

# BROKERS AND BROKERING ACTIVITY

State-financed construction work requires a contractor to make good faith efforts to have *small business enterprises* (SBE) and SBEs which are minority business enterprises participate in the performance of the contract. A *minority business enterprise* can be a SBE that is owned by an ethnic minority (MBE); an SBE owned by a woman (WBE) or an SBE owned by a person with a disability (DisBE). Covered contracts require the implementation of set-aside programs to accomplish the performance goals.

Contracts with brokers or portions of contracts that involve brokering activity are generally not considered toward set-aside program goals. To be considered toward a set-aside goal, a SBE and/or MBE/WBE/DisBE firm must satisfy a number of requirements, including the requirement that the firm must perform at least 30% of the contracted work with its own workforce. A broker would not perform the contracted work with its own workforce.

## I. BROKERS.

A *broker* is a contractor/subcontractor that contracts with the state and/or contracts on state financed construction to provide trade work, supplies and materials and/or services, but

- It does not perform the trade work,
- It does not have the same types of materials or supplies in its inventory,
- It does not have the equipment or employees to perform the services.

### **Examples: Broker SBE and/or MBE/WBE/DisBE Tradeswork, Materials and Supplies, and Services)**

**A. Skilled Trades work.** A contractor/subcontractor enters a contract to perform electrical work, but it does not have skilled craft workers or employees to perform the contracted work. Instead, the broker contractor subcontracts out the work to be performed in the contract.

**B. Materials and Supplies.** A contractor/subcontractor enters a contract to provide lumber, but it has no warehouse or location where it inventories supplies, nor does it have an inventory from which it fills supply orders and ships and/or transports the supplies to a construction site or other designated location. Instead, the broker supplier orders the supplies from manufacturers and/or other suppliers and has them delivered to the construction site or to the location designated in the order. The supplier does not have possession of the supplies, nor does it have a workforce to handle the ordered supplies.

Also, an online or catalogue supplier contractor/subcontractor that locates and provides for the purchase of materials and supplies and/or arranges transportation of the same to designated location would be considered a broker.

**C. Services.** A contractor/subcontractor enters a contract to provide security protection at a construction site, but it has no protective service worker employees, nor will it be hiring employees to perform the contracted services. Instead, it contracts with a guard service to have security guards at the construction site as required by the contract and also contracts with a video security firm to lease and install a video security system including the placement of security cameras at designated locations and a security trailer with video feed from the cameras into video monitors as well as providing video memory storage, all of which are to be immediately accessible to the security guard service. The contractor awarded the contract may have employees, but performs none of the security services contracted with its workforce.

## **II. PARTIAL SBE/MBE/DisBE CONTRACTOR PERFORMANCE AND BROKERING ACTIVITY.**

A contract may include a component that is performed by the contractor's workforce, but also includes a component that cannot be performed by the contractor's workforce, such that a contractor engages in brokering activity to perform that contract component.

The brokering activity component of the contract would involve the SBE and/or MBE/WBE/DisBE contractor/subcontractor's contract component(s) to provide trade work, supplies and materials and/or services, but the SBE and/or MBE/WBE/DisBE

- does not perform the trade work,
- does not have the same types of materials or supplies in its inventory,
- does not have the equipment or employees to perform the services.

Although the SBE and/or MBE/WBE/DisBE contractor/subcontractor's performance of at least 30% of the contract component it did perform would be counted toward set aside program component, the portion of the contract in which the contractor engaged in brokering activity will not be considered to be covered as part of the set aside program unless the brokered component of the contract is actually performed by a respectively eligible SBE and/or MBE/WBE/DisBE.

### **Examples of Brokering activity of SBE and/or MBE/WBE/DisBE Contractors /Subcontractors Tradeswork; Materials and Supplies; and Services)**

**A. Skilled Trades Work.** An electrical contractor/subcontractor enters a contract to perform electrical work and includes some plumbing work, but it does not have skilled craft workers or employees to perform the contracted plumbing work. Instead, the contractor subcontracts out the plumbing work to be performed in the contract. The plumbing work would not be considered toward the goal

attainment in the set aside program unless it was performed by an eligible SBE and/or MBE/WBE/DisBE.

**B. Materials and Supplies.** A plumbing supplier contractor/subcontractor enters a contract to provide plumbing materials (sinks, faucets, bathtubs, showers, toilets, residential or commercial standard plumbing pipes and plumbing fixtures and related installation materials) and other related in-building plumbing supplies. Some of the ordered supplies are carried in the contractor's inventory. Some of the ordered supplies are the same types of supplies regularly carried by the contractor, but they are a different brand than the brands carried by the contractor. These supplies are deemed to be the same types of supplies and reasonably within the contractor's inventory. This order for in-building plumbing supplies is to be covered by the supplier contractor's inventory and therefore **would be considered** toward the goal value of the set aside program.

The same contract includes the provision of the purchase of supplies that are not in the supplier's inventory (underground water pipes and sewer pipes for respective installation between the building and main water supply and main sewage piping connections a block from the building). The supplier contractor does not stock or carry exterior piping or large water or sewer pipes or connectors in its inventory. Instead the supplier contractor orders the product from a street piping supplier or a catalogue to fill the contract: This portion of the contract for exterior piping and street piping is considered brokering activity and **would not be considered** toward the goal value of the set aside program, unless it was performed by an eligible SBE and/or MBE/WBE/DisBE.

**C. Services.** A contractor/subcontractor enters a contract to provide security protection at a construction site. It employs security guards and will deploy its guards to the construction site. The contractor will improve security by increase the night lighting at the site. The security guard service will broker a contract for electrical lighting supplies and electrical hook ups. It will also contract with a video security company to provide a video monitoring electronic system that it will provide for its guard employee's use at the construction site. The electric lighting and video security contracts would not be considered towards the goal attainment in the set aside program unless it was performed by an eligible SBE and/or MBE/WBE/DisBE.