January 29, 2002

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

CONTRACTING POLICY – COST OF LIVING ADJUSTMENTS FOR SERVICES CONTRACTS (ALL DISTRICTS AFFECTED) (3 VOTES)

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve a revised cost of living adjustment (COLA) policy for multi-year services contracts, to be effective with contract solicitations issued March 1, 2002 and thereafter.

2. Sunset the existing COLA cap policy, issued April 9, 1997, consistent with the approval of the recommended revised policy.

PURPOSE/JUSTIFICATION OF RECOMMEDED ACTION

On October 2, 2001, on motion of Supervisor Yaroslavsky, your Board instructed this office, with the assistance of County Counsel, the Internal Services Department (ISD), and other relevant departments, to draft a policy on use of COLAs in Proposition A contracts, with specific attention to those contracts in which the Living Wage Ordinance (LWO), or an exemption to the LWO, is invoked. The concern expressed by your Board was the lack of a consistent policy on the use of COLAs in Proposition A services contracts. This letter provides the requested policy.

We issued a status report to your Board, dated November 9, 2001, requesting additional time to review the above matter in conjunction with an assessment of a potential increase to the Living Wage amount as an alterative to COLAs in Proposition A contracts. At the same time, we issued a memorandum to all department heads to clarify the existing COLA cap policy, pending further policy development. Due to the current fiscal uncertainties, we are not recommending an increase to the Living Wage

amount as an alternative to contractor COLAs. Additional information about this issue is included in the Second Living Wage Annual Report, which is being submitted to your Board under separate cover from the Office of Affirmative Action Compliance (OAAC) and this office.

Staff from Auditor-Controller, County Counsel, ISD, OAAC and the Department of Public Works assisted in our review of the use of COLA provisions in Proposition A contracts. All agreed that a department's determination to recommend the use of COLA provisions should be a business decision that takes into account such factors as the nature of the services contracted, the market and the department's history and experience contracting for the specific service. This applies equally to all services contracts. The difference between Proposition A and other services contracts is the cost-effectiveness requirement, whether or not COLAs are included.

If a department decides to provide for COLAs in a service contract, the department must include the applicable COLA language in the solicitation document. When COLA provisions are included in the solicitation, proposers take it into consideration in calculating their bid price. If the solicitation does not include provisions for COLAs, proposers will likewise consider this in calculating their bid price; the absence or presence of COLA provisions in a solicitation impacts a proposer's bid price.

In the specific instance when the terms of a collective bargaining agreement exempt a Proposition A contractor from paying the LWO wages, a department would be expected to evaluate this factor, but it would not necessarily preclude a recommendation for COLA provisions, if such provisions were included in the solicitation. Depending on the Proposition A service, contactors may incur unanticipated operational cost increases (not necessarily associated with labor) that merit consideration of a COLA.

The COLA cap policy, dating from April 1997, establishes a "not to exceed" limit; it does not mandate contract COLAs or provide policy guidance on when to include COLAs. The recommended policy, as discussed under Facts and Provisions/Legal Requirements, defines a COLA, reissues the COLA cap policy with additional guidelines to increase uniformity in its application, and incorporates the clarifications issued in the previously referenced memorandum of November 9, 2001. The recommended policy should provide for more consistency in use of COLA provisions as appropriate for the contracted service.

Implementation of Strategic Plan Goals

The recommended policy provides greater consistency in the County's use of contract COLAs, which supports the Strategic Plan Goals of Organizational Effectiveness and Fiscal Responsibility, and the associated Strategies to improve internal operations and manage effectively the resources we have.

FISCAL IMPACT/FINANCING

There are no new costs or financing needs associated with this recommendation.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

To assess current practices in departments, in October 2001, this office conducted a survey of departments on the use of COLAs in contracts. Of the 31 departments responding, 19 indicated that COLA provisions are not included in any contracts; the other 12 indicated practices that varied from always including COLA provisions to no policy and case-by-case determinations.

Examples provided by those departments occasionally using COLA provisions indicate that the decision to include COLA provisions was based on the nature of the services contracted, the market, and the department's history and experience contracting for the specific service. Three examples are provided below:

- Proposition A custodial services are largely labor-driven – the primary cost is wages, which are established for the majority of the contract staff by the LWO or a collective bargaining agreement. In some instances, the contracting County department may also provide janitorial supplies to a custodial contractor. In this type of contract, departments may solicit a "fixed firm" price for the full contract term with no provision for COLAs. The proposer calculates the bid price to take into account a possible escalation of wages, materials and other costs during the contract period.

- Contractors for medical examination and evaluation services that are paid negotiated fixed rates for various units of service may be unable to accurately anticipate cost increases for such things as supplies and equipment in the volatile medical field. In this instance, the department's solicitation may include provisions for COLAs to address these unknowns and would likely be based on prior experience contracting for such services.

- Some contract services are impacted by recruitment and retention problems. An example given by one department is security guard services for which there is a large demand in the private sector that has resulted in contract employees moving from contractor to contractor, based on the highest pay available. In this instance, the department made a business decision to recommend Board approval of annual contract price increases for wage increases to reduce potential recruitment and retention problems for the contractor, and service level problems for County departments.

