

RFT PART A – CONDITIONS OF TENDERING

Reference Schedule

The information contained in this Reference Schedule must be read in conjunction with the remainder of this RFT Part A.

Capitalised terms used in this RFT have defined meanings which are explained in clause 17.1 (Interpretation) of this RFT Part A. Capitalised terms defined elsewhere in this RFT but not referred to in clause 17.1 have the same meaning wherever used throughout this RFT.

Note to Tenderers:

Tenderers are advised to register their organisation at:

vichealth.force.com/s/login/SelfRegister?startURL=%2Fs%2F in order to receive any further information (i.e. including amendments, addendum, and further conditions that may apply to this RFT).

The Tenderer's Response (RFT Part D) must be prepared in accordance with clause 6 (Tender Documents) and submitted in accordance with clause 5 (Submission of Tenders) of this RFT Part A.

1. Details schedule

1.1 Tender Reference Number **PRD-01155**

1.2 Project Manager and Contracts & Procurement and Risk Advisor

VicHealth Contact/ Project Manager	
Name and title	Shannon Crane, Public Relations Lead
Email Address	tenders@vichealth.vic.gov.au
Contracts Procurement & Risk Advisor	
Name and title	Karen D'Souza
Email Address	tenders@vichealth.vic.gov.au

1.3 Indicative timetable*

Activity	Date
RFT issued	11am, Wednesday, 14 July 2021
End of period for questions or requests for information (see clause 4.2 (Requests for clarification or further information))	12pm, Friday 23 July 2021
Closing Time (See clause 5.2 (Late tenders))	2.00 pm Australian Eastern Standard Time, Friday 30 July 2021**

Intended completion of assessment of Tenders	Wednesday 11 August 2021
Intended formal notification of successful Tenderer(s)	Thursday 12 August 2021
Negotiations with Tenderer(s) (if applicable)	Thursday 19 August 2021
Intended execution of Proposed Contract(s)	Monday 23 August 2021
Intended commencement date	Friday 27 August 2021

** Note to Tenderers: This timetable is provided to give Tenderers an indication of the timing of the Tendering Process. The timetable is indicative only and may be changed by VicHealth in accordance with the Conditions of Tendering set out in RFT Part A of this RFT.*

A full debrief for unsuccessful Tenderers will be held after the conclusion of the Tender process if requested.

1.4 Additional materials (Not applicable)

Item	Description	Location

1.5 Lodgement of Tenders

Website address	https://vichealth.force.com/s/my-applications
Access restrictions (for e.g. size of file)	Please follow the submission guidelines provided when uploading your responses in the Stakeholder Portal
Other requirements	Not applicable

2. Rules governing this Request for Tender and the Tendering Process

2.1 Application of these Rules

2.1.1 Participation in the Tendering Process is subject to compliance with the rules contained in this RFT Part A.

2.1.2 All persons (whether or not they submit a Tender) having obtained or received this RFT may only use it, and the information contained in it, in compliance with the rules contained in this RFT Part A.

2.1.3 All Tenderers are deemed to accept the rules contained in this RFT Part A.

2.1.4 The rules contained in this RFT Part A apply to:

- (a) the RFT and any other information given, received or made available in connection with the RFT, including any additional materials specified in item 1.6 (Additional Materials) of RFT Part A and any revisions or addenda;

- (b) the Tendering Process; and
- (c) any communications (including any Tender Briefings, presentations, meetings or negotiations) relating to the RFT or the Tendering Process.

3. Request for Tender

3.1 Status of Request for Tender

3.1.1 This RFT is an invitation for persons to submit a proposal for the provision of the Services set out in the Specification contained in Part B of this RFT. Accordingly, this RFT must not be construed, interpreted, or relied upon, whether expressly or impliedly, as an offer capable of acceptance by any person, or as creating any form of contractual, promissory or restitutionary rights.

3.1.2 No binding contract (including a process contract) or other understanding (including any form of contractual, promissory, restitutionary or other rights) for the supply of the Services will exist between VicHealth and any Tenderer unless and until VicHealth has signed a formal written contract as contemplated in clause 10.1 (No Legally Binding Contract) of this RFT Part A.

