STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
VOLUME PRICING CONTRACT
Avnet Enterprise Solutions

This **VOLUME PRICING CONTRACT** for the acquisition of Cisco products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Avnet Enterprise Solutions, with its principal place of business at 1321 Rutherford, Suite 200, Austin, Texas 78753.

1. Contract Scope and Term

This Contract sets forth the terms and conditions governing the acquisition of Cisco products and related services. Terms used in this document shall have the meanings set forth below in Section 2, Definitions. This Contract is available for use by all Customers.

The term of this Contract shall be two (2) years commencing on September 1, 2003. Prior to expiration of the original term, the parties may renew this contract, upon approval of DIR, for up to two (2) optional one-year terms. Upon termination of this Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made by Customers prior to such termination.

2. Definitions

Terms used in this Contract shall have the following meanings:

A. **DIR** - the Department of Information Resources.
B. **Customer** - any Texas state agency and local government as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003), and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.
C. **Reseller** – Avnet Enterprise Solutions. The distributor, dealer, or value-added Reseller designated by DIR who is the distribution source for the Products included under this Contract.
D. **Product** – any Information Resources Technology item included under this Contract. Product may include any pre-loaded software necessary for operation.
E. **Services** – any value-added service that the Reseller may perform as related to products available under this Contract.
F. **State Contract Administrator** - the individual as appointed by DIR to administer this Contract on behalf of the State of Texas and the Customers.
G. **Reseller Contract Administrator** - the individual as appointed by the Reseller to administer this Contract on behalf of the Resellers.
H. **Administrative Fee** - the fee used to defray DIR's cost of negotiating, executing and administering this contract.
I. **Purchase Order** - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
J. **Information Resources Technology (Technologies)** – as defined in Texas Government Code §2054.003.

K. Day Shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.

L. State – refers to the State of Texas.

M. Go DIRect Coordinator – refers to the individual appointed by DIR to administer and collect the Contract reporting data on behalf of the State and the authorized Customers.

3. Entire Agreement and Order of Precedence

This Contract; Appendix A, Standard Clauses for Texas DIR Contracts; Appendix B, HUB Subcontracting Plan; Appendix C, Pricing Index; and Appendix D, Texas Marketplace Posting, DIR-TMP-03-029, constitute the entire agreement between the parties hereto. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, and finally Appendix D. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto, with the approval of DIR.

The terms and conditions set forth herein shall govern all transactions by Customers under this Contract. Customers shall not have the authority to modify the terms of this Contract, except as to receive better terms or pricing for a particular procurement than those set forth herein. In such event, Reseller shall furnish a copy of such better offerings to DIR upon request. No additional term or condition of a purchase order issued by a Customer can weaken a term or condition of this Contract. In the event of a conflict between a Customer's Purchase Order and this Contract, the Contract term shall control.

4. Product and Service Offerings

Products available under this Contract are set forth as any Information Resources Technology item listed within Appendix C, Pricing Index and Product Offering. Services include any value-added service that the Reseller may perform as related to products available under this Contract.

A. Products

Reseller will maintain a product list including pricing, product descriptions, and product specifications for all products offered under this Contract. The product list may be updated at any time during the term of this Contract to incorporate product model changes or product upgrades, addition of new products, and removal of obsolete or discontinued products.

B. Services

Reseller will maintain a list including pricing and descriptions for all services offered under this Contract. The services list may be updated at any time during the term of this Contract to incorporate changes to the service offering.

5. Contract Administration

DIR and the Reseller will each provide a Contract administrator to support this Contract. Information regarding the Contract administrators will be posted on the Internet web site designated for this Contract.

A. State Contract Administrator

DIR shall provide a Contract administrator whose duties shall include but not be limited to: i) supporting the marketing and management of this Contract, ii) advising DIR of Reseller's

performance under the terms and conditions of this Contract, and iii) periodic verification of product pricing and monthly reports submitted by the Reseller.

B. Reseller Contract Administrator

Reseller shall provide a dedicated Contract administrator whose duties shall include but not be limited to: i) supporting the marketing and management of this Contract, ii) facilitating dispute resolution between the Reseller and a Customer, and iii) advising DIR of Reseller's performance under the terms and conditions of this Contract. DIR reserves the right to require a change in Reseller's then-current contract administrator if the assigned administrator is not, in the opinion of DIR, adequately serving the needs of the State.

6. Geographic Coverage

Reseller shall provide service, sales and support resources to serve Customers at multiple geographic purchasing locations throughout the State of Texas.

