

# State of Nebraska - INVITATION TO BID

## ONE TIME PURCHASE

Date	1/24/23	Page	1 of 2
Solicitation Number	6760 OF		
Opening Date and Time	02/10/23 2:00 PM		
Buyer	JULIE DABYDEEN (AS)		

**DESTINATION OF GOODS**  
 EDUCATIONAL TELECOMM COMM  
 SEE ITB FOR SHIPPING INSTRUCTIONS  
 LINCOLN NE 68503-1409

Per Nebraska's Transparency in Government Procurement Act, DAS is required to collect statistical information regarding the number of contracts awarded to Nebraska contractors. This information is for statistical purposes only and will not be considered for contract award purposes.

\_\_\_\_ NEBRASKA CONTRACTOR AFFIDAVIT: Bidder hereby attests that bidder is a Nebraska Contractor. "Nebraska Contractor" shall mean any bidder who has maintained a bona fide place of business and at least one employee within this state for at least the six (6) months immediately preceding the posting date of this ITB.

\_\_\_\_ I hereby certify that I am a Resident disabled veteran or business located in a designated enterprise zone in accordance with Neb. Rev. Stat. §73-107 and wish to have preference, if applicable, considered in the award of this contract.

One Time Purchase to supply and deliver Two (2) 8x10x9 Equipment Shelters to the State of Nebraska as per the attached specifications.

A response to this Solicitation is subject to, but not limited to, the Standard Terms and Conditions. PLEASE READ CAREFULLY!

This form is part of the specification package and must be signed and returned, along with all documents, by the opening date and time specified.

No facsimile or email solicitation responses will be accepted on bids \$25,000 and over.

(1/20/23 sc)

### INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
1	WAUNETA SHELTER	1.0000	EA	<u>53,850.<sup>00</sup></u>	<u>53,850.<sup>00</sup></u>
2	SHIPPING TO WAUNETA	1.0000	EA	<u>3,300.<sup>00</sup></u>	<u>3,300.<sup>00</sup></u>

### BIDDER MUST COMPLETE THE FOLLOWING

~~DISCOUNT PAYMENT TERMS: \_\_\_\_\_% \_\_\_\_\_ DAYS~~

By signing this Invitation to Bid form, the bidder guarantees compliance with the provisions stated in this Invitation to Bid, agrees to the terms and conditions unless otherwise agreed to and certifies that bidder maintains a drug free work place environment. Vendor will furnish the items requested within \_\_\_\_ days after receipt of order. Failure to enter Delivery Date may cause quotation to be REJECTED.

Sign Here \_\_\_\_\_  
 (Authorized Signature Mandatory - Form must be signed manually in ink or by DocuSign)

VENDOR# \_\_\_\_\_  
 VENDOR: Thermo Bond Buildings, LLC  
 Address: 1001 W. MAIN STREET  
ELK POINT, SD 57025

Enter Contact Information Below

Contact DAVID B. JESSIP  
 Telephone 800-356-2686  
 Email DAVID@THERMOBOND.COM

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 LINCOLN NE 68503-1409

## INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
3	CRAWFORD SHELTER	1.0000	EA	<u>53,850<sup>00</sup></u>	<u>53,850<sup>00</sup></u>
4	SHIPPING TO CRAWFORD	1.0000	EA	<u>3,300<sup>00</sup></u>	<u>3,300<sup>00</sup></u>

**II. TERMS AND CONDITIONS**

**Contractors should complete Section II through VI as part of their proposal.** Contractor is expected to read the Terms and Conditions and must initial either accept, reject, or reject and provide alternative language for each clause. The Contractor should also provide an explanation of why the Contractor rejected the clause or rejected the clause and provided alternate language using "Track Changes". Upon request an electronic copy of the proposal with "Track Changes" must be submitted in an editable Word format. By signing the solicitation, Contractor is agreeing to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the proposal. The State reserves the right to negotiate rejected or proposed alternative language. If the State and Contractor fail to agree on the final Terms and Conditions, the State reserves the right to reject the proposal. The State is soliciting proposals in response to the solicitation. The State reserves the right to reject proposals that attempt to substitute the Contractor's commercial contracts and/or documents for this solicitation.

The Contractor should submit with their proposal any license, user agreement, service level agreement, or similar documents that the Contractor wants incorporated in the Contract. Upon notice of Intent to Award, the Contractor must submit a copy of these documents in an editable Word format. The State will not consider incorporation of any document not submitted with the Contractor's proposal. These documents shall be subject to negotiation and will be incorporated as addendums if agreed to by the Parties.

If a conflict or ambiguity arises after the addendums have been negotiated and agreed to, the addendums shall be interpreted as follows:

1. If only one (1) Party's document has a particular clause then that clause shall control;
2. If both Party's documents have a similar clause, but the clauses do not conflict, the clauses shall be read together;
3. If both Party's documents have a similar clause, but the clauses conflict, the State's clause shall control.

