



## Department of Civil Rights

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Affirmative Action Division  
Norman D. Davis, Division Manager

March 17, 2014

SENT VIA US MAIL AND FAX (920) 568-8819

Mr. Jason Schultz  
**JW Schultz Construction Co., Inc.**  
PO Box 159  
N2941 Banker Rd.  
Fort Atkinson, WI 53538

**RE: Contract No. 7175 – SIDEWALK, CURB & GUTTER, AND CONCRETE  
PAVEMENT PATCHES, CITYWIDE INSTALLATION AND REPAIR – 2014**

Dear Mr. Schultz:

Please be advised that this department has reviewed the Small Business Enterprise (SBE) Compliance Report submitted by **JW Schultz Construction Co., Inc.** on March 7, 2014 in response to the City of Madison's advertisement for bids for Contract No. 7175.

It is the determination of this department that **JW Schultz Construction Co., Inc.** did not achieve the specified goal for SBE participation on this contract and that it did not demonstrate good faith efforts to do so. As such, **JW Schultz Construction Co., Inc.** has been deemed a non-responsible bidder ineligible for award of this contract.

The specific reasons for our denial of **JW Schultz Construction Co., Inc.**'s bid include:

1. **JW Schultz Construction Co., Inc.** has not demonstrated meeting the prescribed goal for this project;
2. **JW Schultz Construction Co., Inc.** has not demonstrated good faith effort to meet the prescribed goal for this project.
3. **JW Schultz Construction Co., Inc.** has failed to submit a completed *Cover Sheet* and completed *SBE Contact Reports* as required, thus rendering their SBE Compliance Report incomplete.

According to the Instructions to Bidders, included in the contract documents:

- *"Bidders shall take all necessary affirmative steps to assure that SBEs are utilized when possible and that the established SBE goal for this project is achieved. A contractor who self performs a portion of the work and is pre-qualified to perform that category of work, may subcontract that portion of the work, but shall not be required to do so. When a bidder is unable to achieve the established SBE goal, the bidder must demonstrate that a good faith effort to do so was made. Such a good faith effort should include the following:*

*2.4.1.1. Attendance at the pre-bid meeting.*

*2.4.1.2. Using the City of Madison's directory of certified SBEs to identify SBEs from which to solicit bids.*

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- 2.4.1.3. *Assuring that SBEs are solicited whenever they are potential sources.*
- 2.4.1.4. *Referring prospective SBEs to the City of Madison Affirmative Action Division for certification.*
- 2.4.1.5. *Dividing total project requirements into smaller tasks and/or quantities, where economically feasible, to permit maximum feasible SBE participation.*
- 2.4.1.6. *Establishing delivery schedules, where requirements permit, which will encourage participation by SBEs.*
- 2.4.1.7. *Providing SBEs with specific information regarding the work to be performed.*
- 2.4.1.8. *Contacting SBEs in advance of the deadline to allow such businesses sufficient time to prepare a bid.*
- 2.4.1.9. *Utilizing the bid of a qualified and competent SBE when the bid of such a business is deemed reasonable (i.e. 5% above the lowest bidder), although not necessarily low.*
- 2.4.1.10. *Contacting SBEs which submit a bid, to inquire about the details of the bid and confirm that the scope of the work was interpreted as intended.” (Sec. 2.4.1)*
- *“Bids submitted without a completed SBE Compliance Report as outlined below will be deemed non-responsible and the bidder ineligible for award of this contract.” (Sec. 2.4.2)*
- *“If the bidder does not meet the goal established for SBE utilization, the Small Business Enterprise Compliance Report shall consist of the following:*
  - 2.4.2.2.1. *Cover Page, Page C-7;*
  - 2.4.2.2.2. *Summary Sheet, C-8; and*
  - 2.4.2.2.3. *SBE Contact Report, C-9 and C-10. (A separate Contact Report must be completed for each applicable SBE which is not utilized.)” (Sec. 2.4.2.2)*

JW Schultz Construction Co., Inc. may appeal this decision. As stated in the Instructions to Bidders, included in the contract documents:

- *“A bidder which does not achieve the established goal and is deemed non-responsible for failure to demonstrate a good faith effort to achieve such goal and subsequently denied eligibility for award of contract may, within 72 hours of receiving such notification, appeal that decision to a special appeals committee composed of three (3) members of the Affirmative Action Commission, three (3) members of the Board of Public Works and a seventh member appointed by the Mayor. All appeals must be made in writing to the City Engineer and received within 72 hours of City of Madison’s notice. Postmark not applicable.” (Sec. 2.5)*

Please contact me at (608) 267-8759 with any questions regarding this matter.

Sincerely,

Norman D. Davis  
Division Manager

cc: Lucía Nuñez, Department of Civil Rights Director  
Engineering Division