7. Pricing

If Reseller offers and makes sales of products and services at a higher rate of discount, based on a quantity of one, from that specified in this Contract, to an eligible DIR Customer, other entity or consortia authorized by Texas law to sell products and services available under this Contract to eligible DIR Customers, then the available discount levels in this Contract shall automatically be adjusted to that higher discount rate. Vendor may respond to any Request for Offer (RFO) from an eligible DIR Customer that may be posted on the Electronic State Business Daily of the Texas Marketplace. Vendor shall first inform the eligible Customer of its ability to procure through this contract prior to submitting a response to the Customer's RFO.

A. Customer Discount

Based on a quantity of one (1), the Customer discount from the Reseller for all Products and Services will be a percentage off the Manufacturer's Suggested Retail Price (MSRP), as listed and set forth in Appendix C, Pricing Index. Customer may negotiate more advantageous pricing for large volume purchases with the Reseller.

DIR intends to enter into an agreement with Cisco Systems, Inc. for statewide discounts. Reseller hereby agrees, upon completion of the agreement between Cisco and DIR, to renegotiate the pricing structure granted to the Customer under this Contract.

B. DIR Administrative fee

The DIR administrative fee specified in Section 10, Reporting and Administrative Fees, shall be included in the Customer Discount set forth herein. The administrative fee shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

C. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be F.O.B. Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

D. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 USC Secs. 4253(i) and (j).

E. Changes to Prices

Reseller may change the price of any product or service at any time, based upon changes to the Manufacturer's Suggested Retail Price, but discount levels shall remain consistent with the discount levels specified within Appendix C, Pricing Index. Price decreases shall take effect automatically during this Contract term and Reseller shall pass all price decreases on to the Customer.

Reseller may make product model changes and add new products or product upgrades at any time and the pricing for the same shall incorporate comparable price discount levels as specified within Appendix C, Product and Pricing Index.

8. Order Processing and Payments

All Customer purchase orders will be placed directly with the Reseller and shall reference Contract Number DIR-VPC-04-025. Accurate purchase orders shall be effective and binding upon Reseller when placed in the mail or electronically transmitted prior to the termination of this Contract period.

Invoices shall be submitted by the Reseller directly to the Customer and shall be issued by the Reseller in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under this Contract and any provision of acceptance of such products and/or services shall be made to the Reseller by the Customer.

Invoices must be timely and accurate. Each invoice must match Customer's order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the order by the Customer.

Customer(s) shall comply with Chapter 2251, Texas Government Code, in making payments to Reseller. Payment under this contract shall not foreclose the right to recover wrongful payments.

9. Internet Access to Contract and Pricing Information

Access by Customers to Contract terms and pricing information shall be made available and posted on the Internet. To that end, upon sixty (60) days from execution of the Contract, Reseller will be required to host the complete Contract product and service offerings, including pricing, at Reseller's Internet site. Internet access to this information will be provided including all subsequent changes to the product and services offerings and pricing during the term of this Contract at no cost to DIR, the State, and Customers.

A. Accurate and Timely Contract Information

Reseller warrants and represents that Contract and related information will be accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-Contract offerings at Reseller's web site. Reseller shall indemnify DIR, the State, and Customers for damages resulting from errors or inaccuracies in such information, or from any failure to maintain or timely post Contract information in accordance with this paragraph.

B. Price Data Retention and Compliance Checks

Periodic Compliance Checks of the information posted for this Contract on Reseller's web site will be conducted by DIR. Upon request by DIR, Reseller shall provide verifiable

documentation that pricing listed upon this site is uniform with the Customer Discount as stated within Appendix C, Product and Pricing Index.

C. Web Site Changes

Reseller hereby consents to a link from the DIR web site to Reseller's web site in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Reseller with subsequent notice of link termination or removal. Reseller shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

D. Use of Access Data Prohibited

If Reseller stores, collects or maintains data electronically as a condition of accessing State Contract information, such data shall only be used internally by Reseller for the purpose of implementing or marketing the State Contract, and shall not be disseminated to third parties or used for other marketing purposes. This Contract constitutes a public document under the laws of the State and Reseller shall not restrict access to the Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

E. Responsibility for Content

Reseller is solely responsible for administration, content, intellectual property rights, and all materials at Reseller's web site. Reseller is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Reseller nor any of the foregoing has any authority to act or speak on behalf of DIR or the State. DIR requires Reseller to list all information on the web site, such as: company name, address, contact information, phone and fax number, email address, State Vendor ID number, and other applicable information as deemed necessary by DIR. Information consistent with the terms of this Contract about payment, shipping, returns, delivery terms and special pricing shall be available. DIR also reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent this Contract.