These examples demonstrate the need for flexibility to determine when it is appropriate to include COLAs in Proposition A contracts. However, when a business decision is made to provide for COLAs, a consistent policy should apply. Any exceptions to the policy to address unique contract situations should be discussed with Board offices in advance of issuing the solicitation for the contract.

The recommended policy guidelines to increase consistency and also address these varying situations follow:

COLA Policy Guidelines For Services Contracts

A COLA is defined as any contract price increase during the term of a contract that is not a cost included in the initially negotiated contract price and is not for an increased service level or workload. A COLA reflects changes in the cost of doing business based on inflation.

COLA provisions in contracts are not mandatory; a department's determination to recommend the use of COLAs shall be a business decision based on such factors as the nature of the services contracted, the market, and the department's history and experience contracting the specific service. If a services contract is developed as a result of a solicitation and the department decides to recommend the use of COLAs, the department must include the applicable COLA language in the solicitation document.

The following policy language shall be incorporated in substantially similar form into solicitations and contracts that include COLA provisions:

> "The contract (hourly, daily, monthly, etc.) amount may be adjusted annually based on the increase or decrease in the U.S. Department of Labor, Bureau of Labor Statistics' Consumer Price Index for the Los Angeles-Riverside-Orange County Area

(CPI) for the most recently published percentage change for the 12-month period preceding the contract anniversary date, which shall be the effective date for any cost of living adjustment. However, any increase shall not exceed the general salary movement granted to County employees as determined by the Chief Administrative Office as of each July 1 for the prior 12-month period. Furthermore, should fiscal circumstances ultimately prevent the Board from approving any increase in County employee salaries, no cost of living adjustments will be granted."

The above calculations establish the "COLA cap." No COLA may be granted that exceeds the COLA cap, but lesser or no COLA may be appropriate depending on the specific contract.

When COLA provisions are included in a contract, the contracting department shall indicate this in the Board letter recommending the contract award in the Contracting Process section, and specify whether the contract language complies with County policy. The contract award recommendation shall not include actual COLA dollar increases for any subsequent contract or optional extension year because the information necessary to calculate the COLA cap is not known for future years.

Departments shall discuss with Board offices any prospective contract that does not comply with the County's COLA policy in advance of issuing the solicitation for the contract.

As noted, two factors used to determine the COLA cap are the CPI and the general salary movement granted to County employees. CPI information is published monthly by the Bureau of Labor Statistics to provide the percentage change for the preceding 12-months. Attachment II provides a sample monthly report from the Bureau of Labor Statistics for November 2001, which was released December 14, 2001.

Attachment III provides a sample of information that this office will provide annually on the general salary movement granted to County employees effective for July 1 of each year for the prior 12-month period. This is the other primary factor used in determining the COLA cap.

For example, a department may notify a contractor in mid-May that it intends to continue a contract that has a July 1 anniversary date and COLA provisions. At the time of notification, the most recently published CPI data may be for the 12-month period ending in April. The April CPI percentage change will be compared to the general salary increase percentage for County employees, as reported by the CAO. The lesser amount is the COLA cap. This policy is established to streamline the renewal process and avoid retroactive COLA computations by permitting departments reasonable latitude to utilize the most recently published CPI data prior to a contract anniversary rather than waiting until after the contract renewal to determine the COLA.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The proposed COLA policy generally affirms existing departmental practices and policy with clarifications to increase consistency in application countywide. Departments will be required to assure that their solicitation and contract language, and practices for calculating any COLA comply with the revised policy. Departments will continue to have flexibility to address the broad array of contract services and determine if COLA provisions should be recommended for each specific service. Departments recommending contracts with COLA provisions are additionally required to provide this information in the Board letters, affirming that the contract language is consistent with Board policy.

ISD will incorporate the revised policy into the Service Contracting Manual currently under development.

The existing COLA cap policy will sunset upon approval of the revised policy.

Respectfully submitted,

DAVID E. JANSSEN
Chief Administrative Officer

DEJ:LS
MKZ:NF:nl

Attachments (3)

c: All Department Heads

Los Angeles County
BOARD OF SUPERVISORS POLICY MANUAL

Policy #:	Title:	Effective Date:
0.000	Multi-Year Services Contract Cost of Living Adjustments	03/01/02

PURPOSE

Provides guidelines for the use of cost of living adjustment (COLA) provisions in multi-year services contracts, establishes the maximum allowable COLA.

REFERENCE

April 1, 1997 Board Order

April 8, 1997 Chief Administrative Office memo, "Policy on Contract Cost of Living Adjustments (COLAs)"

October 2, 2001 Board Order, Synopsis

January 29 2002, Chief Administrative Office letter, "Contracting Policy – Cost of Living Adjustments"

POLICY

A COLA is defined as any contract price increase during the term of a contract that is not a cost included in the initially negotiated contract price and is not for an increased service level or workload. A COLA reflects changes in the cost of doing business based on inflation.

