

Reply to the Attention of	Annik Forristal
Direct Line	416.865.7292
Email Address	annik.forristal@mcmillan.ca
Our File No.	248761
Date	September 29, 2017

BY EMAIL (clerk@toronto.ca)

City Council
Toronto City Hall, 12th Floor, West Tower
100 Queen Street West
Toronto, Ontario, Canada
M5H 2N2

Attention: Ms. Marilyn Toft, Secretariat Contact

Dear Mayor Tory and Members of Council:

Re: GM22.9 – Award of Swiss Challenge Request for Proposal No. 3204-17-7034 to GameOnStream for the Installation and Maintenance of Fixed Cameras in Various City of Toronto Arenas to Video Stream Hockey Events, Live and On Demand

We are the solicitors for LiveBarn Inc. (“**LiveBarn**”), a leading amateur sports broadcaster in North America. Further to our letter of September 22, 2017 (attached) (the “**September 22nd Letter**”), LiveBarn feels strongly that implementation of a flawed process has led to the recommendation that GameOnStream Inc. (“**GameOnStream**”) be awarded the License Agreement for The Installation and Maintenance of Fixed Cameras in Various City of Toronto Arenas to Video Stream Hockey Events, Live and On Demand. Had a fair process been implemented, LiveBarn, who submitted a far superior Proposal (as defined in the September 22nd Letter), would have been awarded the License Agreement.

Nevertheless, should City Council choose to uphold the Government Management Committee’s recommendation that the General Manager, Parks, Forestry and Recreation (the “**General Manager**”) award, negotiate and enter into a License Agreement with GameOnStream for a period of up to five years from date of award to August 31, 2022 with an option to renew for an additional five years from September 2022 to August 2027, **LiveBarn strongly recommends that the City require the General Manager to include in the License Agreement strong terms ensuring that GameOnStream meets the key promises it was required to make in order to match and beat LiveBarn’s Proposal and to allow for termination in the event that such performance standards and service requirements are not met. If a new and fair RFP process will not be initiated, robust contract terms should be put in place to ensure that the City in fact achieves the high level of service promised.**

As detailed in the September 22nd Letter, LiveBarn submitted a superior proposal to GameOnStream who was only awarded the License Agreement after being required to match LiveBarn's Proposal. Key elements of LiveBarn's Proposal included the following:

- **Revenue in Excess of Guaranteed Earnings:** In its Proposal LiveBarn guaranteed earnings to the City of at least \$108,000 over the first 5 years. This guarantee was only the beginning, with the potential for earnings by the City to be considerably more as LiveBarn's service increased in popularity with the City's users. LiveBarn offered to provide the City 40% of its gross revenue and projected earnings of at least \$100,000 per year and it was anticipated that the City would benefit from earnings of over \$250,000 in the first 5 years. LiveBarn's ability to exceed guaranteed earnings and meet its established projections has been proven by its consistent payment of revenues to arena owners in hundreds of venues and could have been confirmed had LiveBarn's references been contacted by City Staff during the RFP process. For more information, please refer to page 62 of the Proposal, under the heading *City of Toronto's Revenue Projections*.
 - Should GameOnStream fail to provide the City with consistent revenue over and above the guaranteed earnings, the City should be able to terminate the License Agreement and reconsider its service provider options in order to ensure maximum potential revenue for the City.
- **Upfront Payment of Guaranteed Earnings:** LiveBarn is so confident in its ability to meet and exceed the guaranteed earnings that it would not hesitate to make payment of such earnings at the outset of each contract year.
 - The City should require a similar upfront payment commitment of guaranteed earnings from GameOnStream.
- **No Cost to the City:** Pursuant to LiveBarn's Proposal neither the City nor any of its venue partners would incur any expenses in relation to LiveBarn's services. For more information, please refer to page 62 of the Proposal, under the heading *City of Toronto's Revenue Projections*.
 - Should the City incur any costs in association with the services provided by GameOnStream, the City should be able to terminate the License Agreement and reconsider its service provider options in order to ensure maximum potential revenue for the City.

