



Town Council Agenda Report

SUBJECT: Resolution

CONTACT PERSON/NUMBER:

Michael Donati, Fire Chief
(954) 797-1210

TITLE OF AGENDA ITEM:

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, ACCEPTING THE BID TO UPGRADE THREE (3) "M" SERIES ZOLL EKG MONITOR/DEFIBRILLATOR/PACERS FROM ZOLL MEDICAL CORPORATION AS A SOLE SOURCE SUPPLIER

REPORT IN BRIEF:

The Fire Department wishes to upgrade its "M" Series Zoll EKG Monitor/Defibrillator/Pacer from Zoll Medical Corporation. The cost is \$10,000 for each Monitor/Defibrillator/Pacer. The total cost for the three monitors is \$30,000. In addition, Zoll Medical Corporation will give the Fire Department a \$7,000 credit towards the upgrade. Therefore, the final cost of the upgrade is \$23,000.00.

The Fire Department currently has three devices without 12 lead technology. Broward County Fire uses 12 lead technology on rescue units. At the time the M-Series was purchased by the Town, there was an unknown delay for the 12 lead technology to be cleared by the FDA. We purchased 3 units because three more EKG monitors were needed to begin the basic familiarization with the new style device.

PREVIOUS ACTIONS: On June 2, 1999, Council approved resolution R-99-193, to purchase three "M" Series Zoll EKG Monitor/Defibrillator/Pacer from Zoll.

CONCURRENCES:

N/A

FISCAL IMPACT:

Has request been budgeted? yes

 If yes, expected cost \$23,000

 Account Name: Capital Project EMS Equipment/Refurbishment

RECOMMENDATION(S):

Motion to approve the resolution

Attachment(s):

 Resolution

 Zoll Medical Corporation Quotation

 Procurement Authorization

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, ACCEPTING THE BID TO UPGRADE THREE (3) "M" SERIES ZOLL EKG MONITOR/DEFIBRILLATOR/PACERS FROM ZOLL MEDICAL CORPORATION AS A SOLE SOURCE SUPPLIER.

WHEREAS, the Town previously approved resolution R-99-193 to purchase three "M" Series Zoll EKG Monitor/Defibrillator/Pacers; and

WHEREAS, the Town is in need of upgrading its "M" Series Zoll EKG Monitor/Defibrillator/Pacers; and

WHEREAS, the parts needed to upgrade the equipment must be purchased from the original equipment manufacturer; and

WHEREAS, Zoll Medical Corporation is the sole source supplier for this equipment; and

WHEREAS, after review, the Town Council wishes to accept the bid from Zoll Medical Corporation.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council hereby accepts the bid from Zoll Medical Corporation as a sole source supplier, to upgrade the three (3) EKG Monitor/Defibrillator/Pacers in the amount of \$23,000.

SECTION 2. The Town Council hereby authorizes the expenditure from the Capital Project EMS Equipment/Refurbishment Account.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED ____ DAY OF _____, 1999

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS DAY OF , 1999

**TOWN OF DAVIE
PROCUREMENT AUTHORIZATION**

<u>Account Number</u>	<u>Budget & Description</u>	<u>Approximate Cost</u>
030-0620-522-6442	medical equipment	\$23,000.00
EMS Equipment/Refurbishment		

Method of Procurement (check the one that applies)

- Open Competitive Bidding
- Piggyback on Contract Number
- Sole Source

Checklist Specification & List Of Vendors Must Be Attached

Signed _____
Department Head

Have Funds Been Reserved _____

Date _____ Signed _____

Signed _____
Town Administrator

Bids Submitted

<u>Vendor</u>	<u>Cost</u>
Zoll Medical Corporation	\$23,000.00

Signed _____
Purchasing Specialist

Town Administrator's Recommendation

<u>Vendor</u>	<u>Cost</u>

Signed _____
Town Administrator

ZOLL

ZOLL Medical Corporation

32 Second Avenue
Burlington, Massachusetts 01803-4120
U.S.A.

(781) 229-0020
(781) 272-5578 Telefax

November 19, 1999

Mr. Joe Rivero
Davie Fire
6905 Southwest 45th Street
Davie, FL 33314

Dear Joe:

This letter is to state that ZOLL Medical Corporation is a sole source supplier of ZOLL 12 lead for the M Series defibrillator/pacemaker/monitor.

