

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING THE ) RESOLUTION NO. 95-2131  
EXECUTIVE OFFICER TO ENTER INTO AN )  
AGREEMENT WITH NORSEMAN PLASTICS ) Introduced by Mike Burton  
TO MANUFACTURE AND DISTRIBUTE ) Executive Officer  
HOME COMPOST BINS )

WHEREAS, On February 2, 1995, the Metro Contract Review Board authorized an exemption from competitive bidding and approved the issuance of a Request for Proposal (RFP #95-2-SW) for a home compost distribution and education program, and authorized the use of a multi-year contract; and

WHEREAS, An evaluation committee including representatives from Metro, local governments, and a Master Gardener, evaluated eight proposals for a home compost bin distribution program using the criteria established in the Request for Proposal; and

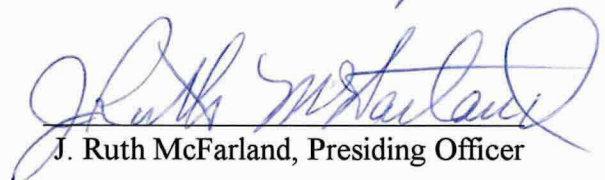
WHEREAS, The evaluation committee selected Norseman Plastics, Rexdale, Canada as the most responsive proposer to the Request for Proposal; and

WHEREAS, The resolution was submitted to the Executive Officer for consideration and was forwarded to the Contract Review Board for approval; now therefore,

BE IT RESOLVED,

That the Metro Contract Review Board authorizes the Executive Officer to enter into a multi-year Public Contract with Norseman Plastics under the terms and conditions specified in Exhibit A attached to this resolution.

ADOPTED by the Metro Contract Review Board this 20 day of April, 1995.

  
J. Ruth McFarland, Presiding Officer

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## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 95-2131, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO ENTER INTO AN AGREEMENT WITH NORSEMAN PLASTICS TO MANUFACTURE AND DISTRIBUTE HOME COMPOST BINS

Date: April 20, 1995

Presented by: Executive Officer Mike Burton

## PROPOSED ACTION

Approve Resolution No. 95-2131 to authorize the Executive Officer to enter into a Public Contract with Norseman Plastics to manufacture, promote, and distribute 7,407 home compost bins in East Multnomah and Clackamas Counties.

## BACKGROUND

The Waste Reduction budget for FY-94-95 includes \$80,000 for a home compost bin distribution program. In February 1995 the Contract Review Board approved an exemption from competitive bidding, the release of a Request for Proposal (RFP) for this project and authorized the use of a multi-year contract. (Resolution No. 95-2084). The proposed contract extends through November 30, 1995 to allow time to complete an evaluation report and to be sure all bins are sold prior to termination of the contract.

Eight proposals were received in response to Metro's RFP. An evaluation committee made up of Metro staff, local governments and a Master Gardener reviewed the proposals against the criteria in the RFP, which were: 1) bin design, 2) workplan and approach, 3) experience, and 4) budget/cost. A field test for each compost bin was also conducted.

Norseman Plastics, Ontario, Canada was selected as the vendor for this project. This company has extensive experience in conducting home compost bin distribution events, often called truck sales. They have been involved in over 600 municipal programs in the United States and Canada, including programs in California and Eugene, Oregon. This vendor proposed the largest number of bins (more than twice the minimum required) for the lowest price. They also offered the most extensive staffing and promotional materials.

The contract, Exhibit A to Resolution No. 95-2131 includes four distribution events to be held on June 3, 1995. Three of these will be held in Clackamas County and one in the city of Gresham to serve the East Multnomah County area. Prior to the events, the proposed contractor will print approximately 100,000 four color flyers announcing the event and insert them into the East and South Metro editions of the *Oregonian*. They will also manage all aspects of the sale, including providing tractor trailers, forklifts, banners, signs, and staff to collect money and direct traffic.