F. On-line Price Configurator

Reseller may be required to make available an on-line configurator at its Contract web site. Directions and assistance in using the configurator and web site in general must be available at entry. This configurator must enable Customers to: (i) view the options available for the type of product or service requested, (ii) search and find products or services offered under this Contract, and (iii) calculate complete acquisition costs. Customers shall have the option of printing their "shopping cart" choices. For those users who are positioned to use it, Reseller shall make available an option for on-line secure ordering.

10. Reporting and Administrative Fees

Reseller shall be responsible for reporting all products and services purchased under this Contract. The failure to file the monthly reports, subcontract reports, and pay the administrative fees on a timely basis will constitute grounds for suspension or termination of the contract for cause. If Reseller submits three (3) consecutive monthly reports incorrectly, DIR reserves the right to suspend or terminate this contract for cause. Reseller's liability for any breach of this section is limited to the amount of administrative fees owed to DIR by Reseller.

DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Reseller's applicable Contract books.

A. Detailed Monthly Report

Reseller shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under this Contract for the previous month period. Reports shall be submitted to the DIR Go DIRect Coordinator. Reports are due on the fifteenth (15th) day of the close of the previous month period. The monthly report shall include the Reseller's company name, each Customer name, order date, ship date, description, part numbers, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as required by DIR. Each line item sale must contain all information listed above or the report will be rejected and returned to the Reseller for correction.

B. Historically Underutilized Business Subcontract Reports

Reseller shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to this Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

Reports shall be due quarterly in compliance with the following schedule, or as requested by each ordering Customer:
September – November: due by December 5th
December – February: due by March 5th
March – May: due June 5th
June – August: due September 5th

C. DIR Administrative Fee

An administrative fee shall be paid by Reseller to DIR to defray the DIR costs of negotiating, executing, and administering this Contract. All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Reseller. Any change in the administrative fee shall be incorporated in the price to the Customer.

Reseller will pay DIR, on the fifteenth (15th) day of the close of the previous month period, a one percent (1%) administrative fee based on the dollar value of all sales to Customers pursuant to this Contract. Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling $100,000 shall be $1,000.

11. Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given on i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party.

If sent to the State:
Patrick W. Hogan
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Fax: (512) 475-4759
Email: patrick.hogan@dir.state.tx.us

If sent to the Reseller:
Cathi Whelan
Avnet Enterprise Solutions
1321 Rutherford Lane, Suite 200
Austin, Texas 78753
Phone: (512) 691-2043
Fax: (512) 691-9480
Email: cathi.whelan@avnet.com

12. Captions

The captions contained in this Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

13. Choice of Law

The law of the State of Texas shall govern the construction and interpretation of this Contract. Nothing herein shall be construed to waive the state's sovereign immunity.

IN WITNESS WHEREOF, the parties hereby execute their mutual agreement to the terms of this Contract. This agreement shall be executed and shall be a binding Contract between the parties.

Avnet Enterprise Solutions

Authorized By: Jim Peter

Name: Jim Peter

Title: President AES

Date: 9/29/03

The State of Texas, acting by and through the Department of Information Resources

Authorized By: Patrick W. Hogan

Name: **Patrick W. Hogan**

Title: **Director of Business Operations**

Date: 9/22/03

Legal: 8/29/03

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STANDARD CLAUSES FOR TEXAS DIR CONTRACTS

The parties to the attached Contract, amendment or other agreement of any kind (hereinafter, "this Contract") agree to be bound by the following clauses which are hereby made a part of this Contract.

1. **INDEMNIFICATION CLAUSE.** Reseller shall defend, indemnify and hold harmless the State of Texas, its officers, agents, and employees from and against all claims, actions, suits, demands, proceeding, costs, damages and liabilities, including attorneys fees, arising out of, or resulting from any acts or omissions of the Reseller or its agents, employees, subcontractors, or suppliers of subcontractors in the execution or performance of this Contract and any Purchase Order(s) issued under this Contract.

The Reseller shall defend, indemnify and hold harmless the State of Texas, its officers, agents and employees, from any and all claims involving infringement of patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the use of any product or service supplied by the Reseller. Reseller agrees to defend against any and all such claims at Reseller's expense, whether or not such claims become the subject of litigation. DIR will provide reasonable assistance in the defense of such claims if so requested by the Reseller. Reseller agrees to coordinate defense with the Texas Office of Attorney General, as may be requested by DIR.

"Developed Works" means any and all deliverables developed by Avnet for Customer by the performance of Avnet services, and the delivery of products, as specified in a Statement of Work. Reseller will defend, hold harmless and indemnify, including attorney's fees, Customer from claims that that Developed Works (except those Developed Works developed to meet the Customer's specifications) infringe the intellectual property rights of a third party. If such a claim is or is likely to be made, Reseller will, at its own expense, with respect to the Developed Works, exercise the first of the following remedies that is practicable: (i) obtain for the Customer the right to continue to use, sell and license them consistent with this Contract; (ii) modify them so they are non-infringing and in compliance with this Contract; (iii) replace them with non-infringing ones that comply with this Contract; or (iv) at the Customer's request, accept the cancellation of infringing Products and/or Services and the return of infringing Developed Works and refund any amount paid.

