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**SC Court of Appeals**

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  
Panel Case No. 2025-5

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In Re: Haren Construction Co., Inc.

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

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

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

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**PARAGON INC. OF SOUTH CAROLINA, LLC d/b/a PARAGON BUILDERS’  
FINAL APPELLANT’S BRIEF**

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## **STATEMENT OF ISSUES ON APPEAL**

1. **Did the Panel Improperly Defer to DNR's Interpretation of a Statute that DNR Is Not Charged with Administering?**
2. **Did the Panel Fail to Conduct De Novo Review of the Scope of the PB License Sub-Classification under § 40-11-410(5)(f) and Fail to Determine Whether DNR's Decision Was Contrary to Law?**
3. **Did the Panel Apply an Incomplete Standard of Review?**
4. **Did the Panel Err by Overruling the CPO's Decision that Paragon Holds the Proper Licenses to Perform the Project, under the plain meaning of § 40-11-410(5)(f), and was the lowest responsive and responsible bidder?**

## **STATEMENT OF THE CASE**

This matter arises from a public construction procurement by the South Carolina Department of Natural Resources ("DNR") for the Beaufort-Waddell Mariculture Maturation Ponds Maintenance project (Project No. P24-6052-PG).

DNR issued a solicitation for the Project on August 12, 2025. Bids were opened on September 23, 2025. Paragon Inc. of South Carolina, LLC d/b/a Paragon Builders (Paragon) submitted the apparent low responsive bid. On October 17, 2025, DNR issued a written determination finding Paragon non-responsible on the grounds that it lacked the contractor license subclassification DNR deemed necessary to perform the predominant portion of the Project's work. **(R. 800)**. DNR posted a Notice of Intent to Award to Haren Construction Co., Inc., the second-lowest bidder, on October 20, 2025. **(R. 801)**.

On October 27, 2025, Paragon timely filed a Notice of Intent to Protest. **(R. 802-808)**. On November 4, 2025, Paragon filed its Formal Protest with the Chief Procurement Officer for Construction (“CPO”), asserting that DNR had misapplied the applicable contractor licensing statutes and that Paragon’s Plumbing (PB) subclassification was sufficient to qualify it as the sole prime contractor for the Project. **(R. 809-846)**.

On November 19, 2025, the CPO sustained Paragon’s protest. **(R. 1-61)**. The CPO concluded that the Project’s scope of work fell within Paragon’s PB subclassification, that the name discrepancy between “Paragon Inc. of South Carolina, LLC” and “Paragon Builders” was a minor informality, and that DNR’s non-responsibility determination was not adequately supported. The CPO remanded the matter to DNR with instructions to proceed in accordance with the Procurement Code. **(R. 1-61)**.

Haren Construction Co., Inc. timely appealed the CPO’s decision to the South Carolina Procurement Review Panel. The appeal was resolved on the written record. On March 13, 2026, the Panel issued its Order reversing the CPO’s decision and reinstating DNR’s non-responsibility determination. **(R. 62-76)**. The Panel concluded that, applying a deferential standard of review, DNR’s selection of the Water and Sewer Lines (WL) subclassification was not clearly erroneous, arbitrary, capricious, or contrary to law, and that the engineer’s cost estimate provided a rational evidentiary basis for DNR’s eighty-percent WL allocation.

On March 23, 2026, both Paragon and the CPO filed Motions to Reconsider. **(R. 120-128; 129-136)**. DNR also filed a post-order motion raising procedural and scope-of-review arguments. The Motions to Reconsider raised three principal legal errors: (1) the Panel improperly deferred to DNR’s interpretation of a contractor licensing statute that DNR does not administer; (2) the Panel failed to conduct a genuinely de novo review of the scope of the PB subclassification under § 40-

11-410(5)(f); and (3) the Panel applied an incomplete standard of review by omitting the “contrary to law” prong of the applicable statutory standard.

On April 6, 2026, the Panel issued its Order Denying Motions to Reconsider, leaving the March Order unchanged. **(R. 77-79)**. The Panel maintained that it had conducted de novo review and had independently determined that the governing statutes did not compel a single license subclassification as a matter of law, and that DNR’s selection among legally permissible subclassifications was not contrary to law.

Paragon and the CPO have each filed Notices of Appeal with this Court challenging both the March Order and the April Order. **(R. 847-870; 871-892)**. DNR has filed a cross-appeal. **(R. 893-915)**.

