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HB 1097 - State and Private Construction Contracts – Prompt Payment Requirements
Position: OPPOSITION

The Maryland Minority Contractors Association, Inc. (MMCA) is a non-profit Maryland corporation established in 1977, composed of minority and women-owned businesses (MWBE), groups, and individuals within the State of Maryland. MMCA has 150+ years of collective general and sub-contracting experience. An important part of MMCA's mission includes providing and taking an active role in reviewing state and local legislation, regulations, policies, and programs that affect its membership businesses.

MMCA has reviewed **HB 1097 - State and Private Construction Contracts – Prompt Payment Requirements** and is in **OPPOSITION** for the reasons listed below:

- HB 1097 would mandate the inclusion of specific terms in contracts between private parties without regard to the consideration negotiated between the parties. For example, 17-604 (B) (4) requires 9% interest on payments more than 60 days after receipt of an invoice, when most agreements require a monthly 1.5% interest after the due date of the payment, typically not more than 30 days after the date of an invoice.
- HB 1097 includes independent contractors within the definition of a “Subcontractor,” which will significantly impede the ability of MWBEs to obtain work. Overall, independent contractors may not intentionally set out to harm MWBEs, but their presence in the marketplace can create challenges and obstacles for MWBEs to overcome. It's important for organizations to actively seek out and prioritize working with MWBEs to help promote diversity and inclusion in the marketplace.

It's worth noting that independent contractors can hurt MWBEs in a few ways:

1. **Competitive Disadvantage:** Independent contractors can often offer services at lower rates than MWBEs due to their lower overhead costs. This can make it harder for MWBEs to compete in the marketplace, especially when it comes to winning bids for contracts.
 2. **Loss of Business:** When organizations choose to work with independent contractors instead of MWBEs, it can result in a loss of business for MWBEs. This can be especially harmful when organizations have diversity and inclusion initiatives, but do not actively seek out or prioritize working with MWBEs.
 3. **Limited Access to Opportunities:** When organizations rely on independent contractors, they may miss out on the opportunity to work with MWBEs who could offer unique perspectives, expertise, and services that can help their business thrive. This lack of access to opportunities can limit the growth and development of MWBEs.
- HB 1097 would prohibit “pay when paid” provisions in subcontracts entered into for public works, but fails to provide financial support for the contractors who rely upon prompt payment by public bodies/government for payment to subcontractors for labor or other project costs. The committee should note that the 9% interest, which provides a scant incentive in any event, does not kick in until after 60 days. This provision discourages MWBEs from bidding as prime contractors because they typically do not have access to the working capital needed to “carry” the job costs for more than 30-45 days.