- **Immediate Ability for Broader Broadcasting and Coverage:** In its Proposal LiveBarn advised that upon request it would be prepared to make available to the City's arena users broadcasting of all games and other activities taking place at the City's arenas, including figure skating and recreational hockey games. This means that if and when the City were interested in expanding the scope of LiveBarn's services, LiveBarn has the infrastructure and capability to provide such expanded broadcasting and coverage right away. For more information, please refer to page 23 of the Proposal, under the heading *LiveBarn Provides Cutting Edge Live and On-Demand Online Broadcasting Services*.
 - The City should require from GameOnStream the option to expand its broadcasting and coverage promptly upon request and, should GameOnStream be unable to provide such coverage, the License Agreement should allow the City to acquire such expanded services from another service provider at its sole discretion.
- **Outstanding Customer Service:** As detailed in its Proposal, LiveBarn responds to its customers' concerns within an average of 15 minutes and would be prepared to contractually commit to this high level of customer service. For more information please refer to page 17 of the Proposal, under the heading *LiveBarn's System is Largely Self-sufficient, Requiring Little Maintenance*.
 - GameOnStream should be required to provide a similar guarantee of customer response and service time and should GameOnStream fail to consistently provide the City and its arena users with this high level of customer service, the City should be able to terminate the License Agreement and reconsider its service provider options in order to obtain the best customer service for its arena users.
- **Installation Timeline:** In its Proposal LiveBarn set out a detailed timeline for installation of its services. LiveBarn is capable of installing all of its cameras and equipment within three weeks or, if requested by the City, could do so within as little as 1.5 weeks. Quick installation would allow revenue generation for the City to begin immediately, maximizing returns. For more information, please refer to page 16 of the Proposal, under the heading *LiveBarn's Streamlined Operational Plan*.
 - GameOnStream should be required to provide a similar guarantee for quick and efficient installation and should GameOnStream fail to provide such service, the City should be able to terminate the License Agreement and reconsider its service provider options in order to obtain the best customer service and ensure maximum potential revenue for the City.

- **Quality of Equipment:** LiveBarn proposed to use high-quality equipment at all of the City's venues. For more information, please refer to page 18 of the Proposal, under the heading *LiveBarn's Equipment*.
 - GameOnStream should be required to provide similarly high-quality equipment at all of the City's venues and should GameOnStream fail to do so, the City should be able to terminate the License Agreement and reconsider its service provider options in order to obtain the best quality service for the City.

As previously stated, the rationale put forward by the City for the award to GameOnStream is that GameOnStream has been able to match all key elements of LiveBarn's Proposal. Therefore, it is not inappropriate for the City to contractually require that such performance standards be met by GameOnStream. It is also in the City's interest to be allowed the flexibility to secure maximum revenues for the City and the best customer service for the City's arena users in the event of any failures by GameOnStream to meet such important performance standards. Otherwise, the City may find itself locked into in a 5 or 10 year contract with a less than qualified proponent.

In the event of termination of the License Agreement with GameOnStream, LiveBarn submits that any replacement License Agreement should be awarded to LiveBarn. In the alternative, a new Swiss Challenge Request for Proposal should be issued for the award of such a License Agreement with LiveBarn's proposal considered to be the "unsolicited proposal" or, in the further alternative, a new request for proposal process should be implemented where all proponents are put on equal footing from the outset.

We thank you for your consideration of LiveBarn's serious concerns. Should you have any questions or wish to discuss, please do not hesitate to contact us.

Yours truly,



Annik Forristal

CC: Farrel Miller and Ray Giroux, Livebarn Inc.

Reply to the Attention of Annik Forristal
Direct Line 416.865.7292
Email Address Annik.forristal@mcmillan.ca
Our File No. 248761
Date September 22, 2017

DELIVERED VIA EMAIL

City of Toronto
Government Management Committee
100 Queen Street West, West Tower, 10th Floor
Toronto, Ontario, Canada
M5H 2N2

Attention: Ms. Carol Kaustinen, Secretariat Contact

Dear Chair and Members:

Re: GM22.9 – Award of Swiss Challenge Request for Proposal No. 3204-17-7034 to GameOnStream for the Installation and Maintenance of Fixed Cameras in Various City of Toronto Arenas to Video Stream Hockey Events, Live and On Demand

We are the solicitors for Livebarn Inc. (“**Livebarn**”), a leading amateur sports broadcaster in North America.

At its meeting of February 17, 2015, pursuant to agenda item GM2.4 the Government Management Committee (the “**GMC**”) authorized application of the City of Toronto’s (the “**City**”) Swiss Challenge procedure to an unsolicited proposal received from GameOnStream (the “**Unsolicited Proposal**”). This recommendation was adopted by City Council on March 31, 2015. As a result, on January 5, 2017 the City issued Request for Proposal Swiss Challenge (No. 3204-17-7034) for The Installation and Maintenance of Fixed Cameras in Various City of Toronto Arenas to Video Stream Hockey Events, Live and On Demand (the “**RFP**”).

