



# Office of the Sheriff

## SANTA BARBARA COUNTY

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**Sheriff - Coroner Office**  
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**Main Jail**  
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### COURT SERVICES CIVIL OFFICES

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**Santa Maria**  
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January 29, 2016

**BILL BROWN**

Sheriff - Coroner

**BERNARD MELEKIAN**

Undersheriff

Linda Penner, Chairperson  
Board of State and Community Corrections  
2590 Venture Oaks Way  
Sacramento, CA 95833

Re: BSCC Pay for Success Grant Program

Dear Chairperson Penner and Members of the Board:

The County of Santa Barbara, through the Sheriff's Office, was very interested in and intended to submit an application for the BSCC's Pay for Success Grant Project ("the Grant"). Our County was intrigued by the innovative funding mechanism and we have a definite need for the services and benefits the prospective grant would provide. The County's intended proposal was for a neurofeedback treatment program to be administered at the County's two day reporting centers to reduce the rate of recidivism. Research indicates neurofeedback is effective in treating conditions like attention deficit hyperactivity disorder (ADHD), impulse control, post-traumatic stress disorder (PTSD), substance abuse, and addiction issues. However, for several reasons county staff determined that the present Pay for Success grant program structure and underpinning made it difficult, if not impossible, for a California county to carry out the requirements of the grant, while meeting the fiscal and legal requirements of a county government.

Despite our County's sincere interest in pursuing the Pay for Success Grant, our County Auditor-Controller, Treasurer, and County Counsel all raised concerns regarding the legal and financial structure of the Grant. The purpose of my letter is to share these concerns and the County's ideas about potential improvements, both within the present RFP and any successor programs, to better address compatibility with county audit and financial requirements. A California county has very specific parameters within which it must function and the existing grant RFP left unanswered many questions about how these requirements could be met.

1. Restrictions on County Investments: The County Treasury is precluded from allowing outside funds, including 501(c)(3) investor funds, in the pooled investment fund. The grant program did not address how funds would be handled and dispersed to comply with County fiscal directives and the County Budget Act. While the program is aimed specifically at counties, it did not appear that county fiscal law had been considered in the creation of the grant program.

2. Accounting Concerns: The contracts and terms between the County, intermediaries and the service delivery providers have not been negotiated. The accounting for operating funds by raising capital from independent commercial or philanthropic investors became problematic for the County Auditor-Controller and County Treasurer-Tax Collector. The financing model used in other states or being proposed for our specific project for these Pay for Success contracts and raising capital would need more vetting under California statutes.
3. Understanding the Scope and Function of the Grant: The structure of the Grant was difficult to understand, as demonstrated by our many questions. Our suggestions are that regulations be adopted that would implement Government Code § 97009 et seq. or that the existing RFP be clarified. The scope and function of this innovative grant program are addressed in the statute in a summary manner and perhaps require additional legislation, if a proper regulatory framework cannot be created. And, although social impact bonds have been successful in their implementation in some other states, it is our understanding that the social impact bonds issued elsewhere were different in concept and function from the pay for success performance contract this grant RFP envisioned. A detailed statutory and/or regulatory structure for such programs in California is needed. Also, the timetable of grant workshops, legislative action, and RFP release and schedule made a responsive grant application difficult.
4. Implementing Statutory Scheme. It was unclear whether the implementing statute produced a good fit with existing fiscal constraints and county contracting procedures. For example, Government Code § 97010 and BSCC's RFP require detailed discussion of the contractual framework to be used for the grant, but they are not clear as to how a county meets contract liability, fiscal oversight and financial responsibility requirements of other sections of county government law, especially in regards to contract law.
5. County Liability and Exposure: Although it appears no county cash flow contribution is required for the Grant, the County has exposure for repayment of funds back to the State, if liability is determined under audit or for a material and substantial breach. (RFP Appendix F's sample contract.) Given that the pay-out of the grant proceeds to the "investor" could precede, by years, any state audit of the grant and given that the County is not wholly responsible for the functioning and outcome of the program's goals, it was unclear how the County could deal with liability and post-grant audit requirements.
6. Determination of Performance Measures: The Grant requires that payment to investors be conditioned on the achievement of specific outcomes based upon performance targets. "An objective process by which an independent evaluator, selected by the county, will determine whether the performance targets have been achieved. This process shall include defined performance metrics and a monitoring plan." *Government Code §97011(b)(2)*. There is no indication whether,

if this process is followed, that the decision of that independent evaluator is final, or could it be second-guessed by a future state audit. If so, who is liable? Given that an independent evaluator would be involved in making critical decisions regarding goal accomplishment, it was unclear wherein litigation liability for disagreements in outcome decisions rested. If an investor disagrees with a decision on success or responsibility for lack of success, a distinct possibility of litigation might ensue (but with whom?).

Therefore, given these unanswered questions, the County of Santa Barbara requests that BSCC, either:

- Extend the present application due date to allow for clarification of the issues addressed above; or
- Set up a process to study the framework for participation by a California county in this and future Pay for Success grant programs and, perhaps, set up a more detailed statutory or regulatory structure for such pay for success performance contracts to be workable in California. Participation by experts in county fiscal, legal and budget requirements would be a valuable part of that process.

The County of Santa Barbara looks forward to participating in the Pay for Success program either in the future, or if the current grant deadline is extended. The County believes it could devote resources to further develop a potentially successful grant proposal, but it needs a clear structure within which a county can operate. We look forward to working with BSCC to that end.

Sincerely,



BILL BROWN  
Sheriff – Coroner

*Cc: Kathleen Howard, Executive Director BSCC  
Colleen Stoner, Field Representative, BSCC  
Board of Supervisors  
Mona Miyasato, County CEO  
Michael C. Ghizzoni, County Counsel  
Joyce Dudley, District Attorney  
Robert Geis, Auditor-Controller  
Harry Hagen, County Treasurer  
Rick Roney, Re-Entry Steering Committee  
Danielle Spann, Community Solutions, Inc.*