**A. GENERAL**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
[Handwritten Initial]			

The contract resulting from this solicitation shall incorporate the following documents:


1. Invitation to Bid and Addenda;
2. Amendments to the solicitation;
3. Questions and Answers;
4. Contractor's proposal response;
5. The executed Contract and any Addenda, if applicable, and properly submitted documents; and,
6. Amendments to the Contract

These documents constitute the entirety of the contract.

Unless otherwise specifically stated in a future contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment to the executed Contract with the most recent dated amendment having the highest priority, 2) executed Contract and any attached Addenda, 3) Amendments to solicitation and any Questions and Answers, 4) the original solicitation document and any Addenda, and 5) the Contractor's submitted Proposal.

Any ambiguity or conflict in the contract discovered after its execution, not otherwise addressed herein, shall be resolved in accordance with the rules of contract interpretation as established in the State.

**B. NOTIFICATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			

Contractor and State shall identify the contract manager who shall serve as the point of contact for the executed contract.

Communications regarding the executed contract shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or five (5) calendar days following deposit in the mail.

Either party may change its address for notification purposes by giving notice of the change, and setting forth the new address and an effective date.

**C. NOTICE (POC)**

The State reserves the right to appoint a Buyer's Representative to manage [or assist the Buyer in managing] the contract on behalf of the State. The Buyer's Representative will be appointed in writing, and the appointment document will specify the extent of the Buyer's Representative authority and responsibilities. If a Buyer's Representative is appointed, the Contractor will be provided a copy of the appointment document, and is expected to cooperate accordingly with the Buyer's Representative. The Buyer's Representative has no authority to bind the State to a contract, amendment, addendum, or other change or addition to the contract.

**D. GOVERNING LAW (Statutory)**

Notwithstanding any other provision of this contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) this contract will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to enforce the provisions of this contract must be brought in the State of Nebraska per state law; (4) the person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms and conditions of the final contract, including but not limited to the clauses concerning third-party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

The Parties must comply with all applicable local, state and federal laws, ordinances, rules, orders, and regulations.

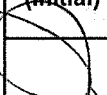
**E. BEGINNING OF WORK**

The Contractor shall not commence any billable work until a valid contract has been fully executed by the State and the successful Contractor. The Contractor will be notified in writing when work may begin.

**F. AMENDMENT**

This Contract may be amended in writing, within scope, upon the agreement of both parties.

**G. CHANGE ORDERS OR SUBSTITUTIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			


The State and the Contractor, upon the written agreement, may make changes to the contract within the general scope of the solicitation. Changes may involve specifications, the quantity of work, or such other items as the State may find necessary or desirable. Corrections of any deliverable, service, or work required pursuant to the contract shall not be deemed a change. The Contractor may not claim forfeiture of the contract by reasons of such changes.

The Contractor shall prepare a written description of the work required due to the change and an itemized cost sheet for the change. Changes in work and the amount of compensation to be paid to the Contractor shall be determined in accordance with applicable unit prices if any, a pro-rated value, or through negotiations. The State shall not incur a price increase for changes that should have been included in the Contractor's proposal, were foreseeable, or result from difficulties with or failure of the Contractor's proposal or performance.

No change shall be implemented by the Contractor until approved by the State, and the Contract is amended to reflect the change and associated costs, if any. If there is a dispute regarding the cost, but both parties agree that immediate implementation is necessary, the change may be implemented, and cost negotiations may continue with both Parties retaining all remedies under the contract and law.


**\*\*\*Contractor will not substitute any item that has been awarded without prior written approval of SPB\*\*\***

**H. VENDOR PERFORMANCE REPORT(S)**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			


The State may document any instance(s) of products or services delivered or performed which exceed or fail to meet the terms of the purchase order, contract, and/or solicitation specifications. The State Purchasing Bureau may contact the Vendor regarding any such report. Vendor performance report(s) will become a part of the permanent record of the Vendor.

**I. NOTICE OF POTENTIAL CONTRACTOR BREACH**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			

If Contractor breaches the contract or anticipates breaching the contract, the Contractor shall immediately give written notice to the State. The notice shall explain the breach or potential breach, a proposed cure, and may include a request for a waiver of the breach if so desired. The State may, in its discretion, temporarily or permanently waive the breach. By granting a waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

**J. BREACH**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			

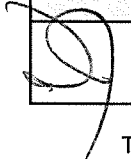
Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a

thirty (30) calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach which may occur at a different time.

In case of breach by the Contractor, the State may, without unreasonable delay, make a good faith effort to make a reasonable purchase or contract to purchased goods in substitution of those due from the contractor. The State may recover from the Contractor as damages the difference between the costs of covering the breach. Notwithstanding any clause to the contrary, the State may also recover the contract price together with any incidental or consequential damages defined in UCC Section 2-715, but less expenses saved in consequence of Contractor's breach. OR In case of default of the Contractor, the State may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

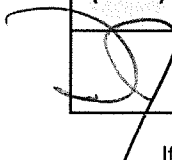
The State's failure to make payment shall not be a breach, and the Contractor shall retain all available statutory remedies. (See Indemnity - Self-Insurance and Payment)

**K. NON-WAIVER OF BREACH**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			

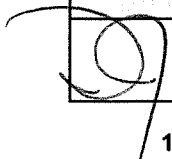
The acceptance of late performance with or without objection or reservation by a Party shall not waive any rights of the Party nor constitute a waiver of the requirement of timely performance of any obligations remaining to be performed.

