



November 7, 2007

Montgomery County Executive Isiah Leggett
101 Monroe Street
2nd Floor
Rockville, Md. 20850

Dear County Executive Leggett:

We were tremendously disappointed by your letter of November 6, which refused to consider I.M.P.'s proposal for the Silver Spring Music Hall, even though I.M.P. is this area's most successful music venue operator and has not been provided any previous opportunity to submit an offer regarding the Silver Spring music venue. However, I.M.P. will continue to avail itself of the processes of our government to try to persuade you and the County Council that I.M.P. is the superior choice for Montgomery County and its citizens.

I.M.P. respectfully disagrees with the conclusion that our proposal is too late or that the County is obligated by law to negotiate exclusively with Live Nation. The County's letter of intent with Live Nation is *non-binding*. The letter itself expressly states that neither the County nor Live Nation "shall have any binding contractual obligation or liability to the other regarding this matter (including, without limitation, any obligation to negotiate concerning this matter) unless and until formal documentation has been . . . fully executed and delivered by the parties in their sole discretion." Thus, Live Nation presently owes no obligations to the County, and the County owes no obligations to Live Nation. Why then close the door prematurely on superior bona fide offers?

We question whether the County's Executive Branch can, prior to County Council deliberations and action, enter into any binding final agreement with Live Nation. Under any such rushed agreement, the County would be expending \$8 million to procure a performing arts facility for Silver Spring without having first held either a competitive procurement, or a full and open hearing and authorization by the County Council. It is our understanding that section 11B-14 of the County Code permits non-competitive procurements only in four limited circumstances,¹ none of which can apply here in the absence of prior legislative consideration and specific approval of the \$8 million subsidy to Live Nation.

¹ The four circumstances are:

- (1) there is only one source for the required goods, service, or construction which can meet the minimum valid needs of the County, including timeliness of performance;
- (2) the contract is in connection with potential or pending litigation, condemnation, or collective bargaining;
- (3) a proposed contractor or subcontractor has been specifically identified in a grant accepted by the County; or
- (4) a proposed contractor has been identified in a grant or appropriation resolution approved by the Council.

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Unlike the Live Nation letter of intent, which expressly states it imposes no obligation on the County or Live Nation, the Montgomery County Code expressly sets forth its rules in favor of competition in County procurements. We think it would be far better to follow the spirit of this County policy, as well as the County Charter (which require public hearing and reasonable notice prior to County legislative action to approve the proposed \$8 million State/County grant to Live Nation), than to follow the supposed spirit of the County's non-binding and privately-negotiated letter of intent with Live Nation.

The last thing I.M.P. seeks is to engage in any kind of legal argument over these issues. That is why I.M.P. has worked to meet with members of the County Council, members of the community, and tried to meet with you to discuss the merits of our proposal. And we are emphatic in *not* asking that the County negotiate exclusively with I.M.P. As noted in our last letter, we are only requesting that the County Government evaluate I.M.P. as another choice, since it is clear that energetic competition ultimately can only benefit the County.

We believe that no one involved in these discussions should seek to stifle the debate, or the operation of any of the open processes involved in making a final choice on who should operate the Silver Spring music venue. Too much is involved, including both the future success of downtown Silver Spring and significant public expenditures. I.M.P. intends to fully participate in these processes, and we remain hopeful that we will be able to persuade both you and the County Council that I.M.P. offers the best choice for the citizens of Montgomery County.

Sincerely,



Seth Hurwitz
Chairman

Seth Hurwitz, Chairman
6112 Lenox Road • Bethesda, MD 20817