Livebarn Inc. responded to the RFP on February 13, 2017 (the “**Proposal**”) and, as noted in the City’s Report for Action dated September 8, 2017 (the “**Action Report**”), the Proposal not only met the mandatory submission requirements, but also scored higher than the Unsolicited Proposal.

Pursuant to the Swiss Challenge procedure, GameOnStream was invited to submit to the City a counterproposal (the “**Counterproposal**”) and, as GameOnStream was able to match the Proposal, an award notification in respect of the RFP in favour of GameOnStream was issued by the City on June 22, 2017.

Livebarn responded to the RFP in good faith and complied with all obligations and requirements of the RFP and Swiss Challenge procedure. Livebarn has serious concerns, however, regarding the manner in which the RFP and Swiss Challenge procedure were implemented by the City which has resulted in the recommendation of an award to GameOnStream. In particular, it appears that the RFP and Swiss Challenge procedure was not properly followed and an unfair advantage given to GameOnStream as a result. Proper implementation of the RFP process is legally required and fair and equal treatment of respondents to an RFP is essential to ensuring the best outcome for the City.

Pursuant to Section 2.1(ii) of the City's procedure for Conducting a Swiss Challenge Request for Proposal dated June 19, 2008, a Swiss Challenge RFP must at a minimum identify the details from the unsolicited quotation or proposal which are not deemed proprietary. The RFP, however, contained no details regarding the Unsolicited Proposal and when such non-proprietary details were requested by Livebarn in questions submitted to the City on January 25, 2017, the City responded that no such information would be provided.

In the Proposal, Livebarn provided for guaranteed minimum revenue to the City in the amounts of \$108,000 for the first 5 years and \$132,000 for the additional 5 option years as follows:

Year	Guaranteed Revenue to City of Toronto
1	\$20,000
2	\$20,000
3	\$22,000
4	\$22,000
5	\$24,000
TOTAL	\$108,000
6	\$24,000
7	\$26,000
8	\$26,000
9	\$28,000
10	\$28,000
TOTAL	\$132,000
GRAND TOTAL	\$240,000

As the guaranteed revenue to be secured from GameOnStream as set out in the Action Report exactly matches the amounts offered by Livebarn, it appears that specific details of the Proposal were provided to GameOnStream.

The provision of specific details of the Proposal to GameOnStream where no similar details of the Unsolicited Proposal were provided to Livebarn strongly indicates unequal treatment of the two parties, contrary to the RFP and Swiss Challenge procedure. Again, the RFP process must be implemented properly and fairly to ensure the best and most appropriate

outcome. It must also be noted that the revenues guaranteed by Livebarn in the Proposal are only minimums. It is unknown whether Livebarn's additional revenue generation for the City has been matched by GameOnStream.

Furthermore, while the Action Report states that GameOnStream was given no more than 30 days to match or improve on the Proposal (consistent with the Swiss Challenge procedure), the schedule for events set out in the RFP was exceeded by many months and conversations between Livebarn and City staff following notification of the award implied that more than 30 days was provided to GameOnStream to provide the Counterproposal and match Livebarn's superior Proposal.

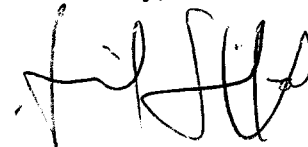
Information regarding the details of the City's implementation of the RFP and Swiss Challenge procedure have been requested by Livebarn through an Application for Access dated August 10, 2017 under the *Municipal Freedom of Information & Protection of Privacy Act*, RSO 1990, c M.56. At this time, Livebarn is awaiting disclosure of the requested information.

In light of the above, Livebarn has reason to believe that they were treated unfairly in the RFP and Swiss Challenge process and that, had Livebarn been treated fairly and equally to GameOnStream, including in respect of information provided and timing to meet deadlines, the Proposal would have been selected and the contract awarded to Livebarn. Accordingly, the contract should not be awarded by the City to GameOnStream and, if anything, should be awarded to Livebarn who submitted the superior Proposal.

In the alternative, Livebarn submits that the City should exercise its discretion to abort the initial RFP process, re-issue a new RFP and allow both GameOnStream and Livebarn the opportunity to respond and be treated fairly and on equal footing. It is in the City's best interest to ensure that the RFP process implemented allows for selection of the best proponent, particularly where the contemplated contractual relationship is a minimum of 5 years.

We thank you for your consideration of Livebarn's serious concerns. Jon Wypych, an associate from McMillan LLP, will be in attendance at the GMC's meeting on Monday, September 25, 2017. Should you have any questions or wish to discuss, please do not hesitate to contact us.

Yours truly,



Annik Forristal

CC: Farrel Miller and Ray Giroux, Livebarn Inc.