Paragon thereafter moved before the Panel for a stay of the Orders pending appeal. **(R. 162-195)**. On April 14, 2026, the Panel denied the stay, concluding that appellate jurisdiction would be preserved even if DNR proceeded with contract award. **(R. 80-81)**.

On April 22, 2026, Paragon filed a Motion for Stay in this Court and request for Expedited Briefing Schedule, **(R. 304-506)**. On April 27, 2026, SCDNR filed a Response in Opposition to Paragon’s Motion for Stay and also filed a Motion to Dismiss the Appeal. **(R. 507-516; 517-651)**.

On April 30, 2026, Haren filed a Return to Paragon’s Motion for Stay. **(R. 652-667)**. On May 1, 2026, the CPO filed a Response to Paragon’s Motion to Stay. **(R. 668-671)**. On May 5, 2026, the CPO filed a Return to DNR’s Motion to Dismiss. **(R. 672-681)**. On May 7, 2026, Paragon filed a Response in Support of the Motion to Stay. **(R. 683-736)**.

On May 20, 2026, this Court issued an Order denying the Motion to Dismiss and granting the motion to stay and entered an expedited briefing schedule, **(R. 82-84)**. Haren thereafter filed a Petition to the full Court for review of the May 20, 2026, Order. **(R. 737-763)**. SCDNR filed a

Return to the Petition on June 1, 2026, **(R. 764-769)**, and Paragon filed its Return on June 8, 2026. **(R. 770-769)**. Haren filed its Reply on June 10, 2026. **(R.780-791)**. The Petition is pending.

### **STANDARD OF REVIEW**

Under Section 1-23-380, SC Code the review must be confined to the administrative record. 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

### **FACTS**

#### **A. The Project**

This project involves rehabilitation and maintenance work at DNR's marine fish hatchery in Bluffton, South Carolina. The scope of work includes:

- Replacement of the main line piping network from an elevated holding tower to mariculture ponds (water distribution system);
- Electrical network replacement;
- Rehabilitation of the concrete water tower (cleaning, coating, and pipe replacement);

- Replacement of concrete outlet structures in ponds;
- Replacement of pond liners; and
- Associated minor grading.

The piping work involves water distribution to non-potable mariculture (fish farming) ponds entirely within DNR's property lines. No buildings are being constructed or renovated as part of this project.

The facility operates by pumping seawater into an elevated concrete tower from which water is released, by a series of valves, to flow by gravity to several in-ground ponds via a network of underground pipes and valves ranging from 8" to 12" in diameter. The seawater is held in the ponds for fish production and then drained into concrete outlet structures where fish are harvested. The drained seawater is discharged into a drainage ditch and returned to the saltmarsh.

## **B. Paragon's Licenses**

Paragon holds two active South Carolina contractor licenses:

### **1. General Contractor License CLG.100190**

- Classifications: Building-BD5, Nonstructural Renovation-NR5
- Group Limitation: Group #5 (Unlimited)
- Expiration: October 31, 2026

### **2. Mechanical Contractor License CLM.111292**

- Classifications: Packaged Equipment-PK5, Plumbing-PB5, Electrical-EL5
- Group Limitation: Group #5 (Unlimited)
- Expiration: October 31, 2027

Both licenses are held in the name "Paragon Builders," which is the trade name of Paragon Inc. of South Carolina, LLC, as confirmed by the license application (DOC 165) submitted to LLR

identifying “Paragon Inc. of South Carolina, LLC” as the Licensee/Legal Name and “Paragon Builders” as the Doing Business As (DBA) name.

### **C. The Department’s Initial Determination**

On October 17, 2025, DNR issued a written determination finding Paragon non-responsible based on two grounds. **(R. 800).**

First, DNR concluded that Paragon’s Plumbing license (PB5) did not cover the water distribution work because the project involved “yard piping” on private property, and that Paragon did not hold the Water and Sewer Lines (WL) subclassification DNR deemed necessary. DNR cited the engineer of record’s opinion of cost and determined that eighty percent of the project cost required WL licensure, based on which Paragon lacked the license coverage necessary to serve as sole prime contractor under S.C. Code Ann. § 40-11-340.

Second, DNR noted that Paragon’s bid was submitted under the name “Paragon Inc. of South Carolina, LLC” while the contractor license in the LLR database appeared under the name “Paragon Builders,” and cited S.C. Code Ann. § 40-11-370(B), which prohibits engaging in construction under a name other than the exact name appearing on the license.

