

electronic Vendor Portal Terms of Use

- 1. ACCEPTANCE OF TERMS** Welcome to The North Carolina electronic Vendor Portal (eVP, or Service). This Service is provided to you and your business (You, or User) subject to the following Terms of Use (TOU), which may be updated from time to time without prior notice to you. The Service is operated by the Department of Administration, Division of Purchase and Contract in conjunction with the Department of Information Technology and other third-party providers (collectively, the Operations Group).

Your registration to participate in procurement opportunities using the State's electronic services or other use of the Service constitutes your agreement on behalf of your business to the terms set out herein. You can review the most current version of this document at any time by clicking on the TOU link at the bottom of every page, and your continued use of the Service constitutes your agreement with the most current version. In addition, when using the Service, you shall be subject to any posted guidelines or rules applicable to such services. All such guidelines or rules are hereby incorporated by reference into this TOU.

- 2. DESCRIPTION OF SERVICE** The Service allows registered vendors to receive emailed bid notifications for selected commodity classes, to receive electronic purchase orders and to initiate certification and recertification for the Historically Underutilized Businesses (HUB) - Statewide Uniform Certification Program (SWUC). It also provides a public search engine of registered vendors. Unless explicitly stated otherwise, any new features, which may augment or enhance the current Service, shall be subject to this TOU. You understand and agree that the Service is provided "AS-IS" and that the State assumes no responsibility for the mis-delivery or failure of delivery of any material posted or sent through the Service or the accuracy of any information available from the Service. Vendors must routinely check the IPS Bids site for a listing of current business opportunities with the State and other governmental entities and other agencies required or permitted to post certain solicitations to this Service. Neither the State nor any soliciting entity shall be responsible if a vendor does not receive an electronic notification for any reason.

You are responsible for obtaining access to the Service, and that access may involve third party fees (such as Internet service provider or airtime charges). You are responsible for those fees and for any equipment or software necessary in order to use the Service.

- 3. YOUR OBLIGATIONS** In consideration for your use of the Service, you agree to: (i) provide true, accurate, current and complete information about yourself as prompted by the Service's registration form (such information being the "Registration Data") and (ii) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate or incomplete, or fail to maintain or update such Data, or the Operations Group has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, the State reserves the right to suspend or terminate your account and refuse any and all current or future use of the Service, or any portion thereof. You will be solely responsible for all errors, miscommunications and other consequences due to inaccurate, outdated or incomplete Registration Data.

You will receive a password and account designation upon completing the Service's registration process. You are responsible for maintaining the confidentiality of the password and account, and are fully responsible for all activities associated with use of your password or account. You agree to (i) immediately notify Customer Service of any unauthorized use of your password or account, or of any other breach of security, and (ii) ensure that you exit from your account at the end of each session.

You are entirely responsible for all content that is uploaded, posted, emailed, transmitted or otherwise made available to the State through the Service using your password or account.

- 4. CUSTOMER SUPPORT** The State will provide customer service to you sufficient for questions involving use of the Service and for inquiries relating to the operation and hosting of the Service during the hours of 7:30 AM Eastern Standard Time and 5:00 PM Eastern Standard Time. The following support services will be included: (i) a customer service telephone number (1-888-211-7440); (ii) a customer service email address (vendor@nc.gov); and (iii) an online training feature to instruct you on conducting procurement through the Service (<http://eprocurement.nc.gov/Training.html>).
- 5. THE NORTH CAROLINA PUBLIC RECORDS ACT** Any information provided to the Service is subject to the provisions of the North Carolina Public Records Act, Chapter 132 of the North Carolina General Statutes. The North Carolina Public Records Act may be accessed under the Statutes portion of the N.C. General Assembly Home Page at: <http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=132> .
- 6. MODIFICATIONS TO SERVICE** The State reserves the right at any time to modify the Service with or without notice. You agree that the Operations Group shall not be liable to you or to any third party for any modification, unavailability or suspension of the Service.
- 7. TERM AND TERMINATION** Once you have accepted this TOU, an agreement has been created between you and the State for use of the Service. You are bound by the terms of the TOU, as it may be modified, until such time as you terminate your agreement with the State by submitting a written termination request via email, fax or through our on-line system and receive confirmation from the State. You agree that the State, at its sole discretion, may terminate your password, account (or any part thereof) or use of the Service, and remove and discard any content within the Service, for any reason, including, without limitation, lack of use, failure to pay overdue amounts due to the State or if the State reasonably believes that you have violated or acted inconsistently with the TOU. You agree that any termination of your access to the Service under any provision of this TOU may be effected without prior notice, and acknowledge and agree that the State may immediately deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or the Service. Further, you agree that the State shall not be liable to you or any third-party for any termination of your access to the Service.
- 8. OUTAGE POLICY** The State will use its best efforts to ensure that the Service is available. However, we may experience website outages where the Service cannot be accessed. The State will use reasonable efforts to restore Service availability, except for downtime for scheduled and unscheduled maintenance, and will promptly investigate any technical problems that you report to us.
- 9. INDEMNITY** You, at no additional cost to the State, agree to indemnify, defend, and hold the State, its officers, employees, and agents involved, directly or indirectly, in the delivery and operation of the Service, harmless from any and all liabilities and expenses, including without limitation, attorney fees, expenses, costs, judgments, settlements, contract losses, or other costs arising out of or relating to (i) User's misuse or modification of the Service, the State sites or information and materials available from the Service; (ii) User's distribution, marketing or use for the benefit of parties other than the State, the State sites or information and materials available from the Service; (iii) Product information, direction, specification or materials provided by you; (iv) User's transactions with Buyers, including the fulfillment, or failure to fulfill procurement contracts you enter with the State; and (v) User's breach of any representation, warranty, promise or obligation under this agreement.

The foregoing indemnity is conditioned upon reasonably prompt written notice by the State of any claim, action or demand for which indemnity is claimed.

10. DISCLAIMER OF WARRANTIES You expressly understand and agree that:

- a. Your use of the Service is at your sole risk. The Service is provided on an "as is" and "as available" basis. The State expressly disclaims all warranties of any kind.
- b. The State makes no warranty that (i) the Service will meet your requirements; or (ii) the Service will be uninterrupted, timely, or error-free.
- c. Any material downloaded or otherwise obtained through the use of the Service is done at your own discretion and risk and you shall be solely responsible for any damage to your computer system or loss of data that results from the download of any such material.
- d. No advice or information, whether oral or written, obtained by you from the Service shall create any warranty not expressly stated in the TOU.

11. LIMITATION OF LIABILITY You expressly understand and agree that the State, including its officers, employees, and agents involved, directly or indirectly, in the delivery and operation of the Service, shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if the State has been advised of the possibility of such damages), resulting from: (i) the use or the inability to use the Service; (ii) unauthorized access to or alteration of your transmissions or data; (iii) statements or conduct of any third party on the Service; or (iv) any other matter relating to use of the Service.

12. APPLICABLE LAW By using or visiting the North Carolina Interactive Purchasing System, you agree that the laws of the State of North Carolina, without regard to principles of conflict of laws, will govern these Terms of Use and any dispute of any sort that might arise between you and the State or its officers, employees and agents. Any action to interpret, enforce or otherwise state any claim related to the Service or its use shall be brought in the court having proper venue located in the State of North Carolina.