



COUNTY OF FREDERICK, VIRGINIA

Finance Department
(540) 665-5610

GENERAL TERMS AND CONDITIONS

Rev: 1/1/2020

BIDS/PROPOSALS ON SOLICITATIONS ISSUED BY THE COUNTY WILL BIND BIDDERS/OFFERORS TO THE APPLICABLE CONDITIONS AND REQUIREMENTS IN THE GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS/OFFERORS UNLESS OTHERWISE SPECIFIED IN THE SOLICITATION AND SUBJECT TO APPLICABLE STATE, LOCAL, AND FEDERAL LAWS.

BIDDERS/OFFERORS OR THEIR AUTHORIZED REPRESENTATIVES SHOULD INFORM THEMSELVES FULLY AS TO THE CONDITIONS, REQUIREMENTS, AND SPECIFICATIONS OF EACH COUNTY PROCUREMENT BEFORE SUBMITTING BIDS/PROPOSALS. FAILURE TO DO SO WILL BE AT THE BIDDER/OFFEROR'S OWN RISK AND RELIEF CANNOT BE SECURED ON THE PLEA OF ERROR.

1. **AUTHORITY:** The County has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order issued by the County of Frederick, VA. The County Finance Director serves as the County Purchasing Agent. In the discharge of these responsibilities, the County Finance Director has appointed the County Purchasing Manager to assist the County Purchasing Agent. Unless specifically delegated by the County, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of Frederick, VA for an indebtedness. Any purchase ordered or contract made which is contrary to these provisions and authorities shall be of no effect and void and the County shall not be bound thereby.

2. PRE-BID AND BID SUBMISSION REQUIREMENTS

- a. **Direct contact with anyone other than the County Purchasing Manager or the IFB Contact, regarding this Invitation for Bids is expressly forbidden except with the permission of the Purchasing Manager. Violation of this directive may result in a determination that the bidder is ineligible for award.**
- b. All bids shall be submitted sealed with the bid number, date and time clearly marked on the outside of the envelope or package. Electronic transmittals (i.e. fax, email, etc.) will not be considered. Bids received by the Purchasing Manager after the due date and time will not be accepted. Failure to return required documents and information specified herein may result in a determination that the bid is non-responsive.
- c. Bids will be publicly opened on the due date and time specified on the "Invitation for Bids Announcement" cover sheet. A bid tabulation will be posted as soon as practical. The County posts all solicitations and related bid tabulations on eVA, Virginia's eProcurement Portal (www.eva.virginia.gov). A direct link to all County solicitations is located [here](#).
- d. All bids shall be submitted in accordance with this Invitation for Bids. If more space is required to furnish a description of the goods and/or services bid, the Bidder may attach that additional information with the bid.
- e. All bids must be signed by an officer or employee having the authority to sign on behalf of the firm.
- f. All prices and notations should be in ink or typewritten. Mistakes may be crossed out and corrections made in ink. Any corrections must be initialed and dated in ink by the person signing the bid.

- g. Prices shall be stated in units of quantity specified. No additional charges shall be passed on to the County, including sales tax, delivery charges or other surcharges. Prices quoted shall be the final cost to the County. All deliveries shall be F.O.B. Destination.
- h. If the County is closed for business at the time scheduled for bid opening, regardless of reason, sealed bids will be accepted and opened on the next business day of the County, at the originally scheduled time.
- i. The Terms, Conditions and Specifications in this solicitation shall supersede any terms and conditions offered by the Bidder. Any additional conditions a Bidder intends to be considered must be submitted with the bid and be noted as an exception on the Bid Form, however, exceptions may result in the bid being determined non-responsive.
- j. Each bid shall be submitted with the understanding that, upon acceptance by the County, the Bidder shall furnish any or all of the goods and/or services described herein. The accepted bid shall constitute a contract between the Bidder and the County and shall bind the Bidder to furnish and deliver the goods and/or services at the stated prices and in accordance with the Terms, Conditions and Specifications of the Invitation for Bids and bid. The County shall order the goods and/or services from the Bidder at the stated prices except for reasons beyond reasonable control, including but not limited to availability of funds and the Contractor's inability to deliver goods or services within the required timeframe.
- k. Submission of a bid is not to be construed as an award or an order to ship.
- l. A submittal (bid) by the Bidder certifies that they are not currently debarred or suspended by a local, state or federal government entity from doing business with that entity. If a debarment or suspension exists, supporting information shall be provided with the response. Suspension or debarment may disqualify the Bidder from award of a contract.
- m. A bid/proposal may be amended and/or withdrawn by a bidder or offeror if the request is received in writing before the due date and hour. The request must be signed by a person authorized to represent the vendor or firm that submitted the bid/proposal. Submission of a subsequent bid/proposal unless specifically identified as an additional bid, shall constitute the withdrawal of any prior one submitted by the same bidder or offeror on the same Invitation for Bid/Request for Proposal.