If you should have any questions or concerns, please do not hesitate to contact me at 800-242-9150 ext. 260.

Sincerely,



Tom Stavola
Territory Manager

TS/tas

ZOLL

ZOLL Medical Corporation

32 Second Avenue
Burlington, Massachusetts 01803-4420
U.S.A.

(781) 229-0020
(800) 348-0011
(781) 221-5879 Telefax

QUOTATION

TO: **Davie Fire**
6905 Southwest 45th Street
Davie, FL 33314

Attn: **Joe Rivero**
Fax: (954)797-1095

DATE: November 18, 1999

TERMS: NET 30 DAYS

TO: BURLINGTON, MA

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	TOTAL PRICE
1	TBD	ZOLL 12-Lead Upgrade	3	\$10,000.00	\$30,000.00
TRADE-IN ALLOWANCE					
2	8812-0100	ZOLL System-12 w/ Interpretive Alogrithm	2	(\$3,500.00)	(\$7,000.00) **
**Trade-In Value valid if all units are in good operational and cosmetic condition and include all standard accessories.					
ZOLL equipment can be acquired through convenient and economical lease plans. For additional information consult your Territory Manager.					
TOTAL					\$23,000.00

WE PROPOSE TO FURNISH THE ITEMS LISTED ABOVE, SUBJECT TO CONDITIONS SET FORTH ON THE REVERSE SIDE HEREOF, AND THE WRITTEN ACCEPTANCE OF THIS QUOTATION.

1. DELIVERY WILL BE MADE 30-60 DAYS AFTER RECEIPT OF ORDER.
2. PRICES WILL BE F.O.B. BURLINGTON, MA.
3. WARRANTY PERIOD (see reverse side for additional warranty info)
4. PRICES QUOTED ARE FIRM FOR 60 DAYS.

Tom Stavola
Tom Stavola
Territory Manager

ZOLL

QUOTATION

GENERAL TERMS AND CONDITIONS

1. ACCEPTANCE. This Quotation constitutes an offer by ZOLL Medical Corporation to sell to the Customer the equipment (including a license to use certain software) listed in this Quotation and described in the specifications either attached to, or referred to in this Quotation (hereinafter referred to as Equipment). Any acceptance of such offer is expressly limited to the terms of this Quotation, including these General Terms and Conditions. Acceptance shall be deemed to be made by the Customer's acknowledgment (i) any continuing written or oral representations made by ZOLL Medical Corporation or any agent or employee of ZOLL Medical Corporation, or (ii) receipt or acknowledgment by ZOLL Medical Corporation of any purchase order, specification or other document issued by the Customer. Any such document shall be wholly inoperative as to any sale made pursuant to this Quotation, and shall not be binding in any way on ZOLL Medical Corporation.

Acceptance of this Quotation by the Customer shall create an agreement between ZOLL Medical Corporation and the Customer (hereinafter referred to as the "Contract"). The terms and conditions of which are expressly limited to the provisions of this Quotation, including these Terms and Conditions. No waiver, change or modification of any of the provisions of this Contract or of the Contract, shall be binding on ZOLL Medical Corporation unless made in writing, in a clearly stating that it is a waiver, change or modification of this Quotation or the Contract and is signed by an authorized representative of ZOLL Medical Corporation.

2. DELIVERY AND RISK OF LOSS. All deliveries shall be F.O.B. ZOLL Medical Corporation's facility. Risk of loss or damage to the equipment shall pass to the Customer upon delivery of the Equipment to the carrier.

3. TERMS OF PAYMENT. Unless otherwise stated in this Quotation, terms of payment are net thirty (30) days after the date of appearing on ZOLL Medical Corporation's invoice.

4. CREDIT APPROVAL. All shipments and deliveries shall at all times be subject to the approval of credit by ZOLL Medical Corporation. ZOLL Medical Corporation may at any time decline to make any shipment or delivery except upon receipt of payment of security, or upon terms regarding credit or security satisfactory to ZOLL Medical Corporation.

5. TAXES. The prices quoted in this Quotation do not include sales tax, excise, or other similar taxes or any duties or customs charges. The Customer shall pay, in addition to the prices quoted, the amount of any present or future sales, use, excise or other similar tax or customs duty or charge, applicable to the sale or use of the Equipment sold hereunder (except any tax based on the net income of ZOLL Medical Corporation). In lieu thereof the Customer may provide ZOLL Medical Corporation with a tax exemption certificate acceptable to the taxing authorities.