2. **NON-ASSIGNMENT CLAUSE.** This Contract shall be entered into and be binding upon the successors of the parties. Reseller may not assign this Contract without the prior written consent of DIR. Any attempt to assign this Contract without the written consent of DIR is null and void.

3. **NO QUANTITY GUARANTEES.** This Contract is not exclusive to the named Reseller. Customers may obtain Information Resources Technologies from other sources during the Contract term. DIR makes no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Information Resources Technologies will be procured through the Contract.

4. **CONFIDENTIALITY CLAUSE.** Reseller acknowledges that DIR is a government agency subject to the Texas Public Information Act. Reseller also acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

Under the terms of this Contract, DIR may provide Reseller with information related to Customers. Reseller shall not re-sell or otherwise distribute or release to any party in any manner, Customer information.

5. **RESELLER CERTIFICATIONS.**
Reseller certifies (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract; (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledges this Contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) it has not received payment from DIR or any of its employees for participating in the preparation of this Contract; (v) it is not ineligible to receive this Contract under § 2155.004, Texas Government Code; (vi) it is in compliance with §618.003, Texas Government Code; (vii) it will comply with §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of this Contract; and (viii) to the best of the Reseller's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting the Reseller, which if determined adversely to the Reseller will have a material adverse effect on the ability of the Reseller to fulfill its obligations under this Contract.

6. **EQUAL OPPORTUNITY COMPLIANCE.**
Reseller agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Reseller agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Reseller under

this Contract. If Reseller is found to be not in compliance with these requirements during the term of this Contract, Reseller agrees to take appropriate steps to correct these deficiencies. Upon request, Reseller will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

7. TECHNOLOGY ACCESS CLAUSE, AS REQUIRED BY §2157.005, TEXAS GOVERNMENT CODE. (Applicable to State Agency Purchases Only) Reseller expressly acknowledges and agrees that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Reseller represents and warrants to DIR and each Customer purchasing products under this Contract that the technology provided hereunder is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology of: (i) providing equivalent access for effective use by both visual and non-visual means; (ii) presenting information, including prompts used for interactive communications, in formats intended for both visual and non-visual use; and (iii) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For the purposes of this section, the phrase "equivalent access means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples, of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical display and customizable display appearance.

8. COMMODITY SOFTWARE. Texas Government Code, §2157.068 requires State agencies to buy commodity software in accordance with contracts developed by DIR, unless the agency obtains a waiver from DIR. Reseller shall agree to coordinate all agency commodity software sales made pursuant to this Contract through existing DIR contracts, if available. Reseller represents it will not license through a signed or unsigned license agreement, volume licensing agreement or an order confirmation, the commodity software to state agencies unless the agency is able to provide a DIR granted waiver that the agency is able to purchase the commodity software outside the DIR Commodity Software contracts. The operating system software and institutions of higher education are not bound to this Code.

9. RECORDS AND AUDIT. The Reseller shall maintain adequate records to establish compliance with this Contract until the later of a period of four years after termination of this Contract or until full, final and unappealable resolution of all audits or litigation issues that arise under this Contract. Such records shall include identification of the procuring Customer, documentation of the Customer's ordering date, Customer Purchase Order number, order date of product or service, ship date or service delivery date, full invoice address, unit price, extended price, invoice number, record of procuring Customer payment and/or balance due, the calculations supporting each administrative fee owed DIR under this Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

Reseller shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of this Contract to DIR, the auditors designated by DIR, including auditors of the State Auditor' Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, auditing and/or copying such books and records. Copies and printouts requested by DIR shall be provided by Reseller without charge. DIR shall provide Reseller ten (10) business days' notice prior to inspecting, auditing, and/or copying Reseller's records. Reseller's records, whether paper or electronic, shall be made available during regular office hours. Reseller's personnel familiar with the Reseller's books and records shall be available to DIR staff and designees as needed. Reseller shall provide adequate office space to DIR staff during the performance of a compliance check or audit.

If any inspection or compliance check performed hereunder reveals an aggregate overcharge to a Customer of .5% or greater, or an aggregate underpayment to DIR of its administrative fee of .5% or greater, then the cost of such compliance check or inspection, including, but not limited to, the salary and associated overhead of DIR staff performing the compliance check or inspection, shall be reimbursed to DIR within thirty (30) days from receipt of an invoice from DIR reflecting the cost of the compliance check or inspection.

