



# Department of Purchasing and Contracting NON-COMPETITIVE PROCUREMENT REQUEST FORM

Marketa H. Killingbeck

Digitally signed by Marketa H. Killingbeck  
DN: cn=Marketa H. Killingbeck, o=DeKalb  
County Government, ou=Watershed  
Management,  
email=mkillingbeck@dekalbcountyga.gov,  
c=US  
Date: 2020.10.22 12:12:30 -0400

Requesting Department: Watershed Management Snapfinger

Department Contact Person: Malcolm Whichard Telephone: 770 808-2911

Email: mawhichard@dekalbcountyga.gov

Requisition Number: 898330 Suggested Supplier: Endress & Hauser

Estimated Amount of Purchase: \$ 1,125,000.00

Detailed Description of the Goods or Services to be purchased: This req is to acquire parts and services for system at the Snapfinger, Pole Bridge & Scott Candler plants.

**Emergency** (For Emergency Requests, Please check this box and answer **all** questions below.)

1. Date and Time of Emergency Occurrence: \_\_\_\_\_

2. Please state the nature of the emergency posing a risk to public health, welfare, safety or resources:

\_\_\_\_\_

3. State how the Estimated Amount was determined to be Fair and Reasonable (attach supporting documentation):

\_\_\_\_\_

**Sole Source** (Please check box and answer all of the following completely.)

1. Provide an explanation why the product, service or supplier requested is the only method that can satisfy the requirements. Please explain why alternatives are unacceptable. Be specific with regard to specification, features, characteristics, requirements, capabilities and compatibility. (Attach additional documents, if necessary):

Carotek is the sole distributor in the region for parts and service from Endress & Hauser. The vast majority of flowmeters between the 3 plants are of the Endress & Hauser brand.

2. Will this purchase obligate us to a particular vendor for future purchases? (Either in terms of maintenance that only this vendor will be able to perform and/or if we purchase this item, will we need more "like" items in the future to match this one?) Explain in detail.

Yes. We will need to go with Carotek for these purchases in the future. They are a sole distributor for E&H.

3. Explain the impact to the County or Public if this request is not approved.

Flowmeters are used to monitor, adjust, & control the flow of liquids or gas throughout the plants. Without these units we would be unable to control the flow of fresh/waste water & chemicals at the plants & thus make us vulnerable to spill & violating consent decree with the EPD & EPA.

I hereby request that this non-competitive procurement request be approved for the purchase of the above stated work, material, equipment, commodity, or service.

Department Director (Typed/Printed Name) Reginald Wells Signature: Reginald Wells Digitally signed by Reginald Wells  
Date: 2020.10.22 12:42:41 -0400 Date: 10/22/21

**Do Not Write Below – for the Department of Purchasing and Contracting Use Only**

Procurement Agent (Typed/Printed Name) Sophia Thomas Signature: Sophia Thomas Digitally signed by Sophia Thomas  
Date: 2021.01.21 13:26:44 -0500 Date: 01/21/21

Procurement Manager (Typed/Printed Name) Crystal Creekmore Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Approved  Not Approved

Signature: \_\_\_\_\_, Director, Department of Purchasing and Contracting Date: \_\_\_\_\_

## Public Notice of Proposed Award of Sole Source Procurement

### Section A – Description of Proposed Sole Source Procurement

**Description of Supplies/Services:** Multi-year purchase agreement for products and services provided by Carotek for the Snapfinger, Pole Bridge, and Scott Candler Wastewater Treatment Plants for the Department of Watershed Management (DWM).

**Demonstration of Contractor’s Unique Qualifications:** Carotek, Inc. is the authorized representative and service provider for Endress+Hauser for the state of Georgia. Endress+Hauser USA is the sole exclusive authorized sales representative in the USA. Carotek, Inc. has an exclusive representative agreement with Endress+Hauser for coverage of municipal and industrial accounts for the state of Georgia.

### Section B – To Be Completed by the Department of Purchasing and Contracting

#### Market Survey Results

**Date Public Notice posted on website:** December 4, 2020

**Date Public Notice closed:** December 10, 2020

#### Review of Offers

**Were any offers received (Yes/No):** No

**Number of offers received:** 0

**Responders:** None

#### **Purchasing Agent review and recommendation:**

Endress+Hauser is a leading supplier of products, solutions and services for industrial process measurement and automation. Endress+Hauser sell proprietary parts that require trained and certified technicians to provide on-site services. Carotek, Inc. is the authorized representative and service provider for Endress+Hauser for the state of Georgia. The Department of Watershed Management (DWM) would like to establish a multi-year purchase agreement for products and services provided by Carotek for the Snapfinger, Pole Bridge, and Scott Candler Wastewater Treatment Plants that will expire in February 2024. This agreement will provide vital parts for numerous Endress+Hauser flowmeter systems. Flowmeters are used to monitor, adjust, and control the flow of liquids or gas throughout the plants.

The Law Department reviewed the terms and conditions provided by Carotek. Law recommended for Carotek to strike provisions 11, North Carolina law governs, and 12, indemnification and limit of liability. In October 2020, Endress+Hauser and the Law Department agreed to remove the indemnification and limitation of liability language within Endress+Hauser’s terms and conditions for a previous sole source. Carotek informed Purchasing that since the quote is for Endress+Hauser products and services, Carotek will use the terms previously agreed upon between Endress+Hauser and Law.

It is my recommendation to approve this request because without this agreement DWM would be unable to control the flow of fresh water, wastewater, and chemicals at the plants. This will make DWM vulnerable to spills thus violating the consent decree with the Environmental Protection Division (EPD) and Environmental Protection Agency (EPA). Endress+Hauser started doing business with DeKalb County in 2004. The total amount spent with Endress+Hauser is \$1,315,211.50. Carotek, Inc. started doing business with DeKalb County in 2017. The total amount spent with Carotek, Inc. is \$6,299.20. Agenda item 2021-2063 for this sole source is expected to go to the Board of Commissioners on February 23, 2021.

