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MEMORANDUM FOR THE CHIEF FINANCIAL OFFICERS AND SENIOR
PROCUREMENT EXECUTIVES OF EXECUTIVE DEPARTMENTS AND AGENCIES

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SUBJECT: Guidance on Allowable Contracting Costs Associated with the Worker
Adjustment and Retraining Notification (WARN) Act

The Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C. §§ 2101-2109, generally requires employers with at least 100 employees to provide written notice to affected employees 60 days before ordering certain plant closings or mass layoffs if they are reasonably foreseeable. On July 30, 2012, the Department of Labor (DOL), which is the Federal agency responsible for administering the WARN Act, issued Training and Employment Guidance Letter No. 3-12 addressing the WARN Act's requirements in the context of the potential across-the-board budget cuts (known as sequestration) scheduled to occur on January 2, 2013 if Congress fails to act. DOL concluded that it is neither necessary nor appropriate for Federal contractors to provide WARN Act notice to employees 60 days in advance of the potential sequestration because of uncertainty about whether sequestration will occur and, if it did, what effect it would have on particular contracts, among other factors. In reaching this conclusion, DOL explained that giving notice in these circumstances would waste States' resources in undertaking employment assistance activities where none are needed and create unnecessary anxiety and uncertainty for workers.

Despite DOL's guidance, some contractors have indicated they are still considering issuing WARN Act notices, and some have inquired about whether Federal contracting agencies would cover WARN Act-related costs in connection with the potential sequestration. To further minimize the potential for waste and disruption associated with the issuance of unwarranted layoff notices, this memorandum provides guidance regarding the allowability of certain liability and litigation costs associated with WARN Act compliance. Specifically, if (1) sequestration occurs and an agency terminates or modifies a contract that necessitates that the contractor order

a plant closing or mass layoff of a type subject to WARN Act requirements, and (2) that contractor has followed a course of action consistent with DOL guidance; then any resulting employee compensation costs for WARN Act liability as determined by a court, as well as attorneys' fees and other litigation costs (irrespective of litigation outcome), would qualify as allowable costs and be covered by the contracting agency, if otherwise reasonable and allocable.

This guidance does not alter existing rights, responsibilities, obligations, or limitations under individual contract provisions or the governing cost principles set forth in the Federal Acquisition Regulation (FAR) and other applicable law. Thus, agencies may treat as allowable other costs potentially associated with sequestration, including WARN Act-related costs arising under circumstances not specified in this guidance, based on the usual cost principles of allocability, allowability, and reasonableness as set forth in the FAR.