For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to the Reseller through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Reseller can demonstrate to DIR's satisfaction that Reseller's calculation of DIR's administrative fee is correct.

Reseller understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Reseller further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Reseller will ensure that this clause concerning the authority to audit funds received indirectly by

subcontractors through Reseller and the requirement to cooperate is included in any subcontract it awards pertaining to this Contract. Reseller will reimburse the State of Texas for all costs associated with enforcing this provision.

10. ABILITY TO CONDUCT BUSINESS IN TEXAS. The Reseller is an entity authorized and validly existing under the laws of its state of organization, and is authorized to do business in the State of Texas. The Reseller is a "Catalog Information Systems Vendor" as defined in §2157.001, Texas Government Code. All products and services offered to Customers under this Contract are listed in Reseller's catalogue on file with the Texas Building and Procurement Commission.

11. QUOTATIONS, WARRANTY, AND RETURN POLICIES. Reseller will adhere to the Manufacturer's and/or Reseller's then-currently published policies concerning quotations, warranties, and return policies related to Products available under this Contract. Warranty and return policies for Customers will not be more restrictive or more costly than those warranty and return policies maintained by the Manufacturer and/or Reseller for other similarly situated Customers for like products or services.

12. INVALID TERM OR CONDITION. If any term or condition of this Contract shall be held invalid or unenforceable, the remainder of this Contract shall not be affected and shall be valid and enforceable.

13. ENFORCEMENT OF CONTRACT AND DISPUTE RESOLUTION. Reseller and DIR agree to the following (i) a party's failure to require strict performance of any provision of this Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision; (ii) applicable to State agency purchases only, for disputes not resolved in the normal course of business, the disputer resolution process provided for in Chapter 2260, Texas Government Code, shall be used; (iii) the laws of the State of Texas shall govern this Contract; (iv) actions or proceedings arising from this Contract shall be heard in a court of competent jurisdiction in Travis County, Texas; and (v) nothing herein shall be construed to waive the State's sovereign immunity.

14. ENTIRETIES. The Contract supercedes all prior agreements, representations or promises, whether oral or written, made by the parties regarding the subject matter of this Contract.

15. MODIFICATION OF CONTRACT TERMS AND/OR AMENDMENTS. The terms and conditions set forth in the Contract shall govern all transactions by Customers under this Contract. The Contract may only be modified or amended upon mutual agreement of DIR and Reseller. Additional Customer terms and conditions, which do not conflict with the contract, may be added by a Purchase Order and given effect. For individual Purchase Orders, however, the Reseller may offer Customers more advantageous pricing and/or payment options than those set forth in the Contract. In such event, Reseller shall furnish a copy of such better offerings to DIR upon request.

16. DIR LOGO. Reseller may use the DIR Go DIRect logo in the promotion of this Contract to Customers with the following stipulations; (i) the logo may not be modified in any way; (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Reseller logo; (iii) the DIR logo is only used to communicate the availability of products and services under this Contract to Customers; and (iv) any other use of the DIR logo requires prior written permission from DIR.

17. RESELLER LOGO. DIR may use the Reseller's name and logo in the promotion of this Contract to communicate the availability of Products under this Contract to Customers. Use of the logo may be on the DIR Web Site or on printed materials. Any use of Reseller's Logo by DIR must comply with and be solely related to the purposes of this Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in this Contract will give DIR any right, title, or interest in or to Reseller's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Reseller.

18. LEASING PROVISION. The parties to this Contract may agree to provisions that allow leasing of Information Resources Technologies in addition to purchase sales.

19. SITE PREPARATION. Customer(s) shall prepare and maintain its site in accordance with written instructions furnished by Reseller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

20. TRADE SHOW PARTICIPATION. Reseller understands and agrees that it must participate by providing a staffed booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by DIR Business Operations Division each calendar year at the Reseller's expense. Reseller must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location of the use of the DIR logo in or on the Reseller's booth.

21. USE OF SUBCONTRACTORS. Reseller may subcontract installation, training, warranty, or maintenance services. However, Reseller shall remain solely responsible for the performance of its obligations under this Contract. If Reseller uses any subcontractors, Reseller shall satisfy DIR that it has complied and maintains compliance with the DIR HUB Subcontracting Plan.

22. FORCE MAJEURE. DIR, Customer, or Reseller may be excused from performance under this contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to

ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties immediately. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Reseller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

23. TERMINATION FOR NON-APPROPRIATION. Customer may terminate Purchase Orders and DIR may terminate this Contract if funds sufficient to pay obligations hereunder are not appropriated by the legislative body on behalf of local governments, or by the Texas legislature on behalf of state agencies. In the event of non-appropriation, Reseller will be provided ten (10) days written notice of intent to terminate.