- | <b>Endress+Hauser</b> | <b>Carotek, Inc.</b> |
|-----------------------|----------------------|
| • 2004 - \$4,702.10   | • 2017 - \$6,299.20  |
| • 2005 - \$32,719.32  | • 2018 - \$0         |
| • 2006 - \$15,055.00  | • 2019 - \$0         |
| • 2007 - \$35,816.00  | • 2020 - \$0         |
| • 2008 - \$179,270.57 | • 2021 - \$0         |
| • 2009 - \$49,677.99  |                      |
| • 2010 - \$76,885.18  |                      |
| • 2011 - \$72,712.35  |                      |
| • 2012 - \$76,575.55  |                      |
| • 2013 - \$118,048.17 |                      |
| • 2014 - \$89,949.16  |                      |
| • 2015 - \$92,773.91  |                      |
| • 2016 - \$66,031.96  |                      |
| • 2017 - \$41,756.64  |                      |
| • 2018 - \$234,364.49 |                      |
| • 2019 - \$0          |                      |
| • 2020 - \$111,816.11 |                      |
| • 2021 - \$17,057.00  |                      |

**Sophia Thomas** Digitally signed by Sophia Thomas  
Date: 2021.01.26 13:59:41 -05'00'

1/26/21

\_\_\_\_\_  
Agent Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Procurement Manager Signature

\_\_\_\_\_  
Date

**Recipient** **County of Dekalb**  
 Attn: Malcolm Whichard  
 Quote Number: 28-68-30019096

**Contact**  
 Robbie Wilson  
 Regional Sales Manager  
 Phone 812-212-1852  
 robbie.wilson@us.endress.com

**For information** **E+H Products & Service Annual Purchase Agreement**  
 \*Snapfinger Plant w/ 2 One Year Options  
 \*Scott Chandler Water Treatment Plant w/ 2 One Year Options  
 \*Pole Bridge Creek Advanced Wastewater Facility w/ 2 One Year Options

Jim Bachmann  
 Account Manager  
 Phone 404-314-0999  
 Jim.Bachmann@carotek.com

Greenwood, IN, January 14, 2021

**Endress+Hauser Products & Service Annual Purchase Agreement**

Attached is the proposed Products & Service Annual Purchase Agreement proposal for the County of Dekalb. Terms and Conditions, as negotiated between E+H Legal (Krista Taggart) and the County of Dekalb, will apply.

Quantity	Sales Price	Total Price	Description
3	\$ 150,000.00	<b>\$ 450,000.00</b>	Endress+Hauser Products & Service Annual Purchase Agreement for Snapfinger Plant w/ 2 One Year Options
3	\$ 150,000.00	<b>\$ 450,000.00</b>	Endress+Hauser Products & Service Annual Purchase Agreement for Scott Chandler Water Treatment Plant w/ 2 One Year Options
3	\$ 75,000.00	<b>\$ 225,000.00</b>	Endress+Hauser Products & Service Annual Purchase Agreement for Pole Bridge Creek Advanced Wastewater Facility w/ 2 One Year Options
		<b>\$1,125,000.00</b>	

Thank you for the opportunity to put this proposal together, and we look forward to continuing the partnership with the County of Dekalb.

Sincerely,  
 Robbie Wilson

Regional Sales Manager-Southeast  
[Robbie.wilson@endress.com](mailto:Robbie.wilson@endress.com)

Endress+Hauser, Inc., Charlotte, North Carolina, USA

DeKalb County  
1300 Commerce Drive  
Decatur, GA 30030  
Attention: Purchasing and Contracting

**Contact**

Mark Schwanekamp  
Sales  
Telephone 704.969.7984  
mark.schwanekamp@us.endress.com

Charlotte, September 29, 2020

**Endress+Hauser Representatives**

To Whom it may concern,

Endress+Hauser USA uses sole exclusive authorized sales representation in the USA. Carotek, Inc. is the sole authorized Endress+Hauser representative in the state of Georgia. They hold an exclusive representative agreement with Endress+Hauser for coverage of municipal and industrial accounts in the above territory.

Carotek, Inc. is also the Endress+Hauser authorized service provider for the state of Georgia. They have been factory trained and certified to provide on-site service for Endress+Hauser products.

Please address purchase orders to Endress+Hauser c/o Carotek. This letter is valid for 1 (one) year through September 29, 2021.

Regards,



Mark Schwanekamp

Inside Sales Manager  
Southeast Regional Center  
P: 704.969.7984

**Endress+Hauser, Inc.**  
13900 South Lakes Drive, Suite A  
Charlotte, NC 28273  
USA

Sales: 888-ENDRESS  
Service: (800) 642-8737  
www.us.endress.com

**From:** [Bachmann, Jim](#)  
**To:** [Thomas, Sophia D.](#)  
**Subject:** RE: Endress + Hauser Quotation #28-68-30019096  
**Date:** Friday, January 15, 2021 11:09:45 AM  
**Attachments:** [image001.png](#)  
[image008.png](#)  
[image009.png](#)  
[image010.png](#)  
[image011.png](#)  
[image013.png](#)  
[image014.png](#)

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Sophia,

This quote would be for Endress + Hauser products and services, and therefore the terms would be as was agreed to from Endress + Hauser in a previous email from their legal department.

The orders would be placed on Endress+Hauser c/o Carotek, Inc. or Endress+Hauser. Purchase order terms would be with Endress+Hauser and not Carotek.

In the meantime, if you have any questions, you may reach me via email or my cell at 404-314-0999.

Regards,

**Jim Bachmann** | Account Manager | Carotek  
E: [jim.bachmann@carotek.com](mailto:jim.bachmann@carotek.com)  
O: 770-635-3100 | M: 404-314-0999  
2150 New Market Pkwy, Suite 100 | Marietta, GA 30067



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[Carotek COVID-19 Status](#)

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**From:** Thomas, Sophia D. <sdthomas@dekalbcountyga.gov>  
**Sent:** Friday, January 15, 2021 10:59 AM  
**To:** Bachmann, Jim <jim.bachmann@carotek.com>  
**Subject:** RE: Endress + Hauser Quotation #28-68-30019096

Thank you. For clarification, does Carotek want to use DeKalb's purchase order terms instead?