Each bin will have Metro's logo hot-stamped on the lid. They will be sold to residents attending the distribution events for a discounted price of \$20. Metro will pay the contractor \$10.80 for each bin sold for a total of \$30.80 a bin. If all the home compost bins are not sold on June 3, 1995, the contractor will arrange to have the remaining bins sold at one or more retail outlets at the discounted price. At the completion of the project the names and addresses of all participants will be provided to Metro for follow-up evaluation.

#### BUDGET IMPACT

The FY 94-95 Solid Waste budget has appropriated \$80,000 for this home compost bin program. Expenditures for the program shall not exceed that amount.

#### EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 95-2131.

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**PUBLIC CONTRACT**

THIS Contract is entered into between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, whose address is 600 NE Grand Avenue, Portland, Oregon 97232, and NORSEMAN PLASTICS, whose address is 39 Westmore Drive, Rexdale, Ontario M9V 3Y6, Canada., hereinafter referred to as the "CONTRACTOR."

In exchange for the promises and other consideration set forth below, the parties agree as follows:

**ARTICLE I  
SCOPE OF WORK**

CONTRACTOR shall perform the work and/or deliver to METRO the goods described in Attachment A, the Scope of Work, which is incorporated herein by this reference. All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

**ARTICLE II  
TERM OF CONTRACT**

The term of this Contract shall be for the period commencing on the last signature date below and shall remain in effect until and including November 30, 1995.

**ARTICLE III  
CONTRACT SUM AND TERMS OF PAYMENT**

METRO shall compensate the CONTRACTOR for work performed and/or goods supplied as described in the Scope of Work. METRO shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in the Scope of Work.

**ARTICLE IV  
LIABILITY AND INDEMNITY**

CONTRACTOR is an independent contractor and assumes full responsibility for the content of its work and performance of CONTRACTOR's labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall indemnify, defend and hold harmless METRO, its agents and employees, from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Contract. CONTRACTOR is solely responsible for paying CONTRACTOR's subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor(s) and METRO.

**ARTICLE V  
TERMINATION**

METRO may terminate this Contract upon giving CONTRACTOR seven (7) days written notice. In the event of termination, CONTRACTOR shall be entitled to payment for work performed to the date of termination. METRO shall not be liable for indirect or consequential damages. Termination by METRO will not waive any claim or remedies it may have against CONTRACTOR.

**ARTICLE VI  
INSURANCE**

CONTRACTOR shall purchase and maintain at CONTRACTOR's expense, the following types of insurance covering the CONTRACTOR, its employees and agents.

A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability. The policy must be endorsed with contractual liability coverage.

B. Automobile bodily injury and property damage liability insurance.

Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an aggregate limit, the aggregate limit shall not be less than \$1,000,000. METRO, its elected officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to METRO thirty (30) days prior to the change.

This insurance as well as all workers' compensation coverage for compliance with ORS 656.017 must cover CONTRACTOR's operations under this Contract, whether such operations be by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them.

CONTRACTOR shall provide METRO with a certificate of insurance complying with this article and naming METRO as an insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

**ARTICLE VII  
PUBLIC CONTRACTS**

All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement, including, but not limited to, ORS 279.310 to 279.320. Specifically, it is a condition of this contract that Contractor and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws, Chapter 684.

**ARTICLE VIII  
ATTORNEY'S FEES**

In the event of any litigation concerning this Contract, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to any appellate courts.

**ARTICLE IX  
QUALITY OF GOODS AND SERVICES**

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trades.

CONTRACTOR guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by METRO, whichever is later. All guarantees and warranties of goods furnished to CONTRACTOR or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of METRO.

**ARTICLE X  
OWNERSHIP OF DOCUMENTS**

All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by CONTRACTOR pursuant to this agreement are the property of METRO and it is agreed by the parties hereto that such documents are works made for hire. CONTRACTOR does hereby convey, transfer and grant to METRO all rights of reproduction and the copyright to all such documents.

**ARTICLE XI  
SUBCONTRACTORS**

CONTRACTOR shall contact METRO prior to negotiating any subcontracts and CONTRACTOR shall obtain approval from METRO before entering into any subcontracts for the performance of any of the services and/or supply of any of the goods covered by this Contract.