24. TERMINATION FOR CONVENIENCE. Either party may terminate this Contract, in whole or in part, by giving the other party thirty (30) days written notice. A Customer may terminate a Purchase Order if it is determined by the Customer that Reseller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

25. TERMINATION FOR CAUSE. Either DIR or Reseller may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of this Contract or a Purchase Order arising hereunder. The non-defaulting party shall give the defaulting party thirty (30) days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate this Contract. Customers hereunder have no power to terminate this Contract for default. Customer's rights are exclusively based on their Purchase Order.

26. CUSTOMER RIGHTS UNDER TERMINATION. In the event this Contract expires or is terminated for any reason, a Customer shall retain its rights under the Purchase Order issued with respect to all products or services ordered and accepted prior to the effective termination date.

27. RESELLER RIGHTS UNDER TERMINATION. In the event this Contract expires or is terminated for any reason, a Customer shall pay all amounts due for products or services ordered prior to the effective termination date and ultimately accepted.

28. SURVIVAL. All warranty and/or service agreements that were entered into between Reseller and a Customer under the terms and conditions of this Contract shall survive the termination of this Contract.

29. HANDLING OF WRITTEN COMPLAINTS. In addition to other remedies contained in this Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office
Department of Information Resources
Attn: Public Information Officer
300 W. 15th Street, Suite 1300
Austin, TX 78701
(512) 475-4700, voice
(512) 475-4759, fax

APPENDIX B

HUB SUBCONTRACTING PLAN

Department of Information Resources
HUB SUBCONTRACTING PLAN

Policy on Utilization of Historically Underutilized Businesses

In accordance with Texas Government Code, §§2161.181-182 and Texas Administrative Code (1 TAC) §111.11, state agencies shall make a good faith effort to use Historically Underutilized Businesses (HUBs) in contracts for construction, services, including professional and consulting services, and commodities contracts. The Texas Building and Procurement Commission's (TBPC) HUB Rules, 1 TAC §§111.11-111.28, encourage the use of HUBs by implementing these policies through race, ethnic, and gender-neutral means. The Department of Information Resources (DIR) has adopted the TBPC rules as its own.

The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the goals specified in the State of Texas Disparity Study. Each state agency shall make a good faith effort to meet or exceed the goals identified below and assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year in accordance with the following procurement goals/percentages:

1. 11.9% for heavy construction other than building contracts;
2. 26.1% for all building construction, including general contractors and operative builders' contracts;
3. 57.2% for all special trade construction contracts;
4. 20% for professional services contracts;
5. 33% for all other services contracts;
6. 12.6% for commodities contracts.

It is the policy of DIR to make a good faith effort to achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code, Chapter 2161, Subchapter F, and TBPC's HUB Rules, 1 TAC §111.14.

HUB Subcontracting Plan (HSP) Procedures

The following procedures are specified pursuant to 1 TAC §§111.13 and 111.14:

a. Before proposing to enter into a contract with an expected value of $100,000 or more, and prior to issuing bids, proposals, offers, notices or invitations to negotiate relating to the proposed contract (offering documents), DIR staff responsible for the contract shall determine if it is probable that opportunities exist for HUBs to provide any or all of the services or products to be obtained under the contract.
b. If subcontracting <u>opportunities are not probable</u>, the DIR offering documents will include a statement attesting that DIR has determined subcontracting opportunities are not probable under the proposed contract. The reasons for this determination will be documented and placed in the project file along with a statement signed by the DIR staff responsible for the contract and the DIR HUB Coordinator.
c. If DIR staff determine that HUB subcontracting <u>opportunities are probable</u>, DIR will state such probability exists in the offering documents and shall require that those potential vendors responding to the offering documents submit an HSP (see attachment A for HSP forms). If the potential vendor does not include or does not submit a complete HSP, the potential vendor's response will be considered non-responsive and will be rejected. The HSP submitted by the awarded vendor will become a provision of the contract. A list of

TBPC HUB certified vendors that may perform the subcontracting opportunities is available through the Internet at: http://www.tbpc.state.tx.us/cmbl/cmblhub.html.

HSP Compliance

Once a contract has been awarded, the awarded vendor shall maintain business records documenting its compliance with the HSP and shall submit compliance reports to DIR periodically and in a format required by the contract.