**L. SEVERABILITY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			

If any term or condition of the contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the provision held to be invalid or illegal.

**M. INDEMNIFICATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			

**1. GENERAL**


The Contractor agrees to defend, indemnify, and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State for personal injury, death, or property loss or damage, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Contractor, its employees, Subcontractors, consultants, representatives, and agents,

resulting from this contract, except to the extent such Contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

**2. SELF-INSURANCE (Statutory)**


The State is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this contract, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 through 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this contract to the extent provided by law.

**N. ATTORNEY'S FEES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			

In the event of any litigation, appeal, or other legal action to enforce any provision of the contract, the Parties agree to pay all expenses of such action, as permitted by law and if ordered by the court, including attorney's fees and costs, if the other party prevails.


**O. ASSIGNMENT, SALE, OR MERGER**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			

Either party may assign the contract upon mutual written agreement of the other party. Such agreement shall not be unreasonably withheld.

The Contractor retains the right to enter into a sale, merger, acquisition, internal reorganization, or similar transaction involving Contractor's business. Contractor agrees to cooperate with the State in executing amendments to the contract to allow for the transaction. If a third party or entity is involved in the transaction, the Contractor will remain responsible for performance of the contract until such time as the person or entity involved in the transaction agrees in writing to be contractually bound by this contract and perform all obligations of the contract.

**P. CONTRACTING WITH OTHER POLITICAL SUB-DIVISIONS OF THE STATE OR ANOTHER STATE**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			

The Contractor may, but shall not be required to, allow agencies, as defined in Neb. Rev. Stat. § 81-145, to use this contract. The terms and conditions, including price, of the contract may not be amended. The State shall not be contractually obligated or liable for any contract entered into pursuant to this clause.

The Contractor may, but shall not be required to, allow other states, agencies or divisions of other states, or political subdivisions of other states to use this contract. The terms and conditions, including price, of this contract shall apply to any such contract, but may be amended upon mutual consent of the Parties. The State of Nebraska shall not be

contractually or otherwise obligated or liable under any contract entered into pursuant to this clause. The State shall be notified if a contract is executed based upon this contract.

**Q. FORCE MAJEURE**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
[Handwritten Initial]			

Neither party shall be liable for any costs or damages, or for default resulting from its inability to perform any of its obligations under the contract due to a natural or man-made event outside the control and not the fault of the affected party ("Force Majeure Event"). The Party so affected shall immediately make a written request for relief to the other party, and shall have the burden of proof to justify the request. The other Party may granted the relief requested; relief may not be unreasonably withheld. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event.

**R. CONFIDENTIALITY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
[Handwritten Initial]			


All materials and information provided by the Parties or acquired by a Party on behalf of the other Party shall be regarded as confidential information. All materials and information provided or acquired shall be handled in accordance with federal and state law, and ethical standards. Should said confidentiality be breached by a Party, the Party shall notify the other Party immediately of said breach and take immediate corrective action.

It is incumbent upon the Parties to inform their officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable by 5 U.S.C. 552a (m)(1), provides that any officer or employee, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.



**III. CONTRACTOR DUTIES**

**A. INDEPENDENT CONTRACTOR / OBLIGATIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			

It is agreed that the Contractor is an independent contractor and that nothing contained herein is intended or should be construed as creating or establishing a relationship of employment, agency, or a partnership.

The Contractor is solely responsible for fulfilling the contract. The Contractor or the Contractor's representative shall be the sole point of contact regarding all contractual matters.

The Contractor shall secure, at its own expense, all personnel required to perform the services under the contract. The personnel the Contractor uses to fulfill the contract shall have no contractual or other legal relationship with the State; they shall not be considered employees of the State and shall not be entitled to any compensation, rights or benefits from the State, including but not limited to, tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.

By-name personnel commitments made in the Contractor's proposal shall not be changed without the prior written approval of the State. Replacement of these personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

The Contractor warrants that all persons assigned to the project shall be employees of the Contractor or a Subcontractor, and shall be fully qualified to perform the work required herein. Personnel employed by the Contractor or a subcontractor to fulfill the terms of the contract shall remain under the sole direction and control of the Contractor or the subcontractor respectively.

With respect to its employees, the Contractor agrees to be solely responsible for the following:

1. Any and all pay, benefits, and employment taxes and/or other payroll withholding;
2. Any and all vehicles used by the Contractor's employees, including all insurance required by state law;
3. Damages incurred by Contractor's employees within the scope of their duties under the contract;
4. Maintaining Workers' Compensation and health insurance that complies with state and federal law and submitting any reports on such insurance to the extent required by governing law;
5. Determining the hours to be worked and the duties to be performed by the Contractor's employees; and,
6. All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the Contractor, its officers, agents, or subcontractors or subcontractor's employees).