METRO reserves the right to reasonably reject any subcontractor or supplier and no increase in the CONTRACTOR's compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. CONTRACTOR shall be fully responsible for all of its subcontractors as provided in Article IV.

**ARTICLE XII  
RIGHT TO WITHHOLD PAYMENTS**

METRO shall have the right to withhold from payments due CONTRACTOR such sums as necessary, in METRO's sole opinion, to protect METRO against any loss, damage or claim which may result from CONTRACTOR's performance or failure to perform under this agreement or the failure of CONTRACTOR to make proper payment to any suppliers or subcontractors.

If a liquidated damages provision is contained in the Scope of Work and if CONTRACTOR has, in METRO's opinion, violated that provision, METRO shall have the right to withhold from payments due CONTRACTOR such sums as shall satisfy that provision. All sums withheld by METRO under this Article shall become the property of METRO and CONTRACTOR shall have no right to such sums to the extent that CONTRACTOR has breached this Contract.

**ARTICLE XIII  
SAFETY**

If services of any nature are to be performed pursuant to this agreement, CONTRACTOR shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

**ARTICLE XIV  
INTEGRATION OF CONTRACT DOCUMENTS**

All of the provisions of any bidding documents including, but not limited to, the Advertisement for Bids, Request for Bids or Proposals, General and Special Instructions to Bidders, Proposal, Bid, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated agreement between METRO and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both METRO and CONTRACTOR. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

**ARTICLE XV  
ASSIGNMENT**

CONTRACTOR shall not assign any rights or obligations under or arising from this Contract without prior written consent from METRO.

**NORESMAN PLASTICS**

**METRO**

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Signature

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Signature

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Andy Williams, VP, Finance, Norseman Plastics

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Mike Burton, Metro Executive Officer

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Date

\_\_\_\_\_  
Date

## Exhibit A

Contract No. 904210

### SCOPE OF WORK

**PROJECT SUMMARY:** Manufacture and distribute home compost bins at distribution events in Clackamas County and the city of Gresham.

**CONTRACTOR:** Norseman Plastics

**CONTRACT PERIOD:** May 1 through November 30, 1995

### STATEMENT OF WORK

#### Contractor's responsibilities:

1. Contractor shall provide 7,407 Earth Machine compost bins for distribution in the Metro area. The Earth Machine shall have a capacity of 10.5 cubic feet, be black in color and have a lid. The Metro logo will be hot-stamped on the lid of each Earth Machine. Each compost bin shall include a copy of the *User's Guide: The Earth Machine, 21st Century Home Composter*, and the book entitled *Backyard Composting: Your Complete Guide to Recycling Yard Clippings*.
2. Contractor shall work with Harmonious Technologies consulting firm to manage four distribution events on Saturday, June 3, 1995 from 9:00 to 5:00 p.m. The sites shall be mutually agreed upon by contractor, Metro's project manager, and the local government recycling coordinators from Clackamas County, the city of Milwaukie and the city of Gresham. Each compost bin shall be sold for \$20.00 to customers attending the distribution events. Each customer may purchase a maximum of two bins.
3. Contractor shall set up distribution equipment at each location and manage the sale of bins at each site. At least one supervisor and two clerks will manage each event and sell the bins. Contractor shall bear sole responsibility for paying and managing these workers. Contractor shall provide billboard tractor trailers to store the bins, shall be responsible for unloading the bins from the truck, and shall provide a trailer to move between sites and keep bins stocked, as necessary.
4. In addition to the tractor trailers described above, Contractor shall provide the following on-site equipment: 1) forklifts, 2) barricades, 3) pylons, 4) pallet jacks, 5) tables and chairs, 6) ropes, 7) signage and banners. Contractor shall deliver bins to each site and ensure that adequate bins are available during the day, based on the allocation for each location that is mutually agreed upon by Metro and local governments.
5. Contractor shall collect the \$20.00 from sale of bins directly from customers on the day of the events. Contractor shall maintain sales records for the Earth Machine compost bin, and provide individual forms for each transaction. A database which includes the name, address, and phone numbers of customers shall be submitted to Metro at the conclusion of



the distribution events. Other information may be included on the sales records if mutually agreed to by Metro and Contractor.