**\*\*Working Remotely – Please contact via Email \*\***

**From:** [Krista Taggart](#)  
**To:** [Thomas, Sophia D.](#)  
**Cc:** [Mark Schwaneckamp](#); [Marisol Sanchez](#)  
**Subject:** RE: New Sole Sources with Endress+Hauser  
**Date:** Friday, December 11, 2020 4:05:22 PM  
**Attachments:** [image003.png](#)  
[image004.png](#)

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**\*\* WARNING:** The sender of this email could not be validated and may not match the person in the "From" field. \*\*

Hi Sophia,

Is the contract with Endress or Carotek? Endress will honor its decision with respect to indemnification/limitation of liability for DeKalb County. If the contract is with Carotek, I cannot bind them and they would need to weigh in.

Best regards

Krista Taggart

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Corporate Counsel | Legal

**Endress+Hauser USA**

Endress+Hauser Inc. | 2350 Endress Place | Greenwood, IN 46143 | United States  
Phone: +1 317 535 1331 | Mobile: +1 317 619 9842  
[krista.taggart@endress.com](mailto:krista.taggart@endress.com) | [www.us.endress.com](http://www.us.endress.com)

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Endress+Hauser cares about data privacy and data security. Please visit our [Data Protection Policy](#) to learn how we collect, use, and protect data.

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Disclaimer:

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential, proprietary, and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you receive this in error, please contact the sender and delete the material from any computer.

This e-mail does not constitute a contract offer, a contract amendment, or an acceptance of a contract offer unless explicitly and conspicuously designated or stated as such.

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**From:** Thomas, Sophia D. <[sdthomas@dekalbcountyga.gov](mailto:sdthomas@dekalbcountyga.gov)>  
**Sent:** Monday, December 7, 2020 11:31 AM  
**To:** Krista Taggart <[krista.taggart@endress.com](mailto:krista.taggart@endress.com)>

**Cc:** Mark Schwanekamp <mark.schwanekamp@endress.com>; Marisol Sanchez <marisol.sanchez@endress.com>

**Subject:** New Sole Sources with Endress+Hauser

Hello All,

I am working on new sole sources with Endress+Hauser/Carotek, Inc. for On-site Calibration Flow and Products & Service Annual Purchase Agreements for three water treatment plants. Regarding Endress+Hauser's terms, will the decision on a prior sole source be acceptable for the on-site calibration quote? For your convenience, both quotes are attached and the previous terms decision is provided below. The Law Department will review Carotek's terms and conditions.

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**Sophia Thomas | Procurement Technician**

DeKalb County Government | Purchasing & Contracting Department

1300 Commerce Drive, 2<sup>nd</sup> Floor | Decatur, GA | 30030

Office: (404) 371-2936

[sdthomas@dekalbcountyga.gov](mailto:sdthomas@dekalbcountyga.gov) | [www.dekalbcountyga.gov](http://www.dekalbcountyga.gov)

Productivity, Accountability, Customer Service, Teamwork



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**From:** Krista Taggart <[krista.taggart@endress.com](mailto:krista.taggart@endress.com)>

**Sent:** Monday, October 26, 2020 11:27 AM

**To:** Thomas, Sophia D. <[sdthomas@dekalbcountyga.gov](mailto:sdthomas@dekalbcountyga.gov)>

**Cc:** Mark Schwanekamp <[mark.schwanekamp@endress.com](mailto:mark.schwanekamp@endress.com)>; Marisol Sanchez <[marisol.sanchez@endress.com](mailto:marisol.sanchez@endress.com)>

**Subject:** RE: DeKalb County Legal Terms Question - Follow-up

Good day Ms. Thomas,

Based on Georgia law with respect to governmental units, we will agree to remove the indemnification language and the limitation of liability. Please let me know if you need any further. Thank you!

Best regards

Krista Taggart

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Corporate Counsel | Legal

**Endress+Hauser USA**

Endress+Hauser Inc. | 2350 Endress Place | Greenwood, IN 46143 | United States

Phone: +1 317 535 1331 | Mobile: +1 317 619 9842

[krista.taggart@endress.com](mailto:krista.taggart@endress.com) | [www.us.endress.com](http://www.us.endress.com)

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**From:** [Priest-Goodsett, Noah W.](#)  
**To:** [Myers, Charlotte P.](#); [Thomas, Sophia D.](#)  
**Cc:** [Jones, John E.](#); [Odum, Chandria A.](#); [Welch, Matthew C.](#)  
**Subject:** Review of terms and conditions  
**Date:** Friday, December 18, 2020 11:05:16 AM  
**Attachments:** [Review of Terms and Conditions.pdf](#)  
[Review of Terms and Conditions - Carotek.pdf](#)  
[image002.png](#)

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Sophia,

I have initially reviewed the T&Cs, please find my comments below:

#### **~~Trane HVAC Inspection/Repair Candler WTP~~**

~~Recommendation: Request Strike of Provision 11 and 12 (indemnity and limit of liability). The vendor should strike the indemnification and limit of liability provisions. If they request the legal basis for the request to strike:~~

~~CSX vs. Garden City, 279 Ga. 655 (2005); CSX v. Garden City, 277 Ga. 248 (2003) (that a County may not enter into an indemnification or limitation of liability agreement); Ga. Const. 1983, Art. III, Sec. VI, Par. VI (a). (clause prohibits state entities from granting any donation or gratuity (gift) to a third party or forgiving any debt or obligation owed to the public. The gratuities prohibition states in pertinent part: "the General Assembly shall not have the power to grant any donation or gratuity. . . .").~~

~~If they refuse, we can add "To the extent allowed by Georgia law" to those provisions if the department wants to make that business decision.~~

#### **Carotek Services at WTPs**

Recommendation: Request Strike of Provision 12. The vendor should strike the indemnification and limit of liability provisions. If they request the legal basis for the request to strike:

CSX vs. Garden City, 279 Ga. 655 (2005); CSX v. Garden City, 277 Ga. 248 (2003) (that a County may not enter into an indemnification or limitation of liability agreement); Ga. Const. 1983, Art. III, Sec. VI, Par. VI (a). (clause prohibits state entities from granting any donation or gratuity (gift) to a third party or forgiving any debt or obligation owed to the public. The gratuities prohibition states in pertinent part: "the General Assembly shall not have the power to grant any donation or gratuity. . . .").