If the Contractor intends to utilize any subcontractor, the Subcontractor's level of effort, tasks, and time allocation must be clearly defined in the Contractor's proposal. The Contractor shall agree that it will not utilize any Subcontractors not specifically included in its proposal in the performance of the contract without the prior written authorization of the State.

The State reserves the right to require the Contractor to reassign or remove from the project any Contractor or Subcontractor employee.

Contractor shall insure that the terms and conditions contained in any contract with a sub-contractor does not conflict with the terms and conditions of this contract.

The Contractor shall include a similar provision, for the protection of the State, in the contract with any Subcontractor engaged to perform work on this contract.

**B. EMPLOYEE WORK ELIGIBILITY STATUS**

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing work within the State. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and

Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the DAS website at <http://das.nebraska.gov/materiel/purchasing.html>

The completed United States Attestation Form should be submitted with the solicitation response.

2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the U.S. Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

**C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Statutory)**

The Contractor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State, and their Subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §§ 48-1101 through 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Contractor shall insert a similar provision in all Subcontracts for goods or services to be covered by any contract resulting from this solicitation.

**D. COOPERATION WITH OTHER CONTRACTORS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			

Contractor may be required to work with or in close proximity to other contractors or individuals that may be working on the same or different projects. The Contractor shall agree to cooperate with such other contractors or individuals, and shall not commit or permit any act which may interfere with the performance of work by any other contractor or individual. Contractor is not required to compromise Contractor's intellectual property or proprietary information unless expressly required to do so by this contract.

**E. PRICES**

Prices quoted shall be net, F.O.B. Destination – Pre-Paid and Add for transportation and delivery charges to the destination named in the solicitation. No additional charges will be allowed for packing, packages, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern.

All prices, costs, and terms and conditions submitted in the proposal shall remain fixed and valid commencing on the opening date of the proposal until an award is made or the solicitation is cancelled.

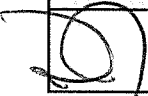
**The State reserves the right to deny any requested price increase. No price increases are to be billed to any State Agencies prior to written amendment of the contract by the parties.**

**The State will be given full proportionate benefit of any decreases for the term of the contract.**

**F. COST CLARIFICATION**


The State reserves the right to review all aspects of cost for reasonableness and to request clarification of any proposal where the cost component shows significant and unsupported deviation from industry standards or in areas where detailed pricing is required.

**G. PERMITS, REGULATIONS, LAWS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			

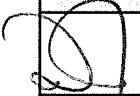
The contract price shall include the cost of all royalties, licenses, permits, and approvals, whether arising from patents, trademarks, copyrights or otherwise, that are in any way involved in the contract. The Contractor shall obtain and pay for all royalties, licenses, and permits, and approvals necessary for the performance of the contract. The Contractor must guarantee that it has the full legal right to the materials, supplies, equipment, software, and other items used to execute this contract.

**H. NOTICE OF POTENTIAL CONTRACTOR BREACH**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			


If Contractor breaches the contract or anticipates breaching the contract the Contractor shall immediately give written notice to the State. The notice shall explain the breach or potential breach, and may include a request for a waiver of the breach if so desired. The State may, at its discretion, temporarily or permanently waive the breach. By granting a temporary waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

**I. ANTITRUST**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

**J. CONFLICT OF INTEREST**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			

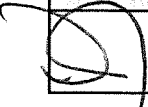
By submitting a proposal, bidder certifies that no relationship exists between the bidder and any person or entity which either is, or gives the appearance of, a conflict of interest related to this Request for Proposal or project.

Bidder further certifies that bidder will not employ any individual known by bidder to have a conflict of interest nor shall bidder take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or

degree with the performance of its contractual obligations hereunder or which creates an actual or appearance of conflict of interest.


If there is an actual or perceived conflict of interest, bidder shall provide with its proposal a full disclosure of the facts describing such actual or perceived conflict of interest and a proposed mitigation plan for consideration. The State will then consider such disclosure and proposed mitigation plan and either approve or reject as part of the overall bid evaluation.

**K. ADVERTISING**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			


The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its goods and services are endorsed or preferred by the State. Any publicity releases pertaining to the project shall not be issued without prior written approval from the State.

**L. DRUG POLICY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			

Contractor certifies it maintains a drug free work place environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

**M. WARRANTY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			

Despite any clause to the contrary, the Contractor represents and warrants that its services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Contract. For any breach of this warranty, the Contractor shall, for a period of ninety (90) days from performance of the service, perform the services again, at no cost to Customer, or if Contractor is unable to perform the services as warranted, Contractor shall reimburse Customer the fees paid to Contractor for the unsatisfactory services. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

**IV. PAYMENT**

**A. PROHIBITION AGAINST ADVANCE PAYMENT (Statutory)**

Neb. Rev. Stat. §§81-2403 states, "[n]o goods or services shall be deemed to be received by an agency until all such goods or services are completely delivered and finally accepted by the agency."