3.2 Accuracy of Request for Tender

3.2.1 While all due care has been taken in connection with the preparation of this RFT, VicHealth makes no representations or warranties that the content in this RFT or any information communicated to or provided to Tenderers during the Tendering Process is, or will be, accurate, current or complete. VicHealth and its officers, employees and advisors will not be liable with respect to any information communicated or provided which is not accurate, current or complete.

3.2.2 If a Tenderer finds or reasonably believes it has found any discrepancy, ambiguity, error or inconsistency in the RFT or any other information provided by VicHealth (other than minor clerical matters), the Tenderer must promptly notify VicHealth in writing of such discrepancy, ambiguity, error or inconsistency to give VicHealth an opportunity to consider what corrective action is necessary (if any).

3.2.3 Any actual discrepancy, ambiguity, error or inconsistency in the RFT or any other information provided by VicHealth will, if possible, be corrected by VicHealth and provided (or the proper information made available) to all Tenderers without attribution to the Tenderer that provided the notice.

3.3 Additions and amendments to Request for Tender

3.3.1 VicHealth reserves the right to change any information in, or to issue addenda to, this RFT before the Closing Time. VicHealth and its officers, employees and advisors will not be liable in connection with either the exercise of, or failure to exercise, this right.

3.3.2 If VicHealth exercises its right to change information under clause 3.3.1, it may seek amended Tenders from all Tenderers.

3.3.3 VicHealth reserves the right to accept whole or part of your Proposal.

3.3.4 VicHealth is not obligated to appoint a successful Respondent into a contract, including where it is unable to identify a Proposal that complies with all of VicHealth's requirements, or to do so would, be otherwise, not in the public

interest. Irrespective of whether VicHealth decides to enter into a contract, VicHealth is free to proceed via any alternative process.

3.4 Representations

3.4.1 No representation made by or on behalf of VicHealth in relation to this RFT (or its subject matter) will be binding on VicHealth unless that representation is expressly incorporated into the contract(s) ultimately entered into between VicHealth and a Tenderer.

3.5 Confidentiality

3.5.1 VicHealth may require persons and organisations wishing to access or obtain a copy of this RFT or certain parts of it, or any additional materials (as referred to below in clause 3.7 (Availability of Additional Materials) of this RFT Part A) to execute a deed of confidentiality (in a form required by, or satisfactory to, VicHealth) before or after access is granted.

3.5.2 Whether or not execution of a deed of confidentiality under clause 3.5.1 is required by VicHealth, all persons (including Tenderers) obtaining or receiving this RFT and any other information in connection with the RFT or the Tendering Process must:

- (a) keep the contents of the RFT and such other information confidential; and
- (b) not disclose or use that information except as required for the purpose of developing a Tender in response to this RFT.

3.6 Licence to use Intellectual Property Rights

3.6.1 Persons obtaining or receiving this RFT and any other documents issued in relation to the Tendering Process may use the RFT and such documents only for the purpose of preparing a Tender.

3.6.2 Such Intellectual Property Rights as may exist in the RFT and any other documents provided to Tenderers by or on behalf of VicHealth in connection with the Tendering Process are owned by (and will remain the property of) VicHealth except to the extent expressly provided otherwise.

3.7 Availability of additional materials

3.7.1 Additional materials (if any) may be accessed in the manner set out in item 1.6 of the Details. Tenderers should familiarise themselves with these additional materials.

4. Communications during the Tendering Process

4.1 Project manager

4.1.1 All communications relating to the RFT and the Tendering Process must be directed to the Project Manager.

4.2 Requests for clarification or further information

4.2.1 Any questions or requests for further information or clarification of the RFT (or any other document issued in connection with the Tendering Process) must be submitted to the Project Manager in writing, via email.

