

materials included a copy of the Corrected Decision letter of Cherri Branson, Director of the Office of Procurement (Exhibit 3), from which the subject appeal is taken; a copy of the Costello's appeal letters, dated October 10, 2016, and October 18, 2016 (Exhibits 4 and 5), and other materials (Exhibits 7) relating to the case. OZAH accepted the case and established a file on December 21, 2016.

On December 23, 2016, the Hearing Examiner issued a Scheduling and Procedures Order, which set up a scheduling conference for January 11, 2017, and suggested alternative schedules for the hearing and other proceedings in this case. The scheduling conference was held on January 11, 2017, and was attended by Associate County Attorney Taggart Hutchinson, on behalf of Montgomery County, and by Nicole L Campbell, Esquire, attorney for Costello.

The issue of whether subcontractors may be appropriate parties to this case was discussed at the conference, and the Hearing Examiner determined that the relevant subcontractors should be notified of this proceeding (Exhibit 9). Also, the current parties will submit briefs as indicated below on the question of whether subcontractors should be allowed as parties in prevailing wage administrative proceedings, such as the instant case. Ms. Campbell supplied the names and addresses of the relevant subcontractors (Exhibit 10) so that they could be notified of these proceedings. The subcontractors referenced by Costello are Commercial Custom Cabinet, Inc., SCCP Contracting, Inc. and Young Electrical Contractors, Inc. Each has been sent a copy of this Order and Hearing Notice, so that each can consider moving to intervene.

At the request of counsel for both parties, all the prehearing and hearing dates suggested in the Hearing Examiner's original Scheduling and Procedures Order have been modified to allow time for settlement negotiations and discovery between the parties. The new schedule for the hearing and pre-hearing proceedings, as requested by the parties, is as follows:

January 31, 2017	Filing of Briefs on the issue of whether the subcontractors are necessary or proper parties to this proceeding
February 28, 2017	Deadline for serving Interrogatories and/or Requests for Documents
March 30, 2017	Completion of Settlement Negotiations ¹ and Deadline for Responses to Interrogatories and/or Requests for Documents
April 28, 2017	Completion of Discovery
May 26, 2017	County's submission of pre-hearing statement
June 16, 2017	Costello's pre-hearing statement & Joint Statement
June 29-30, 2017	Hearing

¹ Of course, the parties may continue to negotiate while discovery is proceeding, but this case will not be postponed indefinitely to allow extended pre-discovery negotiations.

This matter is hereby scheduled for public hearing before the Hearing Examiner on **Thursday, June 29 and Friday June 30 2017**, in the 2nd Floor Hearing Room, Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland, at 9:30 a.m., or as soon thereafter as this matter can be heard.

Pursuant to Montgomery County Code Section 2A-6, this hearing notice is being sent by certified mail to the parties and the subcontractors named herein. It contains the following:

- (a) A copy of the charging documents (*i.e.*, the September 21, 2016 Corrected Decision letter of Cherri Branson, Director of the Office of Procurement (Exhibit 3), from which the subject appeal is taken; and a copy of the Costello's appeal letters, dated October 10, 2016, and October 18, 2016 (Exhibits 4 and 5).
- (b) Time, place and date of hearing.
- (c) That the parties may be represented by counsel or represent themselves (however, the Hearing Examiner notes that corporations must be represented by counsel in most cases. See, e.g., Md. Rule 2-131(a)(2)).
- (d) That the parties have the opportunity to present witnesses, cross-examine witnesses and present supporting documentation.
- (e) That there are pre-hearing procedure requirements as set forth in Montgomery County Code Section 2A-7.
- (f) That the parties may request a continuance of the hearing by written request if made not less than five (5) days prior to the date of hearing.
- (g) That a verbatim record and transcript of the hearing will be made by OZAH.
- (h) That there is a right, subject to the provisions of the state public information law, to inspect and copy at the requesting party's own expense documents of any party, administrative authority or investigating governmental agency involved where such inspection is not otherwise prohibited by law. (1978 L.M.C., ch. 30, § 1.)

For the benefit of the parties, the following are some basic rules that will govern further proceedings:

1. Procedures in this litigation will be governed by the Montgomery County Administrative Procedures Act (MCAPA), Montgomery County Code Chapter 2A and by Code Chapter 11B regarding Contracts and Procurement.
2. Copies of all correspondence with OZAH shall be served on the opposing parties.
3. OZAH's address appears in the heading of this Order. No *ex parte* communication with the Hearing Examiner is permitted at any time.
4. Written submissions to OZAH must be submitted both in duplicate hard copies and in electronic copies. A copy of any written matter filed with OZAH shall be served on the opposing parties by hard copy, either in person or by first-class mail. The electronic copies filed with OZAH must be submitted to OZAH in the

following formats: Filings containing text you have generated must be submitted in Microsoft WORD format. If you are filing copies of text documents not generated by your office, the electronic copy filed with OZAH must be submitted in either Microsoft WORD format or text-searchable PDF format. The electronic copies of diagrams or images must be submitted in PDF format, although photographs may be submitted in JPEG or PDF format. These electronic copies should be submitted on compact discs accompanying the hard copy filings. If necessary, small files may be sent by e-mail (ozah@montgomerycountymd.gov).

