**Subcontracting Reform – Prompt Payment to Subcontractors**

As part of the National Federal Contractors Association (NaFCA) and Set-Aside Alert Solutions Summit on Subcontracting Reform, focus working groups were formed. They are made up of small businesses that do business with the federal government and developed the following solution:

**Solution**

The current Prompt Payment rule ensuring that federal agencies pay vendors in a timely manner shall flow down to the relationship between prime contractors and subcontractors. Prime contractors shall pay subcontractors no later than thirty days from receipt of invoice from small business subcontractor.

**Benefits**

* Subcontractors receive payments in a timely manner.

**Background and Discussion**

The proposed rule notice has asked for input on how prompt payment situations are handled in the commercial sector. In fact, the Prompt Payment Act presents the appropriate corollary for how payments should be made in the government sector. The Act provides specific guidance, appropriate payment periods, and clear penalties for late payment. If these terms are good enough for the primes, why shouldn’t they also be used to guide payments by primes to subcontractors? Clearly we must recognize that primes should be allowed some (short) period to get and deposit government payments before disbursing funds to subs. This period should be a matter of a few days, not a week or more. For most subcontracts, the amount due was determined and fixed at the time the prime invoiced Uncle Sam; therefore there should be no question about amounts, performance of the service or delivery of the goods, and the fact the subcontractor is owed his due. Any delay puts at risk the subcontractor’s ability to continue to perform. An interest penalty, at current market rates (say, bank prime + 1%), acknowledges this need to cover lines of credit or borrowing to meet payroll. Should a prime contractor fail to pay on time for two or more invoices of a subcontractor, a flow-down clause should enable the sub to request that future government payments to the prime be directed to an assignment trustee or escrow account.