In reaching its determination, DNR had contacted personnel associated with the Contractor’s Licensing Board within LLR, the agency responsible for administering Title 40’s contractor licensing provisions. LLR staff declined to provide a classification determination and advised that licensing questions should be directed to the local building official responsible for reviewing the Project’s plans.

### **D. The CPO’s Decision**

On November 19, 2025, the CPO sustained Paragon’s protest. **(R. 1-61)**. On the core licensing question, the CPO conducted an independent review of the statutory text of both the WL subclassification under § 40-11-410(3)(c) and the PB subclassification under § 40-11-410(5)(f). The CPO concluded that “[n]either WL License nor the PB License appears to contemplate water and drainage line work of the type on this project.” Specifically, the CPO observed that “[n]either expressly excludes such work and both incorporate language that seems to include such work” and therefore “finds that the language of both allow the licensee to do the water supply tank and line work of this project as well as the drainage line work.”

The CPO recognized that the WL subclassification’s primary focus is public utility water and sewer service lines within the utility right-of-way or easement, while the PB subclassification’s primary focus is water and sewer service to commercial, residential, and other facilities within property lines. The CPO concluded that neither statute expressly excluded the specialized mariculture infrastructure at issue, and that a plumbing licensee may perform water supply tank and line work within property lines.

Regarding the WL subclassification, the CPO noted that while its primary focus is public utility water and sewer service, it “does not preclude water line work on property that is not within the right-of-way unless it is a service line to a residential structure,” and that this project does not involve a residential structure.

On the business name issue, the CPO found that the discrepancy between the legal name and trade name was a minor informality and did not affect Paragon’s responsibility. The CPO observed that “Paragon Inc. of South Carolina, LLC, does appear on Paragon’s license application as its legal name and Paragon Builders as its trade name” and that Paragon had provided its license number with its bid, clearly identifying it as Paragon Builders. The CPO concluded that “[a]t the

most, Paragon’s bidding in its legal name rather than its trade name as it appears on its license is a minor informality per Section 11-35-1520(13).”

The CPO also noted that the Contractors Licensing Board staff had advised the CPO that engaging in construction under the legal entity name rather than the trade name as displayed on the license certificate is “a minor infraction not affecting a contractor’s ability to perform the work.”

The CPO granted the protest and remanded the matter to DNR to proceed in accordance with the Procurement Code.

### **E. The Panel’s Decision**

Haren appealed the CPO’s decision to the Procurement Review Panel. On March 13, 2026, the Panel issued its Order reversing the CPO’s decision and reinstating DNR’s non-responsibility determination. **(R. 62-76)** (“Panel Order”).

The Panel acknowledged that it was conducting de novo review but framed the dispositive question as whether “DNR’s non-responsibility determination was clearly erroneous, arbitrary, capricious, or contrary to law under S.C. Code Ann. § 11-35-2410(A).”

On the licensing issue, the Panel concluded that “[t]he contractor license subclassifications identified in § 40-11-410 describe broad categories of construction work and do not, as applied to this mariculture infrastructure, compel a single classification as a matter of law.” The Panel found that the Project’s piping components “resemble work typically performed under a PB subclassification” but that DNR had reasonably determined that the Project concerns a broader water distribution system appropriately classified under WL.

The Panel invoked the deference principles of *Kiawah Development Partners II v. S.C. Dep’t of Health & Envtl. Control*, 411 S.C. 16, 33, 766 S.E.2d 707, 717 (2014), concluding that

“deference is warranted where the dispute concerns the technical application of licensing categories to specialized mariculture infrastructure” and that “DNR possesses the expertise necessary to evaluate the technical nature of the Project’s intake and distribution systems.”

The Panel held that “[t]he mere possibility that the PB subclassification could have been selected does not render DNR’s actual determination clearly erroneous under § 11-35-2410(A)” and that “the relevant inquiry is not whether the Panel would have selected the same classification, but whether DNR’s determination had a rational basis.”

The Panel also found that the engineer’s cost estimate, which allocated eighty percent of project costs to work requiring WL licensure, provided a rational evidentiary basis for DNR’s determination, notwithstanding that Paragon had submitted a different percentage allocation without a competing engineering estimate.

As to the name-discrepancy issue, the Panel noted that the administrative record included license applications identifying “Paragon Inc. of South Carolina, LLC” as the legal name and “Paragon Builders” as the DBA name, and that the Panel therefore did not “treat the name variation as affecting bidder responsibility.”

