

About the Division of Minority and Women's Business Development ("DMWBD")

New York State Executive Law Article 15-A §§ 310-317 ("Article 15-A") governs requirements for the participation of minority and women-owned business enterprises ("MWBEs") in New York State contracting. The objective of Article 15-A is to promote equality of economic opportunities for MWBEs by eliminating barriers to their participation in New York State contracting.

DMWBD's mission is to promote equality of economic opportunities for MWBEs and to eliminate barriers to their participation in state contracting. DMWBD supports New York State's leaders with information and resources that increase access to opportunities for minority and women-owned business enterprises throughout the State.

Suppliers and Brokers

Specific requirements must be met for the DMWBD to classify a business as a supplier or broker during the NYS MWBE Certification ("certification") process. The information below only applies to firms in the construction industry.

Definitions

Broker of Goods Case Study

XYZ Building Products markets itself as a supplier of heavy construction, highway, and building materials. DMWBD certified the company as a broker because the required documents failed to prove supplier status:

1. **XYZ** provided **(1)** insufficient bank lines of credit to cover millions of dollars in inventory sales, **(2)** no proof of payment for physical inventory purchases, and **(3)** no proof of payment for delivery systems or necessary warehouse equipment.
2. **XYZ** provided single page distribution agreements that did not include any detail on XYZ's payment structure.
3. **XYZ** operates from a home office and an out-of-state office with one employee. No documents were provided on the location or employee.
4. A site visit showed that their warehouse was a showroom with small amounts of material in stock. The amount of materials made the firm's ability to effectively supply quantities typically required on contracts questionable.

A **supplier** must operate a store or warehouse where inventory - materials, supplies and/or equipment - are bought and regularly kept in stock. A supplier must: **(1)** purchase and keep these materials in stock, **(2)** have a method to sell the materials to the public, and **(3)** not just supply materials for a single contract.

- Over forty percent (40%) of the items supplied to customers of a supplier must come from the firm's inventory. A supplier must control the purchasing, selling, and leasing of the supplies using its own name, and they must take legal title to all the items.

A **broker** is a third-party intermediary between consumers of items and manufacturers, suppliers, or other entities that sell items from a regular inventory. Brokers do not make the same capital investments as suppliers.

- Brokers do not have a warehouse, inventory or, usually, a delivery structure, often only having an office with very few employees.

Note: This guide provides generally applicable information and is not intended to exhaustively describe all criteria or the documents that DMWBD will require in order to process your application.

Documentation Requirements

In addition to all certification requirements, a firm must provide the documents below to prove supplier status. Without them, a firm is classified as a broker:

1. Detailed and itemized inventory, including wholesale and retail dollar value and proof of purchases.
2. Warehouse lease agreement or deed for space showing square footage and location.
3. Invoices showing purchases of commodities from all manufacturers with which the supplier transacts business. This includes lines of credit letters from each manufacturer and stocking distributor agreements for each manufacturer stocked or represented.
4. A copy of all vehicle registrations for use by the business (if applicable), including any additional documents or shipping agreements for the use of third-party shipping companies.
5. Detailed narrative that explains how goods are delivered to clients.
6. Business/Corporate Tax Returns for the most recent tax year, including all schedules, statements and amendments. Incomplete returns will not be accepted.
7. Copies of the firm's largest signed contracts and/or agreements completed with clients in the last 2 years. All contracts must include a description of the commodities provided, method of delivery, and prices or rates charged. Also include copies of invoices to the client showing billing for the commodities sold, and proof of payment at completion.

Distributor Case Study

Site R' Us Distribution defines itself as a distributor of construction and janitorial supplies, including paint, concrete ties, and HVAC supplies, among other items.

When the Division requested supplier documents, only the business tax returns and personal financial statements were submitted. This created two issues:

1. Required documents to prove supplier status were missing; and,
2. The business tax returns did not show that **Site R' Us** holds the needed majority of inventory required for their contracts in stock.

Site R' Us also provided a website link that rerouted to a catalog as proof of their inventory, instead of providing an itemized inventory list that reflected changes from sales. The Division could not confirm that the firm owned the inventory that it was selling from the website link.

Site R' Us does not have a warehouse, inventory, employees or stocking agreements with any of the distributors and/or manufacturers **Site R' Us** orders from. All of **Site R' Us'** demonstrated activities and supplies are determined on a project-to-project basis. **Site R' Us** was classified as a broker.

MWBE Utilization Credit

Prime contractors and NYS Agencies and Authorities may take MWBE utilization credit for suppliers and brokers as follows:

Utilization Credit for Construction Suppliers and Brokers:	
Suppliers	60% of total contract value.
Brokers	Only the monetary value for fees, or the markup percentage is credited.

Drop Shipping and Large Bulk Items

Suppliers of large bulk items must provide over 40% of the supplies they sell pursuant to a contract from inventory in their warehouse in order to be deemed a supplier for that contract. While some items may be drop-shipped due to the specific needs in a contract, the supplier must take legal responsibility for the items at all times. This can be accomplished through delivery with their own trucks, long-term trucking contracts with third party vendors, and/or an insurance policy that covers the items.

Drop shipping is the delivery of goods from the manufacturer directly to the retailer, without going through usual distribution channels. An item may be drop-shipped because it is a custom order, a specialized item, or a large volume of product which cannot be held in stock.

Some specific construction trade industries, such as electric and steel, do not have suppliers as defined above within their regular industry practice. Because of the specific needs related to these sectors, customers instead make custom purchases directly from manufacturers, making these firms the manufacturers and suppliers of these specialized items. It is the owner's responsibility to prove through their application that their business falls in an industry where no supplier exists as part of common industry practice.

HAVE QUESTIONS? MWBE Hotline: (212) 803-2414 Email: MWBEcertification@esd.ny.gov
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