If they refuse, we can add "To the extent allowed by Georgia law" to that provision if the department wants to make that business decision.

I also don't like that in provision 11 of the agreement that North Carolina law governs, so request to strike that too, but it can be approved if they refuse.

Best,

Noah

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**ENDRESS+HAUSER, INC. GENERAL TERMS AND CONDITIONS OF SALE**

1. **Acceptance.** The Buyer's purchase order ("Order") constitutes an offer by Buyer to purchase Goods and/or Services in accordance with these Terms and Conditions. The Order shall be deemed to be accepted when Seller issues written acceptance of the Order at which point and on which date the Agreement shall come into existence. Any quotation given by the Seller shall not constitute an offer. It is only valid for a period of 30 days from the date of issue unless the Seller agrees in writing to extend that period.

2. **Buyer's Assent.** Shipment by Seller and acceptance by Buyer of, or payment for all or any part of the Goods (as defined below) and/or Services (as defined below) covered by the Order shall constitute Buyer's assent to all of the Terms herein. Prior to acceptance of Goods and Services by Buyer, Seller may withdraw or modify its conditional acceptance of the Order.

3. **Complete Agreement.** The Agreement along with these Terms (collectively referred to herein as the "Agreement") constitutes the entire agreement between the parties and supersedes all prior agreements with respect to the Goods and Services whether such agreements were written or oral. These Terms apply to the Agreement to the exclusion of any other terms that Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. These Terms are also available online at [www.us.endress.com](http://www.us.endress.com). Seller may amend these Terms at any time at its discretion. These Terms shall apply to the supply of both Goods and Services except where application to one or the other is specified. Special terms may apply in respect of software support services and/or other specific services as agreed between the parties.

4. **Modification.** No modification, amendment, extension, renewal, rescission, discharge, abandonment, waiver or other change or alteration shall be valid, enforceable or binding on Seller unless agreed to in writing by Seller. Seller shall not be bound by any additional or different terms, whether printed or otherwise, in the Order or any other communication from Buyer to Seller unless specifically agreed to by Seller in writing. Prior courses of dealing, usage of the trade, and verbal agreements not reduced to writing and signed by Seller, to the extent that they modify, add to, or detract from the Agreement, shall not be binding on the Seller. Seller may, at its option, treat any attempted modification, termination or repudiation by Buyer to which Seller does not assent as a breach of the entire Agreement and claim all proper damages.

5. **Termination.** If all or part of the Agreement is terminated by agreement of the parties, and if there is no contrary written agreement between Seller and Buyer, Buyer shall pay termination charges in the amount equal to the greater of (I) ten (10) percent of the net sales price or (II) (a) the price provided in the Order for all Goods assembled and Services performed prior to the agreement by Seller to terminate, plus (b) the actual expenditures made and liabilities incurred by Seller in connection with any portion of the Goods and Services not yet completed (as evidenced in writing), plus (c) reasonable estimated profit on the not yet completed portion of the Goods and Services.

6. **Price, Payment Terms, and Security Interest.** The price for Goods shall be the price set out in the Order confirmation. The price of the Goods is exclusive of all costs and charges of packaging, insurance, and transport of the Goods. The charges for Services shall be on a time and materials basis and shall be calculated in accordance with Seller's standard daily fee rates and service rate schedule, which is available upon request. The price for Goods and Services are collectively hereinafter also referred to as the "Prices". Seller's Prices may be subject to change and are subject to Seller's standard annual price increases. Seller will notify Buyer of any Price increase.

Unless provided otherwise on the face of this Agreement, Buyer shall pay the purchase price for the Goods and Services in full within 30 days from date of shipment. Buyer shall pay all amounts due under this Agreement in full without any set-off, counterclaim, deduction, or withholding except as required by law. Seller may, without limiting its other rights or remedies, set off any amount owing to it by Buyer against any amount payable by Seller to Buyer. All invoices not paid when due will thereafter be subject to a monthly service charge of one and a half percent (1½%) of the unpaid balance. If, in Seller's opinion, there is a material, adverse change in Buyer's financial condition or if Buyer has not, within the agreed time, fully paid for Goods shipped and Services performed under this or any other agreement with Seller, Seller reserves the right to revoke Buyer's credit, to require shipment of Goods C.O.D., and/or suspend performance on this and/or other agreements and/or future shipments. Buyer hereby grants Seller a purchase money security interest in the Goods until the full purchase price is paid, and Buyers appoints Seller as its attorney-in-fact for the purpose of filing any documents necessary or desirable to perfect such security interest in any applicable jurisdiction.

7. **Services.** In the event services are also provided to Buyer by Seller (including, but not limited to the licensing of software), Seller will provide services ("Services") to Buyer in accordance with the Buyer's service specifications and these Terms. However, Seller shall not be obligated to perform Services as a result of malfunctions of the Goods caused by: (a) the deliberate or negligent acts of persons other than the Seller; (b) inadequate facilities of Buyer; (c) systems or equipment outside Seller's control (such as those provided by vendors of utilities), and (d) modifications to the Goods made by a party other than the Seller. Seller shall have the right to make any changes to the Services that are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Seller shall notify the Buyer in any such event.

Buyer shall provide Seller with reasonable access to its premises as necessary for Seller to perform the Services. At all times Seller's personnel will comply with Buyer's safety and security precautions, procedures, and guidelines. Seller will immediately inform Buyer of any injury or accident occurring on Buyer's premises involving Seller's personnel. Seller will provide Services in a manner as to minimize interference with Buyer's operations. Buyer shall cooperate with the Seller in all matters relating to the Services and provide the Seller with such information and materials as the Seller may reasonably require to supply the Services, and ensure that such information is accurate in all material respects. Seller shall have the right to rely on information and materials provided by Buyer and

Seller shall not be liable for Services performed, provided that such Services are provided in accordance with Buyer's specifications. Buyer shall obtain and maintain all necessary licenses, permissions and consents which may be required for the Services to be performed prior to the date on which the Services are to start, and keep and maintain all materials, equipment, documents and other property of the Seller ("Seller Materials") at the Buyer's premises in safe custody at its own risk, and in good condition until returned to the Supplier, and not dispose of or use the Seller Materials other than in accordance with the Seller's written instructions or authorization.

**8. Delivery/Shipment.** Seller shall deliver the Goods to the location as set out in the Order Confirmation (Delivery Location) and in accordance with the INCOTERM referred to in the Order Confirmation (in the absence of written agreement to the contrary) and shall be deemed complete pursuant to the agreed upon delivery terms. If no terms are specified, the delivery terms shall be DAP (Incoterms 2010) Named Place. Buyer shall pay all shipping, packing and handling costs and shall bear the risk of loss after Seller completes delivery of the Goods to the carrier. Buyer shall have five (5) days after any full or partial delivery to notify Seller if Buyer's count of delivered Goods does not comport with Seller's count as identified in the itemized packing list accompanying the shipment.

**9. Title.** Title to the Goods shall transfer to the Buyer upon delivery of the Goods to the carrier at the shipping point.

**10. Sales or Use Taxes.** In compliance with various state sales tax statutes and regulations, Seller will add sales tax to the sale of a taxable order unless Buyer provides documentation that is complete, legally acceptable in form, and valid in accordance with applicable laws and regulations of the state that has jurisdiction over the sales transaction. The jurisdiction state shall be the state into which the delivery of tangible personal property or digital property was transported, where the performance of services occurred, or the state from which there was a foreign export of tangible personal property or digital property, which is issued by Buyer and accepted by Seller, *unless* Buyer provides Seller legally acceptable proof of a direct pay permit and/or a tax exempt certificate, as applicable, owned by Buyer and issued by the state which has jurisdiction over the transaction. Buyer shall be held liable to Seller for monies due for sales tax if a subsequent tax audit determines that Buyer provided incomplete or invalid documentation, unless Buyer provides additional documentation to correct any deficiencies in the original documentation in accordance with applicable state laws and regulations and audit requirements.

**11. Time of Delivery.** Shipment and Service schedules are approximate and are based on conditions existing at the time of execution of the Agreement. Seller shall attempt to effect delivery or performance of Services in good faith by the date specified on the Order. Buyer agrees that Seller shall not be responsible or liable for any damages, including but not limited to, special or consequential damages, arising from any shipment of nonconforming Goods, or any delay in delivery of Goods or performance of Services, or any failure to deliver Goods in quantities and at times specified. In such cases, Seller reserves the right to terminate the Agreement or to reschedule delivery within a reasonable time, and Buyer agrees that such termination or rescheduling shall not be considered a breach of the Agreement. In no event shall Seller be liable for incidental or consequential damages resulting from failure to meet requested delivery schedules. Goods and Services shall be deemed accepted when received by Buyer or upon completion of Services, respectively. Buyer's revocation of acceptance, if any, must be made in writing within fifteen (15) business days after receipt of the Goods or completion of the Services. The writing must specify Buyer's reason for revocation of acceptance. The terms of this section do not limit or affect Buyer's rights or Seller's warranty obligations specified hereunder.

**12. Returns.** Except for the return of nonconforming and defective Goods, all returns of Goods shall be made in strict compliance with Seller's Return Policy as may be in effect from time to time, a written copy of which is available to Buyer upon request.

**13. Storage Fees.** If Buyer requests deferral of shipment, or fails to provide information, material or documentation required by this Agreement and as a result Goods are placed in storage, storage fees will commence immediately following the scheduled ship date unless extended in writing. The Buyer will be charged a storage fee equal to Seller's actual cost to store the Goods. These charges will be invoiced to Buyer separately from the actual shipment and shall be paid in full by Buyer within thirty (30) days of date of invoice.

**14. Specifications.** Goods and Services shall be deemed to be in conformity herewith if they conform to the specifications provided by Buyer. In the event ambiguities, discrepancies, or express conflicts exist between the specifications and any other item purporting to describe or define the Goods or Services, including but not limited to drawings, photographs, models or other documentation, the specifications shall control unless otherwise agreed to in writing by Seller. Buyer agrees that Seller shall have no responsibility to identify or notify Buyer of any such ambiguity, discrepancy, or conflict. Seller reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

**15. Nonconforming Goods.** Seller reserves the right to cure any shipment of nonconforming Goods. At the option of Seller, Buyer's remedies for nonconforming Goods shall be limited to the repair or replacement of the nonconforming Goods, and if repair or replacement is not possible, return of the nonconforming Goods and repayment of any portion of the purchase price paid.

**16. Seller's Express Warranty.** Seller warrants the Goods to meet the specifications provided in the Order and to be free from defects in materials and workmanship under normal use and service for a period of one year from time of shipment. Seller further warrants that for a period of one year from time of completion of Services, Services will conform to the specifications set forth in the Order and that Seller will perform Services in a professional and workmanlike manner in accordance with all applicable laws and regulations. Buyer agrees that it has the sole responsibility for the proper selection application, installation, use and instructions (concerning use, application, periodic maintenance, and cautions of the Goods) to ultimate users of the Goods and Services. Buyer agrees that the warranty provided herein shall not apply to any Goods or Services which: (1) have been repaired or altered outside of Seller's factory in any way so as, in Seller's judgment, to affect such Goods' or Services' reliability; (2) have been subject to misuse, negligence, or accident; (3) have been operated other than in accordance with the printed instructions prepared by Seller and provided by Seller with the Goods or Services; or (4) have been subject to abnormal wear of wetted parts caused by Buyer's application of the

Goods. Furthermore, Buyer acknowledges that repairs performed by Buyer or others are not warranted by Seller, and that third party equipment shall be subject to the warranties provided therewith.

**17. Seller's Exclusive Obligations under Warranty.** Seller shall re-perform, at Seller's sole cost and expense, any Services which do not comply with the applicable warranties specified hereof. At Seller's option, Seller may repair, replace, or refund the purchase price of Goods. Goods shall be returned to Seller no later than one month after the expiration of the applicable warranty period and in the manner set forth in this clause and in a manner in which Seller's examination shall disclose to Seller's satisfaction that Goods are defective as specified in the warranty clause hereof. All allegedly defective Goods shall be returned to the Seller at Buyer's expense and risk. All such defective or nonconforming Goods shall be returned to Seller at Greenwood, Indiana, freight prepaid, unless otherwise agreed by the parties in writing, and shall be accompanied or preceded by a particularized statement of the claimed defect. Under such circumstances, freight charges to and from Seller and risk of loss shall be borne by Buyer. Seller shall bear the cost of repair or replacement and the risk of loss while the Goods are in Seller's possession at Seller's plant. If Goods are returned without being preceded or accompanied by a written statement of the claimed defect, Seller shall hold the Goods pending receipt of Buyer's statement of defect, provided that, prior to such receipt, risk of loss of the Goods shall remain with the Buyer.

~~18. **Limitation of Remedies.** SELLER'S OPTION TO REPAIR, REPLACE OR REFUND THE PURCHASE PRICE FOR GOODS OR RE-PERFORM SERVICES IS BUYER'S EXCLUSIVE REMEDY AGAINST SELLER WHETHER SUCH REMEDY ARISES OUT OF BUYER'S CLAIM FOR BREACH OF WARRANTY, BREACH OF CONTRACT OR ANY OTHER CLAIM WITH RESPECT TO THE GOODS AND SERVICES AND SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES. THE PARTIES AGREE THAT CONSEQUENTIAL DAMAGES FOR PURPOSES OF THIS AGREEMENT REPRESENT ANY DAMAGES OTHER THAN THE COST TO REPAIR, REPLACE OR REFUND THE PURCHASE PRICE OF THE GOODS WITH RESPECT TO WHICH THE LOSS OCCURRED.~~

**19. Seller's Disclaimer of Implied Warranties.** SELLER'S EXPRESS WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, AND SELLER HEREBY DISCLAIMS ANY OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER AGREES THAT MODELS OR SAMPLES SHOWN TO BUYER, IF ANY, WERE USED MERELY TO ILLUSTRATE THE GOODS AND NOT TO REPRESENT, PROMISE, OR GUARANTEE THAT ANY GOODS DELIVERED HEREUNDER WOULD CONFORM TO SUCH MODELS OR SAMPLES. SELLER'S AGENTS HAVE NO AUTHORITY TO GIVE WARRANTIES BEYOND THOSE PROVIDED IN THIS LIMITED EXPRESS WARRANTY.

~~20. **Indemnification.** Buyer agrees to indemnify and hold harmless Seller against all damages, costs, expenses and attorney's fees arising from violation of any applicable laws or regulations and claims of infringement of patents, designs, copyrights or trademarks with respect to all Goods manufactured or assembled either in whole or in part to Buyer's specifications. Buyer agrees that such infringement shall be deemed a breach of the Agreement. Seller further reserves the right to terminate the Agreement for Goods which, in the opinion of Seller, infringe upon any patent, design, copyright or trademark in their manufacture, sale and/or use, and Buyer agrees that such termination shall not be considered a breach by Seller of the Agreement. Buyer further agrees that Seller shall not be liable under this provision if the Goods or Services are altered or modified in any manner after Seller delivers such Goods to the carrier for delivery to Buyer or completes performance of any Services.~~

**21. Import and Export Compliance.** Buyer is solely responsible for compliance with all applicable import and export control laws, in any jurisdiction, relating to the Goods and Services. Buyer shall undertake all necessary actions to comply with such laws, including, but not limited to, processing of all necessary customs procedures, payment of import/export duties and import/export taxes, completion and maintenance of documentation and provision of accurate information to all customs authorities. Buyer shall indemnify and hold harmless Seller against all damages, costs, expenses and attorney's fees arising from or alleged to arise from any violation, alleged violation, or failure to comply with, the terms of this provision by Buyer or any person for whom Buyer may be responsible.

**22. Buyer Default.** Seller shall have the unrestricted right, upon written notice to Buyer, to declare a default ("Buyer Default") hereunder and to terminate this Agreement if any of the following events occur: 1) Buyer's failure to comply with any of the provisions, terms and conditions of this Agreement, including without limitation, Buyer's failure to timely pay for any Goods or Services delivered to Buyer; 2) Seller's ability to perform of any of its obligations in respect of Services is prevented or delayed by any act or omission by Buyer or failure by Buyer to perform any relevant obligation, after a reasonable opportunity to cure such Buyer's failure to perform or act or omission; 3) Dissolution, insolvency, appointment of a receiver, assignment for the benefit of creditors or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Buyer; or 4) Seller's determination, in its sole discretion, that Buyer's financial condition is such as to endanger Buyer's performance hereunder.

**23. Remedies Upon Buyer's Default.** Upon Buyer's Default and Seller's written notice thereof to Buyer, every obligation of Seller hereunder shall immediately terminate and Seller shall have all rights and remedies existing at law or in equity, including but not limited to those provided by the Uniform Commercial Code as adopted in Indiana, and Buyer shall reimburse Seller on written demand for any costs or losses sustained or incurred by Seller arising directly or indirectly from the Buyer Default. Seller shall also have the right to suspend performance of any Services until Buyer remedies such Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays Seller's performance of any of its obligations.



24. **Reservation of Rights.** Buyer agrees that Seller's forbearance, delay or failure to exercise any right or remedy hereunder shall not constitute a waiver of such right or remedy and that Seller's exercise or partial exercise of any right or remedy shall not preclude further exercise of such right or remedy or any other right or remedy.

25. **Costs of Enforcement.** Buyer agrees to pay Seller's reasonable expenses, including reasonable attorney's fees and costs, incurred in enforcing the terms herein.

26. **Choice of Law and Venue.** The Agreement shall be governed by the laws of the State of Indiana, excluding its provisions on conflicts of law. Exclusive venue of any dispute or action arising out of this Agreement will lie in any state or federal court of competent jurisdiction in Johnson County, Indiana.

27. **Severability of Clauses.** Buyer agrees that the invalidity or unenforceability of any of the clauses or terms herein shall not affect the validity or enforceability of any other clauses or terms hereof. Sections 15-20, 28 and 30, and any other clause as the context implies, shall survive the termination or expiration of this Agreement.

28. **Alternative Dispute Resolution.** If a dispute arises between the parties, the parties agree to use the following alternative dispute resolution ("ADR") procedure prior to either Party pursuing other available remedies:

1) A meeting shall be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.

2) If, within thirty (30) days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will jointly appoint a mutually acceptable neutral person not affiliated with either of the parties to act as a mediator. If the parties are unable to agree on the neutral person within twenty (20) days, they shall seek assistance in such regard from the American Arbitration Association ("AAA"). The fees of the neutral person and all other common fees and expenses shall be shared equally by the parties.

3) The mediation may proceed in accordance with AAA's Model Procedure for Mediation of Business Disputes. The parties shall pursue mediation in good faith and in a timely manner. In the event the mediation does not result in resolution of the dispute within sixty (60) days, then, upon seven (7) days' written notice to the other party either party may suggest another form of ADR, *e.g.*, arbitration, a mini-trial or a summary jury trial, or may pursue other available remedies.

29. **Confidentiality.** The parties agree to treat the Order, this Agreement, and any contract formed upon its acceptance as confidential and shall not disclose the existence or substance hereof to any third party. If in connection with the provision of goods or services hereunder a party (each one a "Recipient" as applicable to this provision) becomes aware of or receives any confidential information of the other party (each one a "Discloser" as applicable to this provision), Recipient agrees not to disclose such information to any third party or to make use of such information, except to the extent necessary to perform hereunder or as required by law. Upon Discloser's request, Recipient shall promptly return to Discloser all Confidential Information in tangible form. The parties agree that any disclosure or use of the other party's Confidential Information, except as otherwise authorized herein or by Discloser in writing, would be wrongful and cause immediate and irreparable injury to Discloser. Recipient agrees to immediately notify Discloser of any unauthorized disclosure or use of any Discloser's Confidential Information of which Recipient becomes aware. This clause shall survive termination of this Agreement.

30. **Independent Contractors.** In performing its obligations to Buyer, hereunder, Seller is acting as an independent contractor and neither party is an agent or representative of the other. Neither party is authorized to make any representations or assume or create any obligations on behalf of the other.

~~31. **Limitation of Liability.** NOTWITHSTANDING THE OTHER PROVISIONS OF THIS AGREEMENT TO THE CONTRARY, THE AGGREGATE LIABILITY OF EACH PARTY TO THE OTHER PARTY FOR ANY AND ALL CLAIMS AND LIABILITIES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR TO THE BUYER'S OR SELLER'S RIGHTS AND OBLIGATIONS HEREUNDER, WHETHER BASED ON A THEORY OF CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE GOODS OR SERVICES. IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER EXTEND TO INCLUDE INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES. THE TERM "CONSEQUENTIAL DAMAGES" SHALL INCLUDE BUT NOT BE LIMITED TO, LOSS OF ANTICIPATED PROFITS, REVENUE OR USE AND COSTS INCURRED. THIS CLAUSE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.~~

32. **Compliance with Governing Laws and Regulations.** The Parties acknowledge and agree that all business activities shall be conducted ethically, with integrity, and in full compliance with both the letter and the spirit of the laws and regulations applicable to those activities. This commitment applies without limitation to the award of contracts/subcontracts on an impartial/competitive basis, personal business conduct, internal control systems, the offering/giving/receiving of gifts or anything of value, and correct documentation and registration of financial accounts. Neither Buyer nor its employees are authorized to operate on Seller's behalf in an illegal manner or in contrast with Seller's business-conduct policies and vice-versa. Should a Party ever receive, directly or indirectly from any of the other Party's representatives or agents, a request that the Party believes is contrary to the provisions of this clause, that Party shall immediately notify the other Party's general counsel.

Without limiting the generality of the foregoing or the effect of any other provision of this Agreement, and to the extent either Party performs any work or obtains or sells any of the products in relation to this Agreement in or from a foreign country:

a. Each Party represents and warrants that it is familiar with the Foreign Corrupt Practices Act, as amended, ("the FCPA"). Each Party further represents that, in particular, it is familiar with the prohibitions of the FCPA against offering, paying or giving anything of value, either directly or indirectly, to foreign officials (including employees of state-owned or controlled enterprises), candidates or

political parties for the purpose of securing any improper advantage for a company, including assisting a company in obtaining or retaining business.

b. Each Party agrees that it shall not make any offer, payment, promise to pay, gift, or promise to give monies or anything of value; nor authorize any such offer, payment, promise to pay, gift, or promise to give by anyone acting for or on behalf of itself or the other Party; to any government official, any political party or official thereof, any candidate for political office, any official of a public international organization, or any other person that is contrary to the provisions of the FCPA, as amended.

c. Each Party agrees that it shall not make any offer, payment, promise to pay, gift, or promise to give monies or anything of value; nor authorize any such offer, payment, promise to pay, gift, or promise to give by anyone acting for or on behalf of itself or the other Party; to any employee of a private company in order to improperly induce that employee to provide any competitive advantage to either Party in selling products or services or in otherwise doing business with that company.

d. Each Party agrees to maintain records for 5 years and present them for auditing upon demand by the other Party if there is any suspicion that a violation of this provision 33 may have occurred.

e. Both Parties represent that neither it nor any of its directors, officers, or employees is a government official, including without limitation an official or employee of any government, an official of a political party, or a candidate for political office, or a director, officer, employee, or "affiliate" (as defined in regulations under the U.S. Securities Exchange Act of 1934) of a government instrumentality. Both Parties understand that for purposes of this agreement, a "government official" may include an employee or official of a commercial entity or a university or institute of higher learning in which a government body has an ownership interest or exerts control over the activities of such entity, as well as officials and employees of public international organizations.

Each Party acknowledges that the representations and warranties provided in this clause are material to this Agreement. These representations shall be deemed to be continuing in effect throughout the term of the Agreement. Both Parties shall promptly advise each other of any change in circumstances which may affect the continuing validity of their representations. Either Party may terminate this Agreement at any time, without any liability or obligations to the other Party, if that Party believes, in good faith, that the other Party has violated any provisions of this clause. Any action by either Party which would or might constitute a violation of the FCPA, as amended, or a request for such action from or by a representative of either Party shall result in immediate termination of this Agreement without further liability or obligation of the other Party.

**33. Data Privacy.** Seller complies with the applicable data privacy regulations. Buyer is aware of and agrees with the automated transfer, use, storage and evaluation of personal data in the course of the contractually agreed purpose related this Agreement the Order. If required for reason concerning data privacy rights, upon Seller's request, Buyer agrees to execute an appropriate, written declaration of consent for the organizational and technical protective measures under the terms of the applicable data privacy laws. Seller agrees that it will only use the transferred personal data for purposes related to fulfilling the contractual obligations of this Agreement and the related Order, including but not limited to performing evaluations and quality assurance measures.

**34. Force Majeure.** Events that are beyond reasonable control including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce or any other party), epidemics, pandemics, plague, quarantine, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, difficulties in obtaining authorizations, in particular import and export licenses, accident, break-down of plant or machinery, energy shortage, fire, flood, storm or default of suppliers or subcontractors that prevent delivery of the products or services within the agreed upon time schedule ("Force Majeure"), extend the delivery deadlines for the duration of the Force Majeure and its impact. The Customer shall be notified of such delay in delivery. Should delivery be delayed for at least six (6) months past the original delivery date both Parties may in good faith withdraw from the relevant order.

**35. Assignment.** This Agreement may not be assigned by either Party to any third party without the prior written consent of the other Party hereto; provided, however, that a Party may assign its rights and obligations hereunder by written notice to the other Party to (a) any Affiliate or (b) a successor or transferee (whether by merger, consolidation, purchase or otherwise) of either (i) all or substantially all of the assets of the assignor, or (ii) all or substantially all of the assets of the business to which it pertains; and provided such party is not a competitor of the non-assignor. Any purported assignment in violation of the preceding shall be void. Any permitted assignee shall assume all obligations of its assignor under this Agreement. No assignment shall relieve a Party of responsibility for the performance of any obligation which accrued prior to the effective date of such assignment.

**36. Intellectual Property.** All Intellectual Property Rights in or arising out of or in connection with this Agreement and/or the Services shall be owned by Seller.

**37. General Definitions.**

a) **Agreement:** means the receipt and acceptance by Seller of the Order along with these Standard Sales and Service Terms and Conditions, Sellers' invoices, delivery forms, or other Seller documents related to the Order.

b) **Goods:** means any and all goods purchased by Buyer from Seller in connection with this Agreement and as specified in the Order.

c) **Intellectual Property Rights:** means patents, inventions, copyright and related rights, trademarks, trade names, business and domain names, goodwill, designs, database rights, processes, know-how, trade secrets, computer technical expertise, general product and process expertise, software and other intellectual property independently developed, owned, and/or controlled by Seller and any improvements thereto which are used, improved, modified, or further developed by Seller during its performance under this Agreement, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and right to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, shall be and remain the property of Seller.

d) Services: means any and all services, including any deliverables, purchased by Buyer from Seller in connection with this Agreement and as specified in the Order.

**From:** [Bachmann, Jim](#)  
**To:** [Thomas, Sophia D.](#)  
**Subject:** RE: Endress + Hauser Quotation #28-68-30019096  
**Date:** Wednesday, January 27, 2021 9:04:53 AM  
**Attachments:** [image001.png](#)  
[image010.png](#)  
[image011.png](#)  
[image012.png](#)  
[image013.png](#)  
[image015.png](#)  
[image016.png](#)  
[image017.png](#)  
[image018.png](#)  
**Importance:** High

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Sophia,

The quote is good for 90 days.

In the meantime, if you have any questions, you may reach me via email or my cell at 404-314-0999.

Regards,

**Jim Bachmann** | Account Manager | Carotek  
E: [jim.bachmann@carotek.com](mailto:jim.bachmann@carotek.com)  
O: 770-635-3100 | M: 404-314-0999  
2150 New Market Pkwy, Suite 100 | Marietta, GA 30067



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[Carotek COVID-19 Status](#)

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**From:** Thomas, Sophia D. <[sdthomas@dekalbcountyga.gov](mailto:sdthomas@dekalbcountyga.gov)>  
**Sent:** Monday, January 25, 2021 11:36 AM  
**To:** Bachmann, Jim <[jim.bachmann@carotek.com](mailto:jim.bachmann@carotek.com)>  
**Subject:** RE: Endress + Hauser Quotation #28-68-30019096

Hi Jim,

My manager would like to know how long is the quote for. Due to the amount, it will have to go to the Board of Commissioners for approval. We're trying to get it to the board asap. We want to be sure that the quote will still be valid when it is able to be seen by the board, hopefully in February.

**\*\*Working Remotely – Please contact via Email \*\***