COLA provisions in contracts are not mandatory; a department's determination to recommend the use of COLAs shall be a business decision based on such factors as the nature of the services contracted, the market, and the department's history and experience contacting the specific service. If a services contract is developed as a result

of a solicitation and the department decides to recommend the use of COLAs, the department must include the applicable COLA language in the solicitation document.

The following policy language shall be incorporated in substantially similar form into solicitations and contracts that include COLA provisions:

> "The contract (hourly, daily, monthly, etc.) amount may be adjusted annually based on the increase or decrease in the U.S. Department of Labor, Bureau of Labor Statistics' Consumer Price Index for the Los Angeles-Riverside-Orange County Area (CPI) for the most recently published percentage change for the 12-month period preceding the contract anniversary date, which shall be the effective date for any cost of living adjustment. However, any increase shall not exceed the general salary movement granted to County employees as determined by the Chief Administrative Office as of each July 1 for the prior 12-month period. Furthermore, should fiscal circumstances ultimately prevent the Board from approving any increase in County employee salaries, no cost of living adjustments will be granted."

The above calculations establish the "COLA cap." No COLA may be granted that exceeds the COLA cap, but lesser or no COLA may be appropriate depending on the specific contract.

When COLA provisions are recommended in a contract, the contracting department shall indicate this in the Board letter recommending the contract award in the **CONTRACTING PROCESS** section and specify whether the contract language complies with County policy. The contract award recommendation shall not include actual COLA dollar increases for any subsequent contract or optional extension year because the information necessary to calculate the COLA cap is not known for future years.

Departments shall discuss with Board offices any contract recommendation that does not comply with the County's COLA policy in advance of issuing the solicitation for the contract.

RESPONSIBLE DEPARTMENT

Chief Administrative Office
Internal Services Department

DATE ISSUED/SUNSET DATE

Issue Date: January 29, 2002 **Sunset Date: January 28, 2006**

Attachment III

SAMPLE

January 18, 2002

To: All Department Heads

From: David E. Janssen
Chief Administrative Officer

CONTRACTING POLICY – GENERAL SALARY MOVEMENT FOR COUNTY EMPLOYEES AS OF JULY 1, 200_ FOR THE PRIOR 12-MONTH PERIOD FOR USE IN DETERMINING THE COST OF LIVING ADJUSTMENT CAP FOR SERVICES CONTRACTORS

Consistent with County Policy No. _____ for determining a services contractor annual cost of living adjustment (COLA), if any, the general salary movement percentage for County employees as of July 1, 200_ for the prior 12-month period is __ percent. The maximum contractor COLA, the COLA cap, is the lesser of this general salary movement percentage and the most recently published percentage change in the U.S. Department of Labor, Bureau of Labor Statistics' Consumer Price Index (CPI) for the 12-month period preceding the contract anniversary date.

15 through 18

On motion of Supervisor Molina, seconded by Supervisor Knabe, unanimously carried, the attached recommendations of the Chief Administrative Officer, identified as Synopsis Nos. 15 through 18 were adopted. Following is a summary accounting of the attachments:

15. Recommendation: Endorse and adopt the Operational Area Strategic Plan for Emergency Management which includes 14 goals and 63 initiatives to advance the ability to respond to and recover from a major disaster; instruct the Chief Administrative Officer, in collaboration with affected department heads and directors, to manage the Strategic Plan and to report annually to the Board on the implementation progress of the plan; and authorize the Chief Administrative Officer to make modifications to the initiatives, as required, to implement the intent of the Strategic Plan and to report annually to the Board on the implementation progress of the Strategic Plan. ADOPT

16. Recommendation: Approve the direct sale of nine parcels of County surplus real properties located between Avenues I and J in the vicinity of 96th Street West and 98th Street West, Antelope Valley (5), to Kamal and Sameera Ibrahim in amount of $8,300 for five parcels, and to George Penkoff in amount of $13,500 for four parcels; instruct the Chairman to sign quitclaim deeds, and authorize the Chief Administrative Officer to execute all documents necessary to complete the sale transaction; also instruct the Auditor-Controller to deposit the proceeds in the Asset Development Implementation Fund. APPROVE

17. Recommendation: Approve the revised cost of living adjustment (COLA) policy for multi-year services contracts to provide greater consistency in the County use of contract COLAs, to be effective with contract solicitations issued March 1, 2002 and thereafter; and sunset the existing COLA cap policy issued April 9, 1997, effective upon approval of the recommended revised policy. APPROVE

(Continued on Page 2)

18. Recommendation: Adopt joint resolution with the City of Palmdale approving and accepting the negotiated exchange of property tax revenue resulting from "Annexation No. 1999-03" to the City of Palmdale and detachment from the County Public Library District and County Road District No. 5, portion of two parcels owned by Los Angeles World Airports, City of Los Angeles, into Palmdale's boundaries; authorize the Chief Administrative Officer to provide the Local Agency Formation Commission a waiver of the protest proceedings for the proposed annexation pursuant to Section 56663(c)(2) of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. ADOPT

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Attachments (4)