If circumstances necessitate changes to the awarded vendor's HSP, the awarded vendor must notify DIR in writing and must comply with the provisions of 1 TAC §111.14(b) relating to developing and submitting a subcontracting plan before any modifications to the HSP can be considered by DIR. If the awarded vendor subcontracts any of the work under the awarded contract without prior DIR authorization and compliance of 1 TAC §111.14(b), the awarded vendor may be considered in breach of the awarded contract and subject to any remedial actions provided by state law and HUB rules, possibly including termination of the contract.

DIR may audit the electronic and non-electronic records of the awarded vendor to determine contract and HSP compliance.

Attachment A

Department of Information Resources
HUB Subcontracting Plan Forms

Historically Underutilized Businesses
Subcontracting Plan (Form 1)

This form is required as part of the Historically Underutilized Businesses (HUB) Subcontracting Plan. Failure to include this form and the applicable forms specified herein will result in automatic disqualification of your response to the offering document.

Vendor Company Name: Avnet Enterprise Solutions

Vendor Identification Number: 111-189-0605-300

Department of Information Resources Offering Document Number: DIR-MPC-01-003

1. The Department of Information Resources has determined that HUB subcontracting opportunities are probable. Is your company proposing to subcontract any portion of this contract?

   (X) Yes – Complete the following forms:
   Determination of Good Faith Effort (Form 2)
   Solicitation of HUB Subcontractors (Form 3)
   Selected Subcontractors (Form 4)

   What percentage of the proposed work is to be performed by your company? ___

   ( ) No – Complete the Statement of Intent (Form 5)

2. Is your company certified as a HUB by the State of Texas?

   ( ) Yes (X) No

I have read and understand the Department of Information Resources' Policy on Utilization of HUBs.

Christy Kollar
Authorized Representative Name

Vice President Sales, Central Region
Authorized Representative Title

Christy Kollar
Authorized Representative Signature

July 29, 2003
Date

HUB Subcontracting Plan
Determination of Good Faith Effort (Form 2)

Vendor Company Name: Avnet Enterprise Solutions

Department of Information Resources Offering Document Number: DIR-MPC-01-003

The potential vendor must make a good faith effort in development of the HUB Subcontracting Plan. Please provide answers to the questions below and provide necessary documentation to support the answers. The Department of Information Resources may review the supporting documentation to determine if a good faith effort was made in accordance with applicable 1 TAC rules and the contract specifications. If it is determined that a good faith effort was not made, the vendor response to the offering document shall be rejected as a material failure to comply with advertised specifications. The reasons for rejection shall be recorded in the project file.

1. Did your company divide the contract work into reasonable portions in accordance with prudent industry practices? (X) Yes ( ) No

2. Did your company send notices containing adequate information about bonding, insurance, the plans, the specifications, scope of work, and other requirements of the contract to three or more qualified HUBs allowing five working days from receipt of notice for HUBs to participate effectively? (X) Yes ( ) No

3. Did your company advertise the subcontracting opportunities in general circulation, trade association, and/or other minority/women focused media? ( ) Yes (X) No

4. Did your company assist non-certified HUBs to become certified? ( ) Yes (X) No

5. Did your company negotiate in good faith with qualified HUBs, not rejecting qualified HUBs who were the best value responsive bidder? (X) Yes ( ) No

6. Did your company document reasons for rejection or meet with rejected HUBs to discuss the rejection? (X) Yes ( ) No

HUB Subcontracting Plan
Solicitation of HUB Subcontractors (Form 3)

Use a separate form for each subcontract solicited. Identify each HUB to which a notice of solicitation was given. Use continuation pages if necessary.

Vendor Company Name: Avnet Enterprise Solutions

Department of Information Resources Offering Document Number: DIR-MPC-01-003

Brief Description of Work to be Performed: Selling and Processing of orders for Cisco Equipment

Vendor's Estimate of Dollar Value of Subcontract: $20,000

1. Name of HUB Subcontractor/Supplier: Starboard Technology, Inc.

   Address: PO Box 4631, Lago Vista, TX 78645

   Phone: 512.267.6691 Owner(s): Andrea Roach

   If TBPC HUB certified, provide Vendor Identification Number: 1742676066000/79412
   If not TBPC HUB certified, select one of the following:

   __Black American Male __Hispanic American Male __Native American Male
   __Black American Female __Hispanic American Female __Native American Female

   __Asian Pacific American Male __Woman
   __Asian Pacific American Female

2. Name of HUB Subcontractor/Supplier: Floyd Thomas LLC

   Address: 6505 Winterberry Drive, Austin, TX 78750

   Phone: 512.345.7996 Owner(s): Jenifer Floyd

   If TBPC HUB certified, provide Vendor Identification Number: 1743003914300/00842
   If not TBPC HUB certified, select one of the following:

   __Black American Male __Hispanic American Male __Native American Male
   __Black American Female __Hispanic American Female __Native American Female

   __Asian Pacific American Male ✓Woman
   __Asian Pacific American Female

3. Name of HUB Subcontractor/Supplier: Orion Communications, Inc.

   Address: PO Box 140507, Dallas, TX 75214

   Phone: 214.324.9433 Owner(s): Leslie DeLatte

   If TBPC HUB certified, provide Vendor Identification Number: 1752768150000/82746
   If not TBPC HUB certified, select one of the following:

   __Black American Male __Hispanic American Male __Native American Male
   __Black American Female __Hispanic American Female __Native American Female

   __Asian Pacific American Male __Woman
   __Asian Pacific American Female

HUB Subcontracting Plan
Selected Subcontractors (Form 4)

Please submit a separate form for each subcontractor selected for work on the proposed contract.

Vendor Company Name: Avnet Enterprise Solutions

Department of Information Resources Offering Document Number: DIR-MPC-01-003

Vendor's Estimate of Dollar Value of Subcontract: $20,000

Vendor's Estimate of Percentage of the Dollar Value of the Proposed Contract: Less than 10%

Vendor's Estimate of Percentage of the Proposed Work: Less than 10%

Duration of Subcontract: One Year

Name of Subcontractor/Supplier: Starboard Technology, Inc.

Address: PO Box 4631, Lago Vista, TX 78645

Phone: 512.267.6691 Owner(s): Andrea Roach

Is the subcontractor a TBPC certified HUB? (X Yes ( ) No

If yes, provide Vendor Identification Number: 1742676066000/79412

Description of materials/services to be performed under the agreement with the subcontractor for amount indicated above:

Sales, Order Processing and Project Management

APPENDIX C

PRICING INDEX

Avnet Pricing Discounts for Cisco Products and Services

Cisco Hardware Products	38% off of MSRP
SmartNet Services	20% off of MSRP

APPENDIX D

TEXAS MARKET PLACE POSTING
DIR-TMP-03-029

Texas Building And Procurement Commission
Electronic State Business Daily

View Newest Postings

Cisco Products and Services

Agency: DEPARTMENT OF INFORMATION RESOURCES

Open Date: 07/16/03 03:00 PM **Agency Requisition Number:** DIR-TMP-03-029
Previous Price Paid: N/A
Bid type: 21 Days for bid notice or proposal solicitation package
NIGP Commodity Code(s):

Class-Item: 204 - 64

Class-Item: 208 - 90

Class-Item: 920 - 37

Contact Information:

Contact Name:	Cathy Harris
Email:	Cathy.Harris@DIR.State.TX.US
Address:	300 W 15 Ste 1300 Austin, TX 78701 PO Box 13564 Austin, TX 78711-3564
Phone:	(512) 463-6256
Fax:	(512) 475-4759

NOTE: You will need to download all of the following files below for complete bid specifications.
Help: Right Click to and choose "save file as" or "save target as" to your computer. More Help
Must be QISV - QISV.txt size: 708 (in bytes) Format: (ASCII Plain Text)
HUB Subcontract - HUB FORMS.doc size: 37888 (in bytes) Format: Word for Windows 97
-**Bid Package 1** size: 370176 (in bytes) Type: Bid Specification Format: Word for Windows 97
-**Bid Package 2** size: 15872 (in bytes) Type: Bid Specification Format: Excel for Windows 97

Details:

****NOTICE****PLEASE NOTE THAT THERE HAS BEEN A MODIFICATION TO THIS ITN. PLEASE TAKE THE TIME TO READ BID PACKAGE 1 IN ITS ENTIRETY.
****NOTICE****THE BID OPENING DATE HAS BEEN EXTENDED THROUGH JULY 16th, 2003, 3:00 p.m. The State of Texas, acting by and through the Department of Information Resources, is seeking to enter into contracts with one or more Qualified Information Systems Vendors(QISV) to provide CISCO products and services as listed within this ITN. The following Invitation to Negotiate (ITN) is for the purchase of the CISCO product lines. For a vendor to receive an award from this offer, they must be on the Texas Building and Procurement Commission (TBPC) Centralized Master Bidders List (CMBL) and QISV approved. All vendors supplying associated products lines are encouraged to respond to this ITN. Contracts will be two (2) year contracts with options to renew. Comparable manufacturer product lines will not be accepted. This ITN is limited to new CISCO products.

Rebuilt/refurbished products will not be considered. Please note: If the potential vendor does not include or does not submit all required contents requested for this ITN, the potential vendor's response may be considered non-responsive and may be rejected.

Upload Date: 2003-06-17 12:23:06 Updated date: 2003-06-27 08:33:46