

Reply to the Attention of Annik Forristal
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Our File No. 248761
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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.

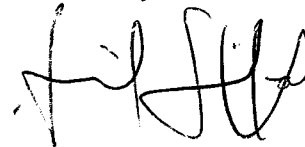
Information regarding the details of the City's implementation of the RFP and Swiss Challenge procedure have been requested by Livebarn through an Application for Access dated August 10, 2017 under the *Municipal Freedom of Information & Protection of Privacy Act*, RSO 1990, c M.56. At this time, Livebarn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