**B. TAXES (Statutory)**

The State is not required to pay taxes and assumes no such liability as a result of this solicitation. The Contractor may request a copy of the Nebraska Department of Revenue, Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption, Form 13 for their records. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

**C. INVOICES**

Invoices for payments must be submitted by the Contractor to the agency requesting the services with sufficient detail to support payment. Email invoices to [accounting@nebraskapublicmedia.org](mailto:accounting@nebraskapublicmedia.org). The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

**D. INSPECTION AND APPROVAL**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			

Final inspection and approval of all work required under the contract shall be performed by the designated State officials.

**E. PAYMENT (Statutory)**

Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2403). The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any goods and services provided by the Contractor prior to the Effective Date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.

**F. LATE PAYMENT (Statutory)**

The Contractor may charge the responsible agency interest for late payment in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §§ 81-2401 through 81-2408).


**G. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Statutory)**

The State's obligation to pay amounts due on the Contract for a fiscal years following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) calendar days prior to the effective date of termination. All obligations of the State to make payments after the termination date will cease. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

**H. RIGHT TO AUDIT (First Paragraph is Statutory)**

The State shall have the right to audit the Contractor's performance of this contract upon a thirty (30) day written notice. Contractor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the contract (Information) to enable the State to audit the contract. (Neb. Rev. Stat. § 84-304 et seq.) The State may audit and the Contractor shall maintain the information during the term of the contract and for a period of five (5) years after the completion of this contract or until all issues or litigation are resolved, whichever is later. The Contractor shall make the Information available to the State at Contractor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the

Contractor so elects, the Contractor may provide electronic or paper copies of the Information. The State reserves the right to examine, make copies of, and take notes on any Information relevant to this contract, regardless of the form or the Information, how it is stored, or who possesses the Information. In no circumstances will contractor be required to create or maintain documents not kept in the ordinary course of contractor's business operations, nor will contractor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to contractor.

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the State. If a previously undisclosed overpayment exceeds three percent (3%) of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Contractor, the Contractor shall reimburse the State for the total costs of the audit. Overpayments and audit costs owed to the State shall be paid within ninety (90) days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.

## **V. SCOPE OF WORK**

The Contractor must provide the following information in response to this solicitation.

### **A. SCOPE**

It is the intent of this solicitation to issue a purchase order for the item(s) requested.

The intent of this request is for Nebraska Educational Telecommunications to replace shelters at two translator sites located in the state of Nebraska. The contractor must provide the shelters listed below

1. First shelter – Wauneta, NE
2. Second shelter – Crawford, NE

For technical details regarding the shelters listed above, please see the sections labeled "Technical Specifications" later in this document.

All items proposed shall be of the latest manufacture in production as of the date of the solicitation and be of proven performance and under standard design complete as regularly advertised and marketed. All necessary materials for satisfactory performance of the supplies shall be incorporated into the (two (2) 8x10x9 equipment shelters)) whether or not they may be specifically mentioned below.

Complete specifications, manufacturer's current descriptive literature and/or advertising data sheets with cuts or photographs must be included with the proposal for the IDENTICAL items proposed. Any information necessary to show compliance with these specifications not given on the manufacturer's descriptive literature and/or advertising data sheets must be supplied in writing on or attached to the proposal document. If manufacturer's information necessary to show compliance with these specifications is not attached to the proposal document, the Contractor may be required to submit requested information within three (3) business days of a written request. Failure to submit requested descriptive literature or advertising data sheets may be grounds to reject the proposal.

**VI. TECHNICAL SPECIFICATIONS**

**A. CONTRACTOR INSTRUCTIONS**

Contractor must respond to each of the following statements. Specifications listed are minimum conditions that must be met in order for a Contractor to qualify for the award.

“YES” response means the Contractor guarantees they can meet this condition.

“NO” response means the Contractor cannot meet this condition and will not be considered.

“NO & PROVIDE ALTERNATIVE” responses should be used only with a narrative response in the NOTES/COMMENTS section explaining in detail any deviation from the Contractor’s ability to meet the condition, and an explanation of how this would be determined to be an acceptable alternative to meeting the condition. Alternatives must be detailed in such a way that allows such deviations to be fully evaluated. The State shall determine at its sole discretion whether or not the Contractor’s alternative is an acceptable alternative.