Withdrawal of bids/proposals after opening is governed by the Code of Virginia §2.2-4330. The bidder/ offeror shall give notice in writing of his/her claim of right to withdraw his/her bid/proposal within two business days after conclusion of the bid opening or receipt of proposals procedure and shall submit original work papers with such notice.

3. PRE-PROPOSAL AND PROPOSAL SUBMISSION REQUIREMENTS

- a. **Direct contact with anyone other than the County Purchasing Manager or the RFP Contact, regarding this Request for Proposals is expressly forbidden except with the permission of the Purchasing Manager. Violation of this directive may result in a determination that the Offeror is ineligible for award.**
- b. All proposals must be signed by an officer or employee having the authority to sign on behalf of the firm.
- c. All proposals shall be submitted sealed with the proposal number, date and time clearly marked on the outside of the envelope or package. Proposals received by the Purchasing Manager after the due date and time will not be accepted or considered. Failure to return required documents and information specified

herein may result in a determination that the proposal is non-responsive. Electronic transmittals (i.e. fax, email, etc.) will not be considered. All costs associated with preparing a proposal, including any mailing costs, are the Offeror's responsibility.

- d. Prices, when requested, shall be stated in units of quantity specified. No additional charges shall be passed on to the County, including sales tax, delivery charges or other surcharges. All deliveries shall be F.O.B. Destination.
- e. If the County is closed for business at the time scheduled for proposal opening, regardless of reason, proposals will be accepted on the next business day of the County, at the originally scheduled time.
- f. The Terms and Conditions in this Request for Proposals shall supersede any terms and conditions offered. Any additional conditions an Offeror intends to be considered, must be submitted as part of the proposal and be indicated on the Proposal Form. Such exceptions may result in the proposal being determined non-responsive.
- g. Submission of a proposal by the Offeror is not to be construed as an award or an order to ship.
- h. A proposal by the Offeror certifies that they are not currently debarred or suspended by a local, state or federal government entity from doing business with that entity. If a debarment or suspension exists, supporting information shall be provided with the response. Suspension or debarment may disqualify the Offeror from award of a contract.
- i. A bid/proposal may be amended and/or withdrawn by a bidder or offeror if the request is received in writing before the due date and hour. The request must be signed by a person authorized to represent the vendor or firm that submitted the bid/proposal. Submission of a subsequent bid/proposal unless specifically identified as an additional bid, shall constitute the withdrawal of any prior one submitted by the same bidder or offeror on the same Invitation for Bid/Request for Proposal.

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- j. The County posts all solicitations and related documents on **eVA**, Virginia's eProcurement Portal (www.eva.virginia.gov). A direct link to all County solicitations is located [here](#).
4. **ADDENDA:** Changes or supplemental instructions to this Invitation for Bids will be posted online with this solicitation. It is the Bidder's responsibility to check for addenda prior to the bid due date and time to ensure that all addenda are received.

All Bidders shall acknowledge receipt of Addenda with the bid. Acknowledgement of all Addenda shall be in the space provided on the Bid Form or by returning a copy of each signed Addendum. If all Addenda are not acknowledged, the bid may be determined non-responsive.

The County posts all solicitations and related addenda on **eVA**, Virginia's eProcurement Portal (www.eva.virginia.gov). A direct link to County of Frederick, VA solicitations is located [here](#).

5. AWARD

- a. A notice of award will be posted with the original solicitation on eVA, Virginia's eProcurement Portal (www.eva.virginia.gov). A direct link to County of Frederick, VA solicitations is located [here](#).
 - b. Award will be made to the lowest responsive and responsible Bidder (reference Method of Award provision contained herein). The ability, capacity, skill, character, integrity, reputation, judgement, experience, efficiency, ability to perform within the time specified, quality of performance of previous contracts, financial resources, suitability of goods or services to particular purpose and future maintenance and service and any exceptions noted will be taken into consideration in making an award.
 - c. The County reserves the right to reject any bid in whole or in part, delete items before making an award and when the County determines that any of the bid prices are significantly unbalanced to the potential detriment of the County and for other reasons when in the County's best interest.
 - d. The County reserves the right to waive any informality if it is determined to be in the best interest of the County.
 - e. In case of an error in the extension of prices, the unit price(s) shall govern.
 - f. If the bid from the lowest responsive and responsible Bidder exceeds available funds, the Purchasing Agent or designee may negotiate with the apparent low Bidder to obtain a contract price within available funds.
 - g. A Bidder may protest the award or decision to award by submitting such protest in writing to the Purchasing Agent no later than ten (10) days after the award or the announcement of the decision to award. No protest shall lie for a claim that the selected Bidder is not a responsible Bidder. The written protest shall include the basis for the protest and the relief sought. The Purchasing Agent shall issue a decision in writing within ten (10) business days stating the reasons for the action taken. This decision shall be final unless the Bidder appeals within ten (10) days of the written decision by invoking legal action as established by the Code of Virginia.
6. **AVAILABILITY OF FUNDS:** A contract shall be deemed in force only to the extent of availability of an annual appropriation by the County for the purchase of such goods and/or services. The County's extended obligations on contracts that include funding through successive fiscal periods shall be contingent upon actual appropriations for the successive periods (additional years).
7. **AUTHORIZATION TO TRANSACT BUSINESS IN VIRGINIA:** All Bidders organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50, as amended, shall provide the identification number issued to it by the State Corporation Commission. Any Bidder that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50, as amended, or as otherwise required by law shall include in the bid a statement describing why the Bidder is not required to be so authorized.

Any business entity that enters into a contract with a public body pursuant to this chapter shall not allow its existence to lapse or its Certificate of Authority or Registration to Transact Business in the Commonwealth, if so required under Title 13.1 or Title 50, as amended, to be revoked or cancelled at any time during the term of the contract. The County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section. Visit <https://www.scc.virginia.gov/> for more information.

8. **COOPERATIVE PURCHASE:** If authorized by the Bidder, the contract resulting from this Invitation for Bids may be extended to other public bodies, public agencies or institutions within the United States to purchase

at contract prices and terms. Any public entity that uses the contract shall place its own order(s) directly with the Contractor(s). The County is not a party to such contracts and is not responsible for placement of orders and payment or discrepancies of the participating jurisdictions. It is the Bidder's responsibility to notify the jurisdictions of the availability of contract(s). Bidders who do not wish to extend the terms, conditions and prices to other public entities shall so indicate in the bid (Attachment A, #8). Cooperative purchases are not extended for construction related projects.

9. **SMALL, WOMEN-OWNED MINORITY AND SERVICE-DISABLED VETERAN-OWNED BUSINESS REQUIREMENTS:** The County of Frederick desires to facilitate the establishment, preservation, and strengthening of small businesses and businesses owned by women, minority individuals and service-disabled veterans and to encourage their participation in the County's procurement activities. The County encourages these firms to compete and encourages non-minority firms to provide for the participation of small businesses and businesses owned by women, minority individuals and service-disabled veterans through partnerships, joint ventures, subcontracts, and other contractual opportunities. A directory of Commonwealth of Virginia Small, Women-Owned Minority and Service-Disabled Veteran-Owned businesses can be found at <https://directory.sbsd.virginia.gov>. Bidders are requested to complete the SWaM Business Indicator on the Bid Form.
10. **FAITH BASED ORGANIZATIONS:** In accordance with the Code of Virginia § 2.2-4343.1, the County does not discriminate against faith-based organizations.
11. **NON-DISCRIMINATION:** During the performance of this contract, the Contractor agrees as follows:
 - a. It will not discriminate against any employees or applicants for employment because of race, religion, color, sex, national origin, age, disability, status as a disabled veteran, or any other basis prohibited by federal or state law relating to discrimination in employment, except where one or more of these are a bona fide occupational qualification reasonably necessary to the normal operations of the Contractor. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
 - b. The Contractor will be and state that he is an equal opportunity employer in all solicitations or advertisements for employees.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - d. The Contractor will include the provisions of the foregoing paragraphs (a), (b) and (c) in every subcontract or Purchase Order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
12. **DRUG FREE WORKPLACE:** In accordance with the Code of Virginia § 2.2-4312, during the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or Purchase Order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this subsection, "A drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this subsection, the employees

of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

13. **PAYMENT TERMS:** Payment will be authorized following receipt of a valid invoice and delivery of goods or completion of services according to specifications and subject to inspections. Payments shall be in accordance with the Acknowledgement of Payment Procedures, which can be found at www.fcva.us/purchasing.
- a. Payment terms shall be "Net 30 Days" unless otherwise stated by the Bidder on the Bid Form. Alternate terms may be offered by Bidder for prompt payment of bills.
 - b. The payment terms stated herein must appear on the Contractor's invoice. Failure to comply with this requirement may result in the invoice being returned to the Contractor for correction.
 - c. Late payment charges shall not exceed the allowable rate specified by the Commonwealth of Virginia Prompt Payment Act. (1% per month).
 - d. If offered by the Bidder, a payment discount period shall be computed from the date of proper receipt of a valid invoice, or from the date of acceptable receipt of the goods and/or services, whichever is latest.
14. **HOLD HARMLESS AND INDEMNIFICATION:** The Contractor shall defend, indemnify and hold the County, and County's employees, agents, and volunteers, harmless, from and against any and all damage claim, liability, cost, or expense (including, without limitation, reasonable attorney's fees and court costs) of every kind and nature (including, without limitation, those arising from any injury or damage to any person, property or business) incurred by or claimed against the Contractor, its employees, agents, and volunteers, or incurred by or claimed against the County, County's employees, agents, and volunteers, arising out of, or in connection with, the performance of all services hereunder by the Contractor. This indemnification and hold harmless includes, but is not limited to, any financial or other loss, any adverse regulatory, agency or administrative sanctions or civil penalties incurred by the County due to the negligent, fraudulent or criminal acts of the Contractor or any of the Contractor's officers, shareholders, employees, agents, contractors, subcontractors, or any other person or entity acting on behalf of the Contractor. Unless otherwise provided by law, the Contractor indemnification obligations hereunder shall not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the Contractor under worker's compensation acts, disability benefit acts, other employee benefit acts, or benefits payable under any insurance policy. This paragraph shall survive the termination of the contract including any renewal or extension thereof.
- The Contractor agrees to defend and save the County, its agents, officials, volunteers and employees, harmless from liability of any nature or kind, for use of any copyright, composition, secret process, patented or unpatented invention, goods and/or services or appliances furnished or used in the performance of the contract, or which the Contractor is not the patentee, assignee, or licensee, to the same extent as provided in the above paragraph.
15. **INTERPRETATION OF SPECIFICATIONS:** The apparent silence in the specifications and any supplemental specifications as to any detail or the omission from the specifications shall be regarded as meaning that only the best commercial practices are to prevail and correct type, size and design are to be used. All interpretations of these specifications shall be made on the basis of this statement.
16. **LAWS AND REGULATIONS:** The Contractor shall keep fully informed of all federal, state and local laws, ordinances and regulations that in any manner affect the conduct of the work. The Contractor shall at all times observe and comply with all such laws, ordinances and regulations.

17. **GOVERNING LAW AND FORUM SELECTION:** This solicitation is subject to the laws of the Commonwealth of Virginia and the County of Frederick, Virginia. By virtue of entering into a contract, Contractor submits itself to a court of competent jurisdiction serving Frederick County, Virginia, and further agrees that this contract is controlled by the laws of the Commonwealth of Virginia and that all claims, disputes, and other matters shall only be decided by said court accordingly.
18. **RIGHTS UNDER ANTITRUST LAWS:** The Bidder assigns to the County any and all rights that it may have under the antitrust laws of the United States and the Commonwealth of Virginia in any way arising from or pertaining to the bid. This provision is remedial in nature and is to be liberally construed by any court in favor of the County.
19. **ETHICS IN PUBLIC CONTRACTING:** Pursuant to the Virginia Code § 2.2-4367: By submitting a bid, the bidder certifies that their proposal is made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
20. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** The Bidder certifies that it does not and will not during the performance of this Agreement knowingly violate the provisions of the Federal Immigration Reform and Control Act of 1986, as amended, which prohibits employment of illegal aliens.
21. **ASSIGNMENT OF CONTRACT:** A Contractor may not assign or transfer this contract and/or Purchase Order in whole or in part except with the prior written consent of the County, which may be withheld in the County's sole and exclusive discretion.
22. **DEFAULT:** In event of default by the Contractor, the County reserves the right to procure the goods and/or services from other sources and hold the Contractor liable for any excess cost occasioned thereby.
23. **TERMINATION FOR CONVENIENCE:** The County may terminate a contract when funds are not appropriated for the specified goods or services or when it is determined to be in the County's best interest without providing specific cause.
24. **TERMINATION FOR CAUSE:** In the event that the Contractor shall for any reason or through any cause be in default of the terms, conditions, or obligations of the contract documents, the County may give the Contractor written notice of such default and terminate the contract. All terms, conditions, and obligations of the contract documents are considered material.