6. WARRANTY. (a) ZOLL Medical Corporation warrants to the Customer that from the date of installation or thirty (30) days after the date of shipment from ZOLL Medical Corporation's facility, whichever first occurs, the Equipment (other than accessories and electrodes) will be free from defects in material and workmanship under normal use and service for the period noted on the relevant side. Accessories and electrodes shall be warranted for 90 days from date of shipment. During such period ZOLL Medical Corporation will, at no charge to the Customer, either repair or replace (at ZOLL Medical Corporation's sole option) any part of the Equipment found by ZOLL Medical Corporation to be defective in material or workmanship. If ZOLL Medical Corporation's inspector detects no defects in material or workmanship, ZOLL Medical Corporation's regular service charges shall apply. (b) ZOLL Medical Corporation shall not be responsible for any Equipment defect, the failure of the Equipment to perform any specified function, or any other non-conformance of the Equipment, caused by or attributable to: (i) any modification of the Equipment by the Customer unless such modification is made with the prior written approval of ZOLL Medical Corporation, (ii) the use of the Equipment with any associated or complementary Equipment, accessory or software not supplied by ZOLL Medical Corporation, (iii) any misuse or abuse of the Equipment, (iv) exposure of the Equipment to conditions beyond the environmental, power or operating constraints specified by ZOLL Medical Corporation, or (v) installation or wiring of the Equipment other than in accordance with ZOLL Medical Corporation's instructions. (c) This warranty does not cover items subject to normal wear and tear during use, including but not limited to lamps, fuses, batteries, cables and accessories. (d) The foregoing warranty does not apply to software included as part of the Equipment including software embedded in read-only memory, known as "firmware". (e) The foregoing warranty constitutes the exclusive remedy of the customer and the exclusive liability of ZOLL Medical Corporation for any breach of any warranty related to the Equipment supplied hereunder. **THE WARRANTY SET FORTH HEREIN IS EXCLUSIVE AND ZOLL MEDICAL CORPORATION EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

7. SOFTWARE LICENSE. (a) A license (the "Software") which term shall include firmware) included as part of the Equipment is licensed to Customer pursuant to a non-exclusive limited license on the terms hereafter set forth. (b) Customer may not copy, distribute, modify, translate or adapt the Software, and may not disassemble or reverse compile the Software, or seek in any manner to discover, disclose or use any proprietary algorithms, techniques or other confidential information contained therein. (c) All rights in the Software remain the property of ZOLL Medical Corporation, and Customer shall have no right or interest therein except as expressly provided herein. (d) Customer's right to use the Software may be terminated by ZOLL Medical Corporation in the event of any failure to comply with the terms of this agreement. (e) Customer may transfer the license conferred hereby only in connection with a transfer of the Equipment, and may not retain any copies of the Software following such transfer. (f) ZOLL Medical Corporation warrants that the read-only memory or other media on which the Software is recorded is free from defects in material and workmanship for the period and on the terms set forth in section 6. (g) Customer understands that the Software is a complex and sophisticated software product, and no assurance can be given that operation of the Software will be uninterrupted or error-free, or that the Software will meet Customer's requirements. Except as set forth in section 7(h), ZOLL MEDICAL CORPORATION MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SOFTWARE, AND IN PARTICULAR DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OF A PARTICULAR PURPOSE WITH RESPECT THERETO. Customer's exclusive remedy for any breach of warranty or defect relating to the Software shall be the repair or replacement of any defective read-only memory or other media to that it correctly reproduces the Software.

8. DELAYS IN DELIVERY. ZOLL Medical Corporation shall not be liable for any delay in the delivery of any part of the Equipment if such delay is due to any cause beyond the control of ZOLL Medical Corporation, including but not limited to acts of God, fires, epidemics, floods, riots, wars, sabotage, labor disputes, governmental actions, inability to obtain materials, components, manufacturing facilities or transportation, or any other cause beyond the control of ZOLL Medical Corporation. In addition, ZOLL Medical Corporation shall not be liable for any delays in delivery caused by failure of the Customer to provide any necessary information in a timely manner. In the event of any such delay, the date of shipment or performance hereunder shall be extended to the period equal to the time lost by reason of such delay. In the event of such delay, ZOLL Medical Corporation may at its sole available Equipment among its Customers on any reasonable and equitable basis. The delivery dates set forth in this Quotation are approximate only, and ZOLL Medical Corporation shall not be liable for nor shall the Contract be breached by any delivery by ZOLL Medical Corporation within a reasonable time after such date.