6. Contractor shall print approximately 100,000 copies of a four color cut-a-way flyer advertising the compost bin distribution events. Two separate flyers will be printed, one for the Gresham event and one for the Clackamas County events. This flyer shall be reviewed and approved by Metro prior to printing and distribution. Contractor shall be responsible for inserting the flyer into the zoned editions of the *Oregonian* newspaper serving the Gresham and Clackamas County areas approximately three days prior to the events. Contractor shall provide Metro with a media kit immediately upon execution of the contract.
7. Contractor shall supply each local government recycling coordinator with a minimum of one free point-of-purchase display immediately upon execution of the contract. They shall supply at least three free sample bins to Metro, should they be needed as part of Metro's promotion.
8. If all compost bins are not sold at the distribution events on June 3, 1995, Contractor shall arrange to have remaining bins sold through at least one retail outlet in the area served by this program. Contractor shall provide each retailer with free storage and inventory, advertising to promote the bins, point of purchase displays, receipts and other information mutually agreed upon by Metro, retailer and contractor. Contractor shall provide names, addresses and phone numbers of customers purchasing bins retail at the end of the contract period.
9. Prior to submitting the final invoice, Contractor shall provide a written report on the home compost bin program, including, but not limited to, the number of bins sold at each distribution event location and at retail stores, the strengths and weaknesses of the program, and recommendations on how to proceed in future compost bin programs.

Metro responsibilities:

1. Metro shall work with local government recycling coordinators to ensure that possible locations for the distribution events are identified and that four sites serving the targeted area are selected.
2. Metro, in cooperation with Clackamas County and Gresham, shall provide advertising of the compost bin distribution events. This will include, at a minimum, one print advertisement in the *Oregonian*, the *Gresham Outlook*, the *West Linn Tidings*, the *Lake Oswego Review*, and the *Clackamas County Review* prior to the distribution events.
3. Metro will prepare a press release and media advisory on the compost bin events, and will arrange for radio advertising of the events. Metro will also arrange for Contractor's Public Service Announcement to be shown on local cable access television.
4. Metro's Recycling Information hotline will answer inquiries about the bin distribution program and the Recycling Information phone number shall be listed on promotional materials developed by contractor and Metro.
5. Metro and local governments shall ensure that at least three volunteers are available to provide assistance at each distribution event.

6. At the termination of the contract, Metro shall take ownership of any unsold bins. At that time Metro shall determine whether to continue working with a retailer, whether to return bins to contractor, or to distribute in some other fashion.

### Payment and Billing

1. Upon completion of the June 3, 1995 distribution events, Contractor shall submit an invoice to Metro for bins sold. The quantity will be calculated using the receipts filled out by residents purchasing bins at \$20.00 per bin.
2. If all the compost bins are not sold at the distribution events, Contractor shall submit monthly invoices to Metro based on proof of purchase receipts Contractor receives from the retail store(s) selling the remaining bins.
3. Prior to termination of the contract, Metro shall pay Contractor for any unsold bins, after receiving an invoice for outstanding costs.
4. Metro shall pay Contractor at the rate of \$10.80 per bin at the times specified above, for a maximum amount not to exceed EIGHTY THOUSAND DOLLARS (\$80,000.00). The per bin cost shall be Contractor's compensation for the above work.

The per bin cost and maximum not to exceed contract price includes all fees, costs and expenses of whatever nature. Contractor's billing statements will include an itemized statement of bins sold, location of each sale, other work done and expenses incurred during the billing period. Billing statements will not be submitted more frequently than once a month, and will be sent to Metro, Attention Solid Waste Department. Metro will pay Contractor within 30 days of receipt of an approved billing statement. Contractor shall maintain all records pertaining to its activities under this contract for the entire term of the contract.

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