

# Understanding Construction Suppliers and Broker Classifications



Division of Minority and Women's Business Development

## Suppliers and Brokers

Specific requirements must be met for the Minority and Women's Business Development (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

A **supplier** is defined as a firm that operates a store, warehouse, or other establishment where materials, supplies, or equipment required under a contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

- Suppliers purchase and sell products as their principal business under their own name, and they must take legal title to all the items.
- Over forty percent (40%) of the items supplied to customers of a supplier must come from the firm's inventory.

A firm is classified as a **broker** when the firm fills requests for a customer by ordering, purchasing, or receiving supplies from a third-party supplier rather than out of its own existing inventory. In addition, considering standard industry practices, the firm provides no substantial service other than acting as an intermediary between a supplier and a customer.

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

### Supplier Case Study – Reclassified as a Broker

**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.
5. **XYZ Building Products** was classified as a **broker**.

### Distributor Case Study – Reclassified as a Broker

**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**.

**Note:** This guide provides generally applicable information and is not intended to exhaustively describe all criteria or the documents that the DMWBD will require 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:

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| <ol style="list-style-type: none"> <li>1. Detailed and itemized inventory, including wholesale and retail dollar value and proof of purchases.</li> <li>2. Warehouse lease agreement or deed for space showing square footage and location.</li> <li>3. Current financial statement, including balance sheet and profit &amp; loss statement.</li> <li>4. List of all manufacturers with invoices showing purchases of commodities, including line of credit letters from each supplier. Stocking distributor agreements for each manufacturer stocked or represented</li> <li>5. 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.</li> </ol> | <ol style="list-style-type: none"> <li>6. Detailed narrative that explains how goods are delivered to clients.</li> <li>7. Business/Corporate Tax Returns for the most recent tax year, including all schedules, statements and amendments. Incomplete returns will not be accepted.</li> <li>8. Copies of the firm's largest signed contracts and/or agreements completed with clients in the last 2 years.<br/>All contracts must include a description of the commodities provided, method of delivery, and prices or rates charged.<br/>Also include copies of invoices to the client showing billing for the commodities sold, and proof of payment at completion.</li> </ol> |
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## MWBE Utilization Credit

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

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

## Other Definitions

<b>NYS Trucking Firm</b>	Transports goods or materials from a supplier to contractor and may have no liability or legal responsibility for the items being transported. 100% credit for total contract value.
<b>Manufacturer's Representative</b>	Under NAICS and as an industry standard, manufacturer's representatives are grouped with and considered brokers and wholesale agents. Credit is same as brokers.
<b>Drop Shipping and Large Bulk Items</b>	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 that cannot be held in stock. Suppliers of large bulk items must adhere to standards listed above. It is the owner's responsibility to provide 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](mailto:MWBECertification@esd.ny.gov)  
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