- 4.2.2 Any communication by a Tenderer to VicHealth will be effective upon receipt by the Project Manager (provided such communication is in the required format).
- 4.2.3 VicHealth may restrict the period during which it will accept questions or requests for further information or for clarification and reserves the right not to respond to any question or request, irrespective of when such question or request is received.
- 4.2.4 Except where VicHealth is of the opinion that issues raised apply only to an individual Tenderer, questions submitted and answers provided will be made available to all Tenderers without identifying the person or organisation having submitted the question. In all other cases, VicHealth may deliver any written notification or response to a Tenderer by leaving or delivering it to the address of the Tenderer (as notified to the Project Manager).
- 4.2.5 A Tenderer may, by notifying the Project Manager in writing, withdraw a question submitted in accordance with this clause 4.2 (Requests for Clarification or Further Information) in circumstances where the Tenderer does not wish VicHealth to publish its response to the question.

4.3 Unauthorised communications

- 4.3.1 Communications (including promotional or advertising activities) with staff of VicHealth or consultants assisting VicHealth with the Tendering Process are not permitted during the Tendering Process except as provided in clause 4.2 (Requests for Clarification or Further Information) above, or otherwise with the prior written consent of the Project Manager. Nothing in this clause 4.3 (Unauthorised Communications) is intended to prevent communications with staff of, or consultants to, VicHealth to the extent that such communications do not relate to this RFT or the Tendering Process.
- 4.3.2 Tenderers must not otherwise engage in any activities that may be perceived as, or that may have the effect of, influencing the outcomes of the Tendering Process in any way.
- 4.3.3 Unauthorised communications with such persons may, in the absolute discretion of VicHealth, lead to disqualification of a Tenderer.

4.4 Improper assistance

- 4.4.1 Tenderers must not seek or obtain the assistance of employees, agents or contractors of VicHealth or the State in the preparation of their Tenders. In addition to any other remedies available to it under law or contract, VicHealth may, in its absolute discretion, immediately disqualify a Tenderer that it believes has sought or obtained such assistance.

4.5 Anti-competitive conduct

- 4.5.1 Tenderers and their respective officers, employees, agents and advisers must not engage in any collusion, anti-competitive conduct or any other similar conduct with any other Tenderer or any other person in relation to:

- (a) the preparation or lodgement of their Tender;
- (b) the assessment and clarification of their Tender; and
- (c) the conduct of negotiations with VicHealth,

in respect of this Tendering Process.

4.5.2 For the purposes of clause 4.5.1, collusion, anti-competitive conduct or any other similar conduct may include disclosure, exchange and clarification of information whether or not such information is confidential to VicHealth or any other Tenderer or any person or organisation.

4.5.3 In addition to any other remedies available to it under law or contract, VicHealth may, in its absolute discretion, immediately disqualify a Tenderer that it believes has engaged in any collusive, anti-competitive conduct or any other similar conduct in respect of this Tendering Process.

4.6 Complaints about Tendering Process

4.6.1 Any complaint about the RFT or the Tendering Process must be submitted to the Project Manager or VicHealth Contracts & Procurement Coordinator in writing immediately upon the cause of the complaint arising or becoming known to the Tenderer. The written complaint must set out:

- (a) the basis for the complaint (specifying the issues involved);
- (b) how the subject of the complaint (and the specific issues) affect the person or organisation making the complaint;
- (c) any relevant background information; and
- (d) the outcome desired by the person or organisation making the complaint.

4.6.2 If the matter relates to the conduct of a department official, the complaint should also be brought to the attention of the Contracts & Procurement Coordinator.

4.7 Harmful Industry Relationships

When you respond to a Request for Tender, you are required to declare relationships with harmful industries.

In ensuring that suppliers of services maintain alignment to these objectives and statutory obligations VicHealth has established a Harmful Industry Relationship Funding and Procurement Policy. Information about VicHealth's Harmful Industry Relationship Funding and Procurement Policy is available [here](#).

Respondents are required to provide details of any past, present or planned relationships between your organisation and a harmful industry for VicHealth to assess as part of this procurement process.

If your organisation has had or currently has a relationship with the tobacco, gambling, alcohol, food and sugary drink industries, you must declare these in Part D and Appendix C.

Note to Tenderers: Only Tenderers capable of providing all of the Services and complying in full with the conditions set out in this RFT should submit a Tenderer's Response.