9. LIMITATIONS OF LIABILITY. IN NO EVENT SHALL ZOLL MEDICAL CORPORATION BE LIABLE FOR INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES RESULTING FROM ZOLL MEDICAL CORPORATION'S PERFORMANCE OR FAILURE TO PERFORM, PURSUANT TO THIS QUOTATION OR THE CONTRACT, OR THE FURNISHING, PERFORMANCE, OR USE OF ANY EQUIPMENT OR SOFTWARE SOLD HERETO, WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, THE NEGLIGENCE OF ZOLL MEDICAL CORPORATION, OR OTHERWISE.

10. PATENT INDEMNITY. ZOLL Medical Corporation shall, at its own expense defend any suit that may be instituted against the Customer for alleged infringement of any United States patents or copyrights related to the parts of the Equipment or the Software manufactured by ZOLL Medical Corporation, provided that (i) such alleged infringement consists only in the use of such Equipment or the Software by itself and not as a part of or in combination with any other device or parts, (ii) the Customer gives ZOLL Medical Corporation immediate notice in writing of any such suit and permits ZOLL Medical Corporation, through counsel of its choice, to answer the charge of infringement and defend such suit, and (iii) the Customer gives ZOLL Medical Corporation all requested information, assistance and authority, at ZOLL Medical Corporation's expense, to enable ZOLL Medical Corporation to defend such suit.

In the case of a final award of damages for infringement in any such suit, ZOLL Medical Corporation will pay such award, but shall not be responsible for any settlement made without its written consent.

Section 9 states ZOLL Medical Corporation's total responsibility and liability, and the Customer's sole remedy, for any actual or alleged infringement of any patent by the Equipment or the Software, or any part thereof, provided hereunder. In no event shall ZOLL Medical Corporation be liable for any indirect, special, or consequential damages resulting from any such infringement.

11. CLAIMS FOR SHORTAGE. Each shipment of Equipment shall be promptly examined by the Customer upon receipt thereof. The Customer shall inform ZOLL Medical Corporation of any shortage in any shipment within ten (10) days of receipt of Equipment. If no such shortage is reported within the ten (10) day period, the shipment shall be conclusively deemed to have been complete.

12. RETURNS AND CANCELLATION. (a) Buyer shall obtain authorization from ZOLL Medical Corporation prior to returning any product. (b) If Buyer receives authorization from ZOLL Medical Corporation to return a product for credit, Buyer shall be subject to a restocking charge of twenty percent (20%) of the original list purchase price, but not less than \$50.00 per product. (c) Any such change in delivery caused by Buyer establishing a delivery date greater than six (6) months from Buyer's original order date shall constitute a new order for the affected products in determining the appropriate list price shall constitute a new order for the affected products in determining the appropriate list price.

13. APPLICABLE LAW. This Quotation and the Contract, shall be governed by the substantive laws of the Commonwealth of Massachusetts without regard to any choice of law provisions thereof.

14. COMPLIANCE WITH LAWS. (a) ZOLL Medical Corporation represents that all goods and services delivered pursuant to the Contract will be produced and supplied in compliance with all applicable state and federal laws and regulations, including the requirements of the Fair Labor Standards Act of 1938, as amended. (b) The Customer shall be responsible for compliance with any federal, state and local laws and regulations applicable to the installation or use of the Equipment furnished hereunder, and will obtain any permits required for such installation and use.

15. ASSIGNMENT. This Quotation, and the Contract, may not be assigned by the Customer without the prior written consent of ZOLL Medical Corporation, and any assignment without such consent shall be null and void.

16. VALIDITY OF QUOTATION. This Quotation shall be valid and subject to acceptance by the Customer, in accordance with the terms of Section 7 hereof, for the period set forth on the face hereof. After such period, the acceptance of this Quotation shall not be binding upon ZOLL Medical Corporation and shall not create a contract, unless such acceptance is acknowledged and accepted by ZOLL Medical Corporation by a writing signed by an authorized representative of ZOLL Medical Corporation.

ZOLL Medical Corporation