**B. NON-COMPLIANCE STATEMENT**

YES	NO	NO & PROVIDE ALTERNATIVE	
✓			1. Read these specifications carefully. Any and all exceptions to these specifications must be written on or attached to solicitation response. Any noncompliance may void your proposal. Non-compliance to any single specification can void your proposal.
✓			2. It is the responsibility of Bidders to obtain information and clarifications as provided below. The State is not responsible for any erroneous or incomplete understandings or wrongful interpretations of this solicitation by any Bidder.
✓			3. No interpretation related to the meaning of solicitation specifications or other pre-proposal documents will be made orally to any Bidder by the State. Any solicitation interpretation must be put in writing by the Bidder to the State Purchasing Bureau, by the last day to submit written questions per the Schedule of Events. (Inquiries received after the last day to submit written questions may not be addressed).
NOTES/COMMENTS:			

**C. TECHNICAL SPECIFICATIONS: SHELTER #1 8X10X9 EQUIPMENT SHELTER FOR WAUNETA, NE SITE**

YES	NO	NO & PROVIDE ALTERNATIVE	
✓			1. Size: shall be 8' OD width X 10' OD length X 9' interior height
✓			2. Lightweight shelter with stone aggregate exterior R=11 walls, R=19 roof Must be able to withstand 115 mph winds, roof loading minimum 70psf
✓			3. Vinyl tile flooring. Floor loading for minimum 200 psf
✓			4. Qty. (2) 2 tube 4 foot interior LED light fixtures
✓			5. Qty. (1) exterior LED light, exterior GFCI receptacle



✓			6. Qty. (3) 120V interior duplex receptacles
✓			7. Dual one ton cool/5kW HEAT wall mount BARD or equivalent HVAC units. Lead/lag controller with alarm and Ethernet board included.
✓			8. Electrical service at site is 240V single phase.
✓			9. Master ground bar 4" x 20" x ¼"
✓			10. Standard 6 port pass through for waveguide
✓			11. Freight to Wauneta, NE, see Delivery Locations section for site address and please fill in pricing on the line item on the Invitation to Bid Form.
<b>NOTES/COMMENTS:</b>			

**TECHNICAL SPECIFICATION: SHELTER #2 8X10X9 EQUIPMENT SHELTER FOR CRAWFORD, NE SITE**

YES	NO	NO & PROVIDE ALTERNATIVE	
✓			1. Size: shall be 8' OD width X 10' OD length X 9' interior height
✓			2. Lightweight shelter with stone aggregate exterior R=11 walls, R=19 roof Must be able to withstand 115 mph winds, roof loading minimum 70psf
✓			3. Vinyl tile flooring. Floor loading for minimum 200 psf
✓			4. Qty. (2) 2 tube 4 foot interior LED light fixtures
✓			5. Qty. (1) exterior LED light, exterior GFCI receptacle
✓			6. Qty. (3) 120V interior duplex receptacles
✓			7. Dual one ton cool/5kW HEAT wall mount BARD or equivalent HVAC units. Lead/lag controller with alarm and Ethernet board included.
✓			8. Electrical service at site is 240V single phase
✓			9. Master ground bar 4" x 20" x ¼"
✓			10. Standard 6 port pass through for waveguide
✓			11. Freight to Crawford, NE, see Delivery Locations section for site address and please fill in pricing on the line item on the Invitation to Bid Form.
<b>NOTES/COMMENTS:</b>			

**D. DELIVERY ARO**

YES	NO	NO & PROVIDE ALTERNATIVE	
✓			<p>1. Delivery desired within one hundred twenty (120) days after receipt of order(s).</p> <p>At the time of delivery, a designated State employee will sign the "invoice/packing slip." This signature will only indicate that the order has been received and that the items actually delivered agree with the delivery invoice. This signature does not indicate all items were received in good condition and/or that there is not possible hidden damage.</p>
<p>NOTES/COMMENTS: shop drawings must be approved within two weeks ARO</p>			

**E. DELIVERY LOCATIONS / INSTRUCTIONS (CONTRACTOR AGREES THAT THEY CAN MEET THE DELIVERY LOCATIONS/INSTRUCTIONS)**

YES	NO	NO & PROVIDE ALTERNATIVE	
✓			<p>1. Shelter #1 Wauneta, NE, N Falls Dr., Coordinates: 40-25-20.01N 101-22-3.44W Contact Operations Manager Robert Vos (308) 991-7443 at least three days prior to delivery.</p>
✓			<p>2. Shelter #2 Crawford, NE NE-71 south at water plant, Coordinates: 42-40-16.78N 103-24-5.73W Contact Operations Manager Robert Vos (308) 991-7443 at least three days prior to delivery.</p>
<p>NOTES/COMMENTS:</p>			

**F. PACKAGING**

YES	NO	NO & PROVIDE ALTERNATIVE	
✓			<p>1. Packages are to be clearly marked with size, weight, color, quantity, and the purchase order number.</p>
<p>NOTES/COMMENTS:</p>			

**G. QUALITY**

YES	NO	NO & PROVIDE ALTERNATIVE	
✓			<p>1. Product quality must meet specifications and be consistent for the term of the contract. All materials must be of first quality, under standard production by the manufacturer and be of standard design, complete as regularly advertised and marketed and be of proven performance.</p>
✓			<p>2. A guarantee of satisfactory performance by the contractor and meeting delivery dates are considered to be an integral part of the purchase contract resulting from this proposal invitation.</p>
	✓		<p>3. Products are to be fully guaranteed and may be returned for full credit or replacement (at the State's option) for any reason during the initial warranty period with no additional charges for shipping or restocking.</p>

NOTES/COMMENTS:

non-returnable

H. GRAY MARKET PRODUCTS PROHIBITION

YES	NO	NO & PROVIDE ALTERNATIVE	
✓			1. The State will not accept Gray Market Products for this solicitation. Gray Market is defined as the trade of a commodity through distribution channels which, while legal, are unofficial, unauthorized, or unintended by the original manufacturer. Gray Market items are not designed to be sold in a particular market and cannot be supported by the authorized importer because of various reasons.