The County may, in its discretion, provide the Contractor an opportunity to cure the default, if curable, prior to termination. Unless a different duration is provided in the notice of default, or agreed upon by the parties in writing, the Contractor shall have fourteen (14) calendar days to cure the default from the date such notice is mailed to the Contractor unless notification is by electronic means (fax/email) or personal delivery, in which case the opportunity to cure shall commence upon delivery of the notice. Upon failure of the Contractor to cure the default, the County may immediately terminate the contract effective as of the mailing or delivery of the default notice. If the County terminates the contract, the Contractor shall remain liable for performance of all terms, conditions, and obligations through the date of termination. Termination by the County shall not constitute a waiver by the County of any other rights or remedies available to the County by law or contract.

In addition, failure of the Contractor to perform the obligations of the contract may result in debarment of the Contractor for a period of up to three years. Termination and/or debarment of the Contractor shall not constitute

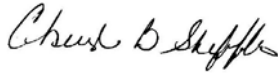
a waiver by the County of any other rights or remedies available to the County by law or contract.

25. **RIGHTS AND REMEDIES NOT WAIVED:** In no event shall a payment by the County to the Contractor or the waiver by the County of any provision under the contract, including any obligation of the Contractor, constitute or be construed as a waiver by the County of any other provision, obligation, breach of covenant, or any default which may exist under this contract on the part of the Contractor, and the making of any such payment by the County while any such breach or default exists shall not impair or prejudice any rights or remedies available to the County.
26. **SEVERABILITY:** If any provision of the Contract resulting from this Invitation for Bids or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this contract, or the application of such provision to persons or circumstances other than those which it is invalid or unenforceable, shall not be affected, and each provision of this contract shall be valid and enforced to the full extent permitted by law.
27. **INDEPENDENT CONTRACTOR:** The Contractor and any employees, agents, or other persons or entities acting on behalf of the Contractor shall act in an independent capacity and not as officers, employees, or agents of the County.
28. **CONFLICT:** In the event of a conflict between the contract documents, including these terms and conditions and the terms of a purchase order or related document issued by the Finance Department, the contract documents shall control.
29. **CONTRACTUAL DISPUTES:** Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the County Administrator, who shall reduce a decision to writing and mail or otherwise forward a copy to the Contractor within ninety (90) days. The decision of the County Administrator shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A Contractor may not institute legal action, prior to receipt of the County Administrator's decision on the claim, unless the County fails to render such decision within the time specified.
- a. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.
30. **NON-EXCLUSIVE CONTRACT:** Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the Contractor. The contract shall not restrict the County from acquiring similar, equal or like goods and/or services from other sources.
31. **RECORDS AND INSPECTION:** The Contractor shall maintain full and accurate records with respect to all matters covered under this contract, including, without limitation, accounting records, written policies and procedures, time records, telephone records, and any other supporting evidence used to memorialize, reflect, and substantiate charges or fees related to this contract. The Contractor's records shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by the County and its employees, agents or authorized representatives after giving at least three (3) days' notice to the Contractor by the County. The County shall have access to such records from the effective date of this contract, for the duration of the contract, and for five (5) years after the date of final payment by the County to the Contractor pursuant to this contract or any renewal or extension of this contract. The County's employees, agents or authorized representatives

shall have access to the Contractor's facilities, shall have access to all necessary records, and shall be provided adequate and appropriate workspace, in order to conduct audits.

32. **VIRGINIA FREEDOM OF INFORMATION ACT:** Public inspection of all records is strictly governed by Code of Virginia 2.2-4342 and in accordance with the Virginia Freedom of Information Act (VA Code 2.2-3700 et seq). Any inspection of procurement transactions shall be subject to reasonable restrictions to ensure the security and integrity of the records. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
33. **ENTIRE AGREEMENT:** The contract resulting from this Invitation for Bids and any additional or supplementary documents incorporated herein by reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this contract or any part thereof shall have any validity or bind any of the parties hereto. This contract shall not be modified, altered, changed or amended unless in writing and signed by the parties hereto.

APPROVED:



COUNTY FINANCE DIRECTOR
Cheryl B. Shiffler



COUNTY ATTORNEY
Roderick B. Williams