On March 23, 2026, Paragon and the CPO each filed Motions to Reconsider raising three principal legal errors: (1) that the Panel improperly deferred to DNR’s interpretation of a contractor licensing statute that DNR does not administer; (2) that the Panel failed to conduct a genuinely de novo review of the scope of the PB subclassification under § 40-11-410(5)(f); and (3) that the Panel applied an incomplete standard of review by omitting the “contrary to law” prong of the applicable statutory standard.

On April 6, 2026, the Panel issued its Order Denying Motions to Reconsider, leaving the March Order unchanged. **(R. 77-79)**. The Panel maintained that it had conducted de novo review

and had independently determined that the governing statutes did not compel a single license subclassification as a matter of law, and that DNR's selection among legally permissible subclassifications was not contrary to law.

## **ARGUMENT**

### **I. The Panel Improperly Deferred to DNR's Interpretation of a Statute That DNR Is Not Charged with Administering.**

The Panel improperly deferred to DNR's interpretation of a statute that it does not administer. Under the deference doctrine, a court may defer to an agency's interpretation of an ambiguous statute, but only if the agency is charged with administering the statute. As the South Carolina Supreme Court has held, "our deference doctrine provides that courts defer to an administrative agency's interpretations *with respect to the statutes entrusted to its administration or its own regulations* 'unless there is a compelling reason to differ.'" *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't'l Ctrl.*, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014); *Barton v. S.C. Dep't of Prob. Parole & Pardon Servs.*, 404 S.C. 395, 415, 745 S.E.2d 110, 121 (2013) ("The construction of a statute by the agency *charged with its administration* will be accorded the most respectful consideration").

The rationale for the deference doctrine rests on agency expertise. An administering agency's officers are "masters of the subject." *Kiawah Dev. Partners*, 411 S.C. at 34, 766 S.E.2d at 718. "Not unfrequently they are the draftsmen of the laws they are . . . called upon to interpret." *Id.* Such agencies are often "considered the expert designated by the legislature to make policy determinations" regarding the statute. *See S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n*, 388 S.C. 486, 697 S.E.2d 587 (2010).

Here, while DNR is an expert on natural resources, it is neither a "master of the subject" of contractor licensing, nor did it help draft the contractor licensing laws. The General Assembly charged the Contractors' Licensing Board — not DNR — with "the administration and enforcement of this chapter[.]" S.C. Code Ann. § 40-11-10. The Board is "the state authority responsible for enforcing the provisions set forth in the Contractor's Licensing Act," and the Panel has historically given it deference when it has spoken on an issue. *Protest of Roofco*, Case Nos. 2000-14 and -14(II). The Board has not, however, issued any interpretation regarding the scope of the PB classification as applied to the work at issue here. It is worth noting that the Board meets only quarterly, and given the time-sensitive nature of most state construction projects, waiting for the Board to convene to receive guidance is often impractical.

Because the Contractor's Licensing Board has not issued an interpretation, there was no interpretation entitled to deference in this case. After Paragon filed its protest, it became the CPO's responsibility to interpret the scope of the PB classification. Once Haren appealed to this Panel, it became the Panel's responsibility to conduct a *de novo* review and interpret the scope of the PB classification — without deferring to DNR. The Panel erred by abdicating that responsibility.

## **II. The Panel Failed to Conduct *De Novo* Review of the Scope of the PB License Sub-Classification Under § 40-11-410(5)(f) and Determine Whether DNR's Decision Was Contrary to Law.**

The interpretation of the scope of § 40-11-410(5)(f) is a question of law. "Statutory interpretation is a question of law subject to de novo review." *Barton v. S.C. Dep't of Prob. Parole & Pardon Servs.*, 404 S.C. 395, 414, 745 S.E.2d 110, 120 (2013); *see also Contractors' State License Bd. v. Superior Ct.*, 23 Cal. App. 5th 125 (Cal. Ct. App. 2018) ("interpretation of Contractors' State License Law is a matter of law subject to independent review"). The General

Assembly "charged [the Panel] with the responsibility to review and determine [appeals] de novo." S.C. Code Ann. § 11-35-4410(1).

DNR's non-responsibility determination rested entirely on the premise that Paragon's PB sub-classification was insufficient. **(R. 1049)**. Thus, the interpretation of § 40-11-410(5)(f) was the paramount issue on appeal. If DNR's interpretation was correct, its non-responsibility determination was proper and consistent with the law. But if DNR's interpretation was wrong, its determination was based on a faulty premise and contrary to law.

The Panel, however, did not even attempt to interpret the statute. The Order reflects no analysis of the statutory text, no examination of its plain language, no consideration of its structure, purpose, or history, and no engagement with Paragon's arguments that the plumbing definition expressly covers piping systems installed on premises to supply water, located solely within property lines. *See (R. 76)* ("This Order does not determine that WL licensure was the only possible classification for the Project."); **(R. 73-74)** ("The mere possibility that the PB subclassification could have been selected does not render DNR's determination clearly erroneous under § 11-35-2410(A)."). In short, the Panel abdicated its obligation, and relied on DNR's determination of an issue of law that the Panel was required to address *de novo*. **(R. 1049)**.

This was error on multiple levels. Even if DNR's interpretation were entitled to deference (which it is not), the Panel was still required, at a minimum, to interpret the plain meaning of the statute. *Kiawah Dev. Partners*, 411 S.C. at 32, 766 S.E.2d at 717 (explaining that the deference doctrine involves a two-step process requiring the court to first interpret the statute). Where "the plain language of the statute is contrary to the agency's interpretation, the Court will reject the agency's interpretation." *Media General Commc'ns, Inc. v. S.C. Dep't of Rev.*, 388 S.C. 138, 150,

694 S.E.2d 525, 531 (2010) (holding the ALC was not required to defer to an administering agency's interpretation contrary to the plain meaning of the statute).

Paragon submits that a proper plain-meaning interpretation of § 40-11-410(5)(f) — which expressly encompasses installation of piping systems on premises to supply water, located solely within property lines — would compel the conclusion that Paragon's PB5 license covers the yard piping work at the Beaufort-Waddell facility. In fact, the Panel concluded just that. The Panel found that the Project's piping components "resemble work typically performed under a PB subclassification," yet concluded that SCNR was vested with discretion to select which type license it preferred to perform the work. Instead, the Panel should have ended its inquiry after determining that Paragon's PB license covered the piping work on private property, and should have found that Paragon was the lowest responsible and responsive bidder.

### **III. The Panel Applied an Incomplete Standard of Review.**

Under § 11-35-2410(A), responsibility determinations are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or **contrary to law**. The Panel's Order applied only part of this standard. The Panel concluded that "[t]he relevant inquiry is not whether the Panel would have selected the same classification, but whether DNR's determination had a rational basis." (**R. 74**). By limiting its inquiry to rational basis, the Panel omitted the "contrary to law" prong and effectively treated an issue of law as a matter of agency discretion and business judgment. This was error.

Further compounding the problem, the record reveals that the foundation of DNR's determination was not as solid as the Panel assumed. DNR's non-responsibility determination stated that Paragon "does not have the proper license classifications or subclassifications to act as a sole prime contractor per SCLLR for this project." (**R. 1049**). The "SCLLR" referenced is the Board's program coordinator, Rhonda Jackson. Contrary to DNR's characterization, however, Ms.

Jackson did not conclude that Paragon lacked a proper license. In fact, Ms. Jackson directed DNR to reach out to "the Building Official at your local city or county Building Department or Permit Office" to determine the license classifications required. **(R. 1053)**. The relevant "building official" for this state project is the State Engineer, who is also the CPO in this matter. S.C. Code Ann. § 10-1-180.

Ms. Jackson is not the Contractor's Licensing Board; she is a program coordinator who — rightly — declined to render an opinion. DNR was not entitled to rely on her non-opinion and treat it as though it were a Board interpretation. By misplacing its reliance on this non-opinion, DNR's determination arguably lacked even a rational basis. And by accepting DNR's reliance on Ms. Jackson, the Panel has effectively delegated the resolution of a question of law to an LLR program coordinator.

The proper framing is not the one the Panel applied. Most responsibility determinations are, indeed, matters of business judgment and discretion — an agency evaluating whether it is comfortable with a contractor's finances, past performance, or management capacity. For those determinations, deference is appropriate because the agency "must bear the brunt of difficulties experienced in obtaining the required performance." *Appeal by SGA | Narmour Wright Design*, Case No. 2022-2.

But determining whether a contractor is licensed is categorically different. A contractor is either licensed or not. The lack of a license "will *always* render a bidder non-responsible." *Protest of Roofco*, Case No. 2000-14(II) (emphasis added). Just as an agency has no discretion to award a contract to an unlicensed contractor, it likewise has no discretion to disqualify a licensed contractor that is otherwise responsible.

The applicable standard of review is not rational basis, but whether the determination was **contrary to law**. S.C. Code Ann. § 11-35-2410(A). Finally, to the extent the Panel's order rests on any inference that DNR preferred a contractor with a WL license sub-classification, that was not the basis of DNR's non-responsibility determination. DNR simply found that Paragon "does not have the proper license classifications or subclassifications." The solicitation did not include a special standard of responsibility under Regulation 19-445.2125F mandating that bidders hold a WL sub-classification. DNR's determination therefore necessarily incorporated an interpretation of the contractor licensing laws — and it is precisely that interpretation that the Panel must review and determine whether it was contrary to law.

**IV. The Panel's Decision to Reverse the CPO's Ruling that Paragon is Properly Licensed under the Plain Meaning of Section 40-11-410(5)(f), and was the Low Responsive and Responsible Bidder was Clearly Erroneous, and Controlled by an Error of Law**

Paragon was properly licensed to perform the work under S.C. Code Ann. § 40-11-410(5)(f). The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Words “must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operation.” *Hitachi Data Sys. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

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

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

\* \* \*

(f) "Plumbing" which includes [1] the installation, replacement, alteration, and repair of all plumbing including solar water heating when performed solely within property lines and not on public easements or rights-of-way except to make

connections to water meters or sewer taps as allowed by the utility owner; and **[2]** the installation, alteration, and repair of all piping, fixtures, and appliances related to water supply, including pressure vessels and tanks, and excluding municipal or related water supply systems; **[3]** venting and sanitary drainage systems for all fluid and semi-fluid and organic wastes; **[4]** roof leaders; **[5]** water-conditioning equipment; **[6]** piping and equipment for swimming pools; and **[7]** installation of a system of pipes, fittings, fixtures, drains, and all necessary component parts upon the premises or in a building to supply water to buildings and to convey sewage or other waste products from buildings. If this equipment is gas-fired, the necessary gas lines may be installed under this subclassification used in connection with this subclassification. Plumbing contractors in license groups three, four, and five are not required to be licensed under Chapter 45, Title 23 to install standpipe systems, including water hose connections, water hose cabinets, and related branch lines if the water hoses do not supply water to automatic fire protection sprinklers.

S.C. Code § 40-11-410(5)(f) (internal numbering and underlining added).

The statute focuses on water service to commercial, residential, and similar facilities “within property lines.” The project here involves the work “within property lines” on the water supply tank, the water supply lines, and the drainage lines—all part of a series of fishponds used solely for research purposes. Thus, under at least two categories, the project fits within the definition of “Plumbing” and is within the scope of a PB subclassification. Further, none of the statute’s exclusions apply. The work will not be performed in a public easement or right of way, nor does it involve a public-utility or municipal-water-supply.

While the Panel’s order relies heavily on the project’s cost estimate, the estimate supports rather than refutes that Paragon was properly licensed to perform the work. The cost estimate is broken down by category and line item, showing that \$3,0871,009 of the work required some form of license. In three categories, DNR determined that a WL license subclassification is required: “Head Tower Rehab,” “Yard Piping” for the site, and “Piping and valves” for the four medium ponds. **(R. 1057).**

Admittedly, the “Head Tower Rehab” arguably has some line items falling outside the scope of a PB license, but this represented only \$405,000, or 13.1% of estimate. As to the project

site's "Yard Piping," it contains the following line items, representing \$797,904 or 25.9% of the estimate:

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

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

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

Together, the site's "Yard Piping" and the four ponds' "Piping and Values" represents 66.8% of the work. Each line item consists of pipes (HDPE or PVC) or pipe connectors and attachments (butterfly valves, toes, elbows, reducers, tees, pinch values, and knife gates). The pipes and attachments are all "piping, fixtures, and appliances related to water supply," and fit squarely within the scope of Section 40-11-410(5)(f)'s second category, as shown above.

DNR already determined that 17% of the work required an "Electrical" (EL) subclassification, which Paragon possesses. When you combine this with the 66.8% of the estimate suitable for a PB subclassification, Paragon's license classifications and subclassifications cover 83.3% of the work. Given that a contractor holding a Mechanical Contractor's license can act as a sole prime contractor if at least 51% of the project falls within its license subclassifications, S.C. Code Ann. § 40-11-340, Paragon was always qualified to act as sole prime contractor on the project.

## **CONCLUSION**

The Panel's decision to overrule the CPO's order was clearly erroneous, and controlled by multiple errors of law. Paragon has the appropriate licenses to perform the work on the project, and was the lowest responsible and responsive bidder. The Panel's decision to defer to SCDNR's preference of Haren, who was not the lowest responsible and responsive bidder was clearly erroneous and contract to law.

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