5. Unless otherwise agreed, or ordered by the Hearing Examiner, responses to pre-hearing motions or other pre-hearing filings should be served on the opposing parties and filed with OZAH within 10 calendar days after service (plus three calendar days when responding to motions served by mail). Service on a party is complete when deposited with the United States Postal Service, and filing is complete when delivered to OZAH's office, by the due date.
6. All motions must include a statement that the opposing parties have been asked to agree to the relief requested in the motion as well as a statement disclosing whether the other parties have informed the movant that they expect to oppose the motion. If the movant is unable to reach the other parties after reasonable, good-faith efforts to do so, the motion shall include a statement to that effect.
7. Discovery will be governed by MCAPA § 2A-7(b).
8. The parties are encouraged to reach agreement on a plan for the scheduling and completion of discovery.
9. Discovery material shall not be automatically filed with OZAH. Rather, the party propounding the discovery shall promptly file with OZAH a notice stating (A) the type of discovery material served, (B) the date and manner of service, and (C) the party or person served. The party generating the discovery material shall retain the original and shall make it available for inspection by any other party. Discovery materials may be introduced as evidence at the hearing, or be used for cross-examination, under the normal rules of evidence. They may also be used as exhibits to support or oppose motions.
10. The hearing will be held in an OZAH hearing room in the Stella B. Werner Council Office Building. OZAH will arrange for a court reporter. The hearing will be somewhat less formal than a judicial trial, but it will proceed in an orderly manner in accordance with the MCAPA, with sworn witnesses subject to cross-examination. Hearsay may be admitted if it is probative and reliable. See MCAPA § 2A-8(e). The hearing will be public. The parties will be asked whether they would like a rule on witnesses, *i.e.*, a rule excluding witnesses (other than the parties themselves) from the hearing room except during the witnesses' own testimony.

11. The record on which the Hearing Examiner and the Chief Administrative Officer will base their findings and conclusions will consist of the verbatim transcript of the testimony and exhibits admitted by the Hearing Examiner. The record will not automatically include matters filed with OZAH or the Office of the Chief Administrative Officer, except for the following documents which are automatically included in the record because they are necessary to establish jurisdiction:
- The referral to OZAH from the Chief Administrative Officer (Exhibit 1);
 - The Director's Decision under the Prevailing Wage provisions (Exhibit 3); and
 - Costello's Appeal letters (Exhibits 4 and 5).
- Other items will be included in the record only if the parties stipulate to them, or if they are introduced and admitted at the hearing, or if they are otherwise admitted by the Hearing Examiner.
12. The parties' pre-hearing submissions must contain all the information specified in Code § 2A-7(a)(1), as well as a legal brief; a set of labeled exhibits; and a joint pre-hearing submission, specifying all items that are mutually stipulated and all objections to the authenticity or admissibility of any opposing exhibits. These items must be filed by the date agreed to at the scheduling conference. Individual submissions will include the following:
- a. All documents which will be relied upon at the hearing, including investigative reports, or portions thereof. The Hearing Examiner may, in his discretion, exclude from evidence any materials or documents not included in the pre-hearing submission.
 - b. List of names and addresses of all prospective witnesses, together with summaries of their expected testimony.
 - c. List of names and addresses of any persons requested to be summoned by the Hearing Examiner and any documents or records requested to be subpoenaed for the hearing.
 - d. Estimate of time to present case.
 - e. A brief statement of your legal theories and points and authorities.
13. The referral memorandum gives OZAH the authority only to write a report and recommendation, not a decision in the case. However, Sec. 2A-7(d) of the MCAPA allows a motion proceeding leading to a report and recommendation of a summary decision if warranted.

(d) Summary Decision. Any party may file a motion for summary decision at least 30 days before the date of a hearing. The hearing authority may grant summary decision if the hearing authority finds that:

(1) there is no genuine issue of material fact to be decided at the hearing; and

(2) the moving party is entitled to prevail as a matter of law.

The hearing authority must give all other parties at least 10 days to respond to the motion for summary decision before deciding the motion.

The hearing authority may permit oral argument on the motion.

So ORDERED, January 19, 2017.



Martin L. Grossman
Hearing Examiner
Director, Office of Zoning and Administrative Hearings

Attachment "A" – the September 21, 2016 Corrected Decision letter of Cherri Branson, Director,
Office of Procurement (Exhibit 3)
Attachment "B" – the Costello appeal letter, dated October 10, 2016 (Exhibit 4)
Attachment "C" – the Costello's appeal letter, dated October 18, 2016 (Exhibit 5)

Serve:

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