NOTES/COMMENTS:

I. WARRANTY

YES	NO	NO & PROVIDE ALTERNATIVE	
✓			1. The Contractor warrants for a period of one (1) year from the date of Acceptance that: (a) the Products perform according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the State has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the State) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

NOTES/COMMENTS:

**Form A**  
**Contractor Contact Sheet**  
**Invitation To Bid Number 6760 OF**

Form A should be completed and submitted with each response to this solicitation. This is intended to provide the State with information on the Contractor's name and address, and the specific person(s) who are responsible for preparation of the Contractor's response.

Preparation of Solicitation Contact Information	
Contractor Name:	Thermo Bond Buildings
Contractor Address:	1001 W. Main Street Elk Point, SD 57025
Contact Person & Title:	Evan Nedved
E-mail Address:	enedved@thermobond.com
Telephone Number (Office):	605-952-0078
Telephone Number (Cellular):	605-760-4781
Fax Number:	

Each Contractor shall also designate a specific contact person who will be responsible for responding to the State if any clarifications of the Contractor's response should become necessary.

Communication with the State Contact Information	
Contractor Name:	Same
Contractor Address:	
Contact Person & Title:	
E-mail Address:	
Telephone Number (Office):	
Telephone Number (Cellular):	
Fax Number:	

**THERMO BOND**  
BUILDINGS



ATTN: Julie Dabydeen

COMPANY: State Purchasing Bureau

ADDRESS: 1526 K Street, Suite 130  
Lincoln, NE 68503

PHONE: (402) 471-6500

EMAIL: [as.materielpurchasing@nebraska.gov](mailto:as.materielpurchasing@nebraska.gov)

PROPOSAL NO. 2210-417

ITB #6760 OF for (2) 8' x 10' Shelters

DATE: February 3, 2023

## **8' OD x 10' OD x 9' ID Lightweight Shelter Specifications**

1. (1) 3'x7' exterior steel door with passage, deadbolt hardware and hydraulic closer
2. (1) 6-4" port wave guide entrance
3. Stone Aggregate Exterior (Ozark Brown)
4. R-values of 11 in the walls and floor & R-19 in the roof
5. Painted "I" beam box skid assembly
6. Single-ply rubber roofing material with Kynar 500 coated roof edging
7. Vinyl tile floor covering
8. 5/8" OSB/FRP interior finish
9. Full set of Nebraska PE sealed construction drawings and structural calculations
10. Freight to Site if site is accessible to semi-truck & trailer.

### **Electrical & Integration Package:**

1. (1) - 200 amp, 120/240V single phase Load Center with main breaker
2. (2) - 2 tube, 4 foot LED light fixtures with switch
3. (1) - Exterior LED light with photocell
4. (2) - 120v duplex receptacles
5. (2) - 1 ton cool/5kW heat wall mount BARD air conditioners, 11 EER
6. (1) - Lead/lag master controller, with enhanced alarm & ethernet board, MC4002-BC
7. (1) - Exterior GFI receptacle
8. All electrical wires, breakers, boxes, conduit, etc. to make a complete assembly.

## **PRICING**

<b>8' O.D. x 10' O.D. x 9' I.D. Lightweight Shelter:</b>	<b>\$ 53,850.00 each</b>
<b>Freight to Crawford or Waunita NE</b>	<b>\$ 3,300.00 per load</b>
<b>Total delivered price</b>	<b>\$ 57,150.00 each</b>

**Typical lead-time is 120-150 days from approved prints.**

**Payment Terms: 25% down, remaining balance due upon shelter completion.**

This price does not include:

1. Crane offloading
2. Foundation
3. Site work and site grounding
4. Any applicable taxes

Thank you for allowing Thermo Bond Buildings to bid on your project. If you have any questions please contact me.

**Evan Nedved**

**Thermo Bond Buildings, LLC**

**(605) 952-0078**

**[enedved@thermobond.com](mailto:enedved@thermobond.com)**

**Thermo Bond Buildings, LLC 1001 W. Main St. - PO Box 445 Elk Point, SD 57025 (800) 356-2686**

## **THERMO BOND BUILDINGS LLC TERMS AND CONDITIONS OF SALE**

1. Any order placed or any purchase order issued by the BUYER shall constitute an acceptance of all the terms and conditions contained in this document except for such terms and conditions as both the BUYER and the SELLER agree to in writing.
2. All new customers are required to fill out the attached "Confidential Credit Application."
3. Twenty Five percent (25%) deposit required with purchase order/signed contract. Remaining balance due thirty (30) days from the date of invoice whether or not Buyer has taken delivery. All sums not paid when due shall be subject to a 1.5% per month interest charge on past due balances. Payment shall not be dependent upon payment from any other party unless previously negotiated. No retainage shall be deducted from payment unless previously negotiated.
4. Prices quoted are in effect for a period of (30) days from the date of quotation.
5. BUYER shall pay all local, state and/or federal taxes and fees applicable to the purchase of SELLER'S equipment. Where applicable, said charges will be added to the invoice of the SELLER by separate line item.
6. BUYER shall pay all freight expenses pursuant to the invoice of the SELLER. Title and Risk of Loss shall pass to the BUYER upon shipment to the destination agreed to by the parties. If at the BUYER'S request, shipment is delayed beyond BUYER'S original shipment date, the BUYER will be invoiced for the completed unit once it is finished. BUYER must add the building to off-premises insurance coverage.
7. Changes shall be valid only if in writing signed by authorized representatives of BUYER and SELLER. Such changes must provide for any modification in the price or the time of delivery. Minor variations by SELLER in the details of design or construction of the equipment shall not give rise to any claim of defect or default. The SELLER reserves the right to make such minor changes in details or design and construction as shall in its judgment constitute an improvement over the original specification.
8. SELLER is not responsible for delay in delivery or other non-performance of this agreement due to force majeure, labor disputes or any other similar or dissimilar causes beyond the control of the SELLER. In the event of delay caused for reasons beyond the control of the SELLER, the time for the SELLER to perform shall be extended until such time as the disability has been removed.
9. This agreement shall be governed by the laws of the State of South Dakota. The Courts of South Dakota shall have exclusive jurisdiction over all controversies arising out of or in connection with this agreement. The parties consent to personal jurisdiction in South Dakota and agree that process may be served upon them by registered mail at the address stated at the head of this agreement or personally within or without South Dakota. If service is made in any manner other than personally within South Dakota, the defendant shall be entitled to a period of twenty (20) additional days to answer over and above the time set by law.
10. The parties covenant and agree that if either acquires any right or rights to bring any action, suit or proceeding against the other as a result of any breach of this agreement, except for non-payment of the purchase price, the party acquiring such right or rights shall be conclusively deemed to have waived and relinquished the same unless such action, suit or proceeding is commenced within one year after such right or rights arose.
11. This agreement is not subject to cancellation or change unless requested by BUYER and accepted in writing by SELLER. In the event of any such cancellation, BUYER shall pay to SELLER, within thirty (30) days of such cancellation, the reasonable costs and expenses incurred by SELLER prior to receipt of the request for cancellation (including but not limited to engineering, manufacturing expenses and all commitments to its suppliers, subcontractors, and others), plus a reasonable percentage of the total of the foregoing for SELLER'S overhead and profit.



### **Limited Warranty**

Thermo Bond Buildings, LLC (hereinafter Seller) warrants the equipment manufactured by them to be free of defects in workmanship and material under normal use and service provided it is properly installed, maintained, and operated. Seller warrants that its equipment will be designed and manufactured to conform to the requirements expressly stated in the specifications. If any element or feature of the equipment is found to be defective within one year of the date of delivery and the Seller is immediately notified in writing of the nature of the defect, Seller will replace, repair or modify such equipment, at Seller's option and expense, within thirty (30) days of such notification. This warranty is exclusive and is in lieu of any and all other warranties, whether written or implied, including warranty of marketability and warranty of fitness for purpose. Seller's liability under this warranty is limited to repair, modification, or replacement of the defective equipment, exclusive of any and all other damages or claims of whatever nature including and without limitation, Buyer's labor, loss of profits, consequential damages, down time, labor expenses, loss of production or any other damages resulting from the defect. Seller is not responsible for claims of any kind based upon loss of use, network down time, overhead, labor expenses, and damages to other equipment or loss of production or profits. In addition, Seller is not responsible for consequential or incidental damages arising out of or in connection with this warranty.

To the extent authorized by the manufacturer, any equipment carrying a separate manufacturer's warranty that is integrated into Seller's product will retain its manufacturer's warranty to the benefit of the Buyer, whatever that warranties may be. Seller does not warranty any equipment or parts carrying a separate manufacturer's warranty.

The remedies set forth herein are exclusive to the Seller and the Seller shall have the final decision as to the time and nature of the repairs, reinstallation, or removal of any of its equipment as is necessary to bring it within warranty.

There are no rights, warranties or conditions, expressed or implied, statutory or otherwise, other than those contained in this warranty statement. This warranty is the entire an exclusive agreement between the Buyer and Seller. No agreement by the Seller shall otherwise exist as a release of or consent to any liability beyond those contained in this warranty.

Any agreement to purchase, payment or acceptance of delivery by the Buyer shall constitute an acknowledgement that they have read and understand the terms of this warranty, and that they agree to them.

This warranty shall not cover any intentional acts to Seller's equipment, natural disasters, acts of God or damage due to force majeure.

Any and all liability of the Seller under this warranty shall be limited to and not exceed the purchase price paid.