4.8 Individual Conflict of Interest

- 4.7.1 A Tenderer must not, and must ensure that its officers, employees, agents and advisers do not place themselves in a position that may or does give rise to actual, potential or perceived conflict of interest between the interests of the State and the Tenderer's interests during the Tendering Process. Note: This does not pertain to relationships with harmful industries which are covered under Part D Harmful Industry Relationships and Appendix C Harmful Industry Relationships Declaration Form.
- 4.7.2 The Tenderer's Response in RFT Part D requires Tenderers to provide details of any interests, relationships or clients which may or do give rise to a conflict of interest in relation to the supply of Goods or Services under any contract that may result from this RFT.
- 4.7.3 If the Tenderer submits its Tender and a conflict of interest arises, or is likely to arise, which was not disclosed in the Tender, the Tenderer must notify VicHealth immediately in writing of that conflict.
- 4.7.4 VicHealth may disqualify a Tenderer from the Tendering Process if the Tenderer fails to notify VicHealth of the conflict as required.

5. Submission of Tenders

5.1 Lodgement

- 5.1.1 Tenders must be lodged only by the means set out in item 1.5 of the Lodgement Details of RFT Part A.
- 5.1.2 Where the Reference Schedule requires or permits Tenders to be lodged via the Internet through the website nominated in clause 1.5 of RFT Part A, Tenderers are deemed to accept the online user agreement applying to that website and must comply with the requirements set out on that website.

5.2 Late tenders

- 5.2.1 Tenders must be lodged by the Closing Time. The Closing Time may be extended by VicHealth in its absolute discretion by providing written notice to Tenderers.
- 5.2.2 Tenders lodged after the Closing Time or lodged at a location or in a manner that is contrary to that specified in this RFT will be disqualified from the Tendering Process and will be ineligible for consideration. However, a late Tender may be accepted where the Tenderer can clearly demonstrate (to the satisfaction of VicHealth) that late lodgement of the Tender was caused by a system interruption in case of the eTender system or that access was denied or hindered in relation to the physical tender box or that a major/critical incident hindered the delivery of their tender documents and, in either case, that the integrity of the Tendering Process will not be compromised by accepting a Tender after the Closing Time.
- 5.2.3 The determination of VicHealth as to the actual time that a Tender is lodged is final. Subject to clause 5.2.2, all Tenders lodged after the Closing Time will be recorded by VicHealth and will only be opened for the purposes of identifying a business name and address of the Tenderer. VicHealth will inform a Tenderer whose Tender was lodged after the Closing Time of its ineligibility for consideration. The general operating practice is for the late tender to be returned within 5 working days of receipt / within 5 working days after determination not to accept a late tender.

6. Tender Documents

6.1 Tenderers' Responsibilities

6.1.1 Tenderers are responsible for:

- (a) examining this RFT and any documents referenced or attached to this RFT and any other information made available by VicHealth to Tenderers in connection with this RFT;
- (b) fully informing themselves in relation to all matters arising from this RFT, including all matters regarding VicHealth's requirements for the provision of the Goods and/or Services;
- (c) ensuring that their Tenders are accurate and complete;
- (d) making their own enquiries and assessing all risks regarding the RFT, and fully incorporating the impact of any known and unknown risks into their Tender; and
- (e) ensuring that they comply with all applicable laws in regards to the Tendering Process (including Part 2 of the *Fair Trading Act 1999*).

6.2 Preparation of Tenders

6.2.1 Tenderers must ensure that:

- (a) their Tender is presented in the required format as set out in RFT Part D; and
- (b) all the information fields in RFT Part D are completed and contain the information requested.

Note to Tenderers: VicHealth may in its absolute discretion reject a Tender that does not include the information requested or is not in the format required.

6.2.2 If VicHealth elects to shortlist any Tenderers, those shortlisted Tenderers may be required to provide the information requested in Parts E and F of this RFT. Tenderers may wish to prepare Parts E and F in order to ensure that they can respond to a request by VicHealth within the applicable timeframes, but should not submit those Parts unless and until required to do so by VicHealth.

6.2.3 Unnecessarily elaborate responses or other presentations beyond what is sufficient to present a complete and effective proