

**INDEFINITE QUANTITY  
PRICE AGREEMENT**

between SANTA FE COUNTY and ZOLL MEDICAL CORPORATION  
for mechanical chest compression devices

**THIS AGREEMENT** is made and entered into this 26<sup>th</sup> day of February, 2019, by and between **SANTA FE COUNTY**, hereinafter the "County" and **ZOLL MEDICAL CORPORATION**, whose principal address is 269 Mill Road, Chelmsford, Massachusetts 01824-4105, hereinafter the "Contractor".

**IT IS MUTUALLY AGREED BETWEEN THE PARTIES:**

**1. DEFINITIONS**

- A. "County" shall mean the County of Santa Fe, New Mexico.
- B. "Using Department or Department" shall mean a Department of Santa Fe County.
- C. "Purchase Order" shall mean a fully executed Purchase Document issued by the County Purchasing Department that specifies the items to be provided by the Contractor.
- D. "Price Agreement" means this indefinite quantity Price Agreement which requires the Contractor to provide mechanical chest compression devices to a Using Department which issues a Purchase Order.
- E. "Price" means the fixed prices paid by the County and its Departments for mechanical chest compression devices as described in Attachment A.

**2. GOODS TO BE PROVIDED**

- A. **Purchase.** Attachment A of this Price Agreement is the price for the Contractor's delivery of mechanical chest compression devices for cardiopulmonary resuscitation. Attachment A also indicates any specifications required for the items that are subject of this Price Agreement.
- B. **Items Listed on Attachment A.** The County may issue Purchase Orders for the purchase of the items listed on Attachment A. Any item ordered by the County must be an item described on Attachment A. All orders issued hereunder must bear both an order number and the number of this Price Agreement No. 2019-00115-FD/CW.
- C. **Quantities.** It is understood that this is an indefinite quantity Price Agreement and the County may purchase any quantity of the items listed on Attachment A on an as-needed basis. No guarantee or warranty is made or implied that any order for any definite quantity of items be issued under this Price Agreement. Quantities of items may vary and the Contractor is required to accept the Purchase Order and furnish the item(s).
- D. **Specifications.** The items furnished under this Price Agreement shall meet or exceed the specifications provided in the Information for Bidders (IFB) No. 2019-0115-FD/CW including all Addenda. Orders issued pursuant to this Agreement must show the applicable Price Agreement item(s) and price(s).
- E. **Delivery and Billing Instructions.**
  - 1. The Contractor shall deliver the items in accordance with the County's instructions. The Contractor shall also deliver, with the items ordered, an invoice listing the order number and the Price Agreement number.

2. Whenever, the Department does not accept any deliverable and returns it to the Contractor, all related documentation furnished by the Contractor shall be returned also.
3. The Department will inform the Contractor within five business days that a deliverable is unacceptable by the Department and request return instructions.
4. Prices listed in Attachment A, for each item, shall be the fixed prices for the items.

## 2. PAYMENT.

All payments under this Price Agreement are subject to the following provisions:

- A. Inspection.** Final inspection and acceptance of a deliverable shall be made by the Using Department.
- B. Acceptance.** In accordance with NMSA 1978, Section 13-1-158, the Using Department shall determine if the items and deliverables meet specifications and will accept the items or deliverables if they meet specifications. No payment shall be issued for any item unless the Using Department certifies that the item(s) have been received and meet specifications. Unless otherwise agreed upon, between the Department and the Contractor within 30 days from the delivery and receipt of item(s), the Using Department shall issue a written certification of complete or partial acceptance or rejection of any item(s). Unless the Using Department gives notice of partial acceptance or rejection within the time specified in Paragraph 2 above, the item(s) will be deemed to have been accepted. If any item(s) is partially accepted or rejected, no late fee will be assessed by the Contractor during the period in which the Contractor is remedying the partial acceptance or rejection. In accordance with NMSA 1978, Section 13-1-157, the County is not obligated to pay for items that are nonconforming and for which the Contractor has failed to remedy the nonconformity.
- C. Issuance of Orders.** Only written, signed and properly executed Purchase Orders are valid under this Price Agreement.
- D. Payment.** County shall pay Contractor on an invoice received from Contractor within 30 days from the date the County approves the invoice.
- E. Taxes.** Applicable gross receipts taxes or local option tax(es) shall be included on each invoice and shown as a separate item on each invoice. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and must be reported under the Contractor's federal and county tax identification number(s). If the Using Department is exempt from the New Mexico gross receipts tax or local option taxes for the transaction, the Using Department shall provide the Contractor written evidence of such exemption(s).

## 4. TERM OF THIS AGREEMENT.

This Price Agreement shall not become effective until the date of the last signature by the parties hereto and shall terminate four years later, unless earlier terminated pursuant to Section 6 (Termination) or Section 11 (Appropriations).

## 5. CANCELLATION.

- A.** Either party reserves the right to cancel without cost to the opposite party all or any part of any order placed, and not yet shipped, under this Price Agreement if the items or deliverables fail to meet the requirements of this Price Agreement.

- B. The failure of the either party to perform its obligations under this Price Agreement shall constitute a default of this Price Agreement.
- C. The Contractor may be excused from performance if the Contractor's failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor, unless the County shall determine that the item, to be furnished by a sub-contractor, is obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.
- D. Such causes of excuse include, but are not limited to, acts of God or the public enemy, acts of the County or Federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above.
- E. The County may cancel all, or any part, of any order without cost to the County if the Contractor fails to meet material provisions of the order and the Contractor shall be liable for any excess costs incurred by the County that is associated with such default.

## 6. TERMINATION

A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective 30 days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within 30 days, the breaching party shall have a reasonable time to cure the breach, provided that, within 30 days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Vendor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than 15 days from the Vendor's receipt of the notice. The County shall pay the Vendor for shipped products, shipped before the effective date of termination but shall not be liable for shipped product after the effective date of termination.

## 7. AMENDMENT.

Except for amendment affecting price(s), this Price Agreement may be amended by mutual agreement of the County and the Contractor upon written notice by either party to the other. Any such amendment shall be in writing and signed by the parties hereto. Unless otherwise agreed to by the parties, an amendment shall not affect any outstanding Purchase Order(s) issued, by the County, prior to the effective date of the amendment.

## 8. ASSIGNMENT.

Contractor shall not sell, assign, pledge, transfer, or otherwise convey any of its rights or interests in this Price Agreement.

## 9. NON-COLLUSION.

In signing this Price Agreement, the Contractor certifies it has not, either directly or indirectly,

entered into action in restraint of free competitive bidding in connection with its offer and this either directly or indirectly, entered into action in restraint of free competitive bidding in connection with its offer and this Price Agreement.

**10. RECORDS.**

During the term of this Price Agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services or deliverables provided. These records shall be subject to inspection by the Department, the County and State Auditor and other appropriate County authorities once annually. The County shall have the right to audit billings both before and after payment. Payment under this Price Agreement shall not foreclose the right of the Department to recover excessive or illegal payments.

**11. APPROPRIATIONS.**

The terms of this Price Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Price Agreement. If sufficient appropriations and authorization are not made, this Price Agreement, and any orders placed under it, shall terminate upon written notice being given to the Contractor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

**12. CONFLICT OF INTEREST.**

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with any performance required under this Price Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

**13. APPROVAL OF CONTRACTOR'S REPRESENTATIVES.**

The County reserves the right to require a change in Contractor representatives if the assigned representatives are not, in the opinion of the County, serving the needs of the County adequately.

**14. SCOPE OF AGREEMENT, MERGER.**

This Price Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and all such covenants, agreements and understandings have been merged into this written Price Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Price Agreement.

**15. NOTICE.**

The New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199 imposes civil misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose penalties for bribes, gratuities and kickbacks.

**16. INDEMNIFICATION.**

The Contractor shall hold the County and its Departments, agencies and employees harmless and shall indemnify the County and its agencies and employees against any and all third party

claims, suits, actions, liabilities and cost of any kind, including reasonable attorney's fees for personal injury or damage to tangible property arising directly from the negligent acts or omissions of the Contractor, its agents, officers, employees, or sub-contractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the Department, its officers or employees.

**17. THIRD PARTY BENEFICIARY.**

This Price Agreement was not intended to and does not create any rights in any persons not a party hereto.

**18. NEW MEXICO TORT CLAIMS ACT.**

No provision of this Price Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by the County and its Departments or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

**19. INSURANCE.**

A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Price Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Price Agreement is an insured contract. Santa Fe County will be included as an Additional Insured with respect to General Liability/ Premises Operations.

C. Worker's Compensation Insurance. The Contractor shall comply with the provisions of the Worker's Compensation Act.

D. Increased Limits. If, during the life of this Price Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

**20. APPLICABLE LAW.**

This Price Agreement shall be governed by the laws of the State of New Mexico.

**21. CHOICE OF LAW.**

This Price Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. The parties agree that the exclusive forum for any litigation between them arising out of or related to this Price Agreement shall be in the First Judicial District Court of New Mexico, located in Santa Fe County, New Mexico.

**22. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS**

The Contractor hereby irrevocably appoints \_\_\_\_\_, as its agent upon whom process and writs in any action or proceeding arising out of or related to this Price Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

**23. INVALID TERM OR CONDITION/SEVERABILITY.**

The provisions of this Price Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Price Agreement is determined to be invalid by a court or department or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of the Price Agreement, which can be given effect without the invalid provision.

**24. ENFORCEMENT OF AGREEMENT.**

A party's failure to require strict performance of any provision of this Price Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by party or any of its rights under this Price Agreement shall be effective unless express and in writing, and not effective waiver by a party of any of its right shall be effective to waive any other rights.

**25. NOTICES.**

Either party may give written notice to the other party in accordance with the terms of this Price Agreement. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three business days after being mailed.

**To the County:**

Santa Fe County  
Attn: Katherine Miller  
102 Grant Avenue  
PO Box 276  
Santa Fe, NM 87504-0276

**To the Vendor:**

Zoll Medical Corporation  
Attn: Contracts and Bids Department  
269 Mill Road  
Chelmsford, Massachusetts 01824-4105

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Price Agreement. The carrier for mail delivery and notices shall be the agent of the sender.

**26. SURVIVAL**

The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement as of the date of last signature by the parties.

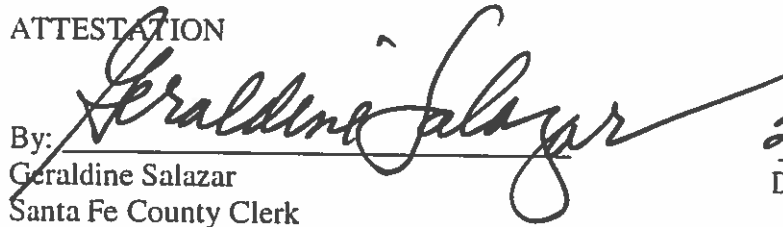
**SANTA FE COUNTY**




Anna T. Hamilton, Chair  
Santa Fe County Board of County Commissioners



**ATTESTATION**


By:  2/26/2019  
Geraldine Salazar  
Santa Fe County Clerk  
Date

Approved as to form:

  
R. Bruce Frederick  
County Attorney

2/21/19  
Date

Finance Department:

  
Erika D. Thomas  
Interim Finance Director

2/22/19  
Date

**ZOLL MEDICAL CORPORATION**

\_\_\_\_\_  
Signature

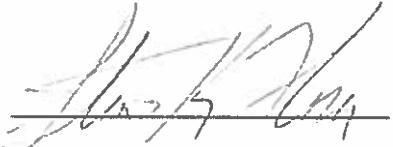
\_\_\_\_\_  
Date

\_\_\_\_\_  
(Print name and title)





ZOLL MEDICAL CORPORATION

A handwritten signature in black ink, appearing to read "Steven K. Flora", is written over a horizontal line.

Signature

\_February 21, 2019

Date

Steven K. Flora, SR. V.P., V.P. North American Sales

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(Print name and title)



**ATTACHMENT A**  
**PRICING**



IFB #2019-0115-FD/CW

**BID SHEET**

**Mechanical Chest Compression Devices for Cardiopulmonary Resuscitation**

All blanks must be filled in, the Bid Sheet attached to the completed Invitation to Bid (IFB) #2019-0115-FD/CW, and returned herewith.

NAME OF COMPANY: ZOLL Medical Corporation

Please offer your best price for all bid items based on the unit price indicated below to include all costs for labor, equipment, tools, materials, federal tax, permits, licenses, fees, freight and any other items necessary to complete the services.

Item	Est. Qty.	Unit	Article and Description	Unit Price \$	Unit Price Written in Words
1	5	SF	Automatic, Load-Distributing Band Chest Compression Device For Out-Of-Hospital Cardiac Arrest Resuscitation	\$10,995.00 per unit	Ten thousand nine hundred ninety five dollars per unit

*All bid items are exclusive of NM Gross Receipts Tax*

BID SUBMITTED BY:

COMPANY NAME: ZOLL Medical Corporation

NAME: Lavern Smith

SIGNATURE: Lavern Smith / ems enclosures

TITLE: Territory Manager

EMAIL ADDRESS: lsmith@zoll.com

DATE: 1/29/19



**ZOLL Medical Corporation  
Corporate Resolution**

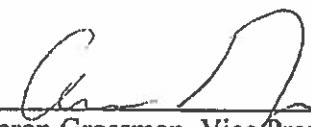
The undersigned does hereby certify that he is the Vice President and General Counsel of ZOLL Medical Corporation (the "Corporation"); that Steven K. Flora is the duly elected Senior Vice President and Vice President of North America Sales; that at a meeting of the Board of Directors of said Corporation held on April 25, 2006, at which meeting all Directors present and voting, the following vote was unanimously adopted:

**VOTED:**

To authorize the President and Chief Executive Officer, and any other officer of the Corporation so authorized by the President and Chief Executive Officer, acting singly, to execute and deliver on behalf and in the name of the Corporation, contracts for the sale of the Corporation's products or services or to acquire products or services from other parties from time to time, such actions by any such officer being conclusive evidence of his or her authority to so act hereunder.

I further certify that Steven K. Flora is the duly appointed Senior Vice President and Vice President of North America Sales of the Corporation, and that he has been so authorized by the President and Chief Executive Officer of the Corporation.

I further certify that said vote has not been rescinded and is still in force and effect.

  
Aaron Grossman, Vice President and General Counsel

