed award or *award of the contract* or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement." 28 U.S.C. § 1491(b)(1) (emphasis added). The Court of Federal Claims holds that protestors have standing to challenge awarded contracts under the Tucker Act so long they are an actual bidder with a direct economic interest affected by the award

Assembly used clear language stating that an aggrieved bidder still has protest rights even if a contract has been awarded. The General Assembly also granted protest rights in emergency procurements, where award is entered immediately, and notice of an award must be posted “as soon as practicable thereafter.” S.C. Code § 11-35-1570(B). “The goal of bid protests is to ensure fairness and transparency in the procurement process[.]” *Warrior Focused Solutions, LLC v. U.S.*, 175 Fed. Cl. 416, 427 (2025). Under DNR’s argument, protest rights would be illusory once a contract is awarded, and an agency could foreclose any challenges by awarding the contract to its preferred bidder.

Paragon was the low bidder on the project. Therefore, if the Court finds that DNR’s disqualification of Paragon was improper, then the award of the contract to Haren is illegal. *See* S.C. Code § 11-35-1520(10) (mandating that award must be made to the lowest responsive and responsible bidder unless there is a compelling reason to reject the low bid as prescribed by regulation). Under § 1-23-380(5), the court may affirm the agency’s decision, remand the case for further proceedings, or reverse or modify the decision if the appellant’s substantial rights have been prejudiced. Further § 11-35-4310(3) expressly provides for “Remedies After Award.”⁵ If the Court finds DNR’s disqualification of improper and its award to Haren illegal, upon remand DNR can then determine how to proceed with the illegal award pursuant to Regulation 19-445.2015.

of the contract or the failure to award the contract. *Galen Med. Associates, Inc. v. U.S.*, 56 Fed. Cl. 104, 108 (2003)

⁵ The CPO is unsure whether § 11-35-4310 applies outside the context of an administrative review by the CPO or the Panel. Subsection (1) states that the “provisions of this section apply” when the CPO or the Panel, upon administrative review, finds that a solicitation or award is illegal. It further states that the “remedies set forth herein *may be granted*” by the CPO or the Panel. Section 1-23-380(5), on the other hand, states the remedies available upon judicial review of an agency decision. And the Procurement Code expressly provides that appeals from the Panel are governed by § 1-23-380. *See* S.C. Code Ann. § 11-35-4410(6).

Because performance has not begun, DNR has several options including termination of the contract. And if DNR terminates the contract, Paragon has amply demonstrated through its protest and appeal that it is interested in any re-solicitation of the project.

III. DNR's jurisdictional and procedural arguments lack merit.

DNR's brief argues that this Court lacks jurisdiction over the dispute; that Paragon lacks standing; that Paragon has failed to exhaust administrative remedies; and that Paragon's appeal is moot. Each argument is addressed below.

A. This Court has jurisdiction over Paragon's appeal.

DNR's Brief makes the remarkable argument that nobody—not even this Court—has jurisdiction to question DNR's determination when it disqualified Paragon, in part, on the basis that it failed to bid in its exact name. The CPO, however, has jurisdiction to hear and determine bid protests under § 11-35-4210(1)(B). The Panel has jurisdiction under § 11-35-4410(1)(a) to handle appeals from the CPO. And this Court, of course, has the jurisdiction established by the Constitution to review cases and controversies and, specifically, bid protest appeals under § 11-35-4410(6). DNR cannot simply apply a subjective interpretation of § 40-11-370 and then argue that this Court lacks jurisdiction to determine whether that interpretation is incorrect.

B. Paragon has standing to maintain its appeal.

DNR argues that Paragon lacks standing. While § 40-11-370(C) prohibits certain contractors from enforcing contracts, the prohibition is limited to two categories of contractors: (1) unlicensed contractors and (2) contractors that *sign a contract* in an inexact name. The statute states that a contractor “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) (emphasis added). The statute,

therefore, requires a party to *enter* a contract before it is foreclosed from enforcing it. As discussed above, Paragon was disqualified before final contract documents were exchanged and executed. It is undisputed that Paragon has not entered a contract with DNR.

This is not a contract dispute. This is a bid dispute concerning a bidder that was disqualified before it had the opportunity to place its licensee name on the final executed contract. DNR cannot speculate and presume what name Paragon would have placed on the final contract documents. Paragon, therefore, has standing under § 11-35-4210 as an aggrieved bidder to challenge whether DNR has improperly disqualified its low bid.

C. Paragon has exhausted its administrative remedies.

DNR argues that Paragon has failed to exhaust its administrative remedies. Its argument rests on an application of a hyper-strict pleading requirement that is neither found in the law, nor supported by Panel precedent. DNR alleges that Paragon failed to adequately protest the determination of non-responsibility because Paragon's protest used the word "responsiveness" instead of "responsibility."⁶

Like a pleading filed in court, a bid protest is not judged by highly technical or formal standards. Protests must set "forth 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). This is consistent with the law our courts apply to pleadings, which are construed liberally.

The law requires a plaintiff to state the facts constituting his cause of action and demand the relief to which he supposes himself entitled, he is not required to characterize the facts stated, or to give his cause of action a name; that being the province of the court.

⁶ A "responsive" bidder is one that submits a bid conforming in all material aspects to the solicitation. S.C. Code Ann. § 11-35-1410(9). A "responsible" bidder is one who has the capability to perform. *Id.* at § 11-35-1410(8). In the context of contractor licensing, there is a history of confusion as to whether an unlicensed contractor is considered non-responsive or non-responsible. See Footnote 7, below.

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 protest was more than sufficient under § 11-35-4210(2). The protest expressly challenged the DNR's determination and rebutted its conclusions that Paragon lacked a proper license and used the wrong name. (R. pp. 10-18). The protest stated its factual and legal basis and specified the relief it sought. It clearly alleged that it had been wrongfully disqualified. While it used the word "responsiveness" instead of "responsibility," these two concepts have historically been used interchangeably with regards to contractor licensing.⁷ Nobody was confused, and all were put on notice of the issues to be decided. There are no further "administrative remedies" to be exhausted.

D. Paragon's appeal is not moot.

DNR argues that Paragon's appeal is moot because "it would be illegal" for the DNR to award the contract to Paragon. In support, DNR cites § 40-11-200(B), but that section simply makes it illegal for DNR to award a contract to an *unlicensed* contractor:

(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

⁷ For example, in *Appeal by Palmetto Pavement Maint.*, Panel Case No. 1996-7, 1996 WL 33404910, the CPO found a bidder non-responsive for lacking the proper contracting license, and the Panel affirmed on that basis. In *Protest of Roofco*, Panel Case No. 2000-14(II), 2001 WL 34058940, the CPO determined the contractor nonresponsive for lacking a proper license, but the Panel corrected the CPO's terminology and stated, "[t]echnically this is an issue of nonresponsibility." Nevertheless, the Panel knew what the CPO meant. In *Appeal by Midwest Maint.*, Panel Case No. 2004-3, 2004 WL 2516300, the project manager determined a contractor non-responsive for lacking a specialty roofing license. But the project manager later testified that he "agreed the issue was one of responsibility instead of responsiveness." In short, 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.

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).

It is undisputed that Paragon is a licensed contractor. DNR’s argument merely highlights the distinction that the contractor-licensing laws draw between (A) unlicensed contractors and (B) licensed contractors “engaging in construction” under the wrong name. *See* S.C. Code Ann. § 40-11-370. As discussed above in Part I, the General Assembly made it illegal for *unlicensed* contractors to submit bids and for agencies to consider those bids. *Id.* at §§ 40-11-200(B) and -370(A). The same prohibition, however, does not apply to licensed contractors failing to use their exact name. The General Assembly merely prohibited licensed contractors from “engaging in construction” by “marketing, advertising, using site signs, and submitting contracts” under the wrong name. *Id.* at § 40-11-370(B). Despite knowing the exact words to use, the General Assembly did not include “bidding” or “offering to perform” in the definition of “engaging in construction.”

CONCLUSION

For the reasons stated above, the Court should deny the relief requested in DNR’s cross appeal.

[Signature on the following page]

Respectfully submitted,

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PROOF OF SERVICE

The undersigned certifies that I have served all counsel in this action with the Chief Procurement Officer's Final Brief of Appellant/Respondent and Final Response Brief to DNR's Cross Appeal by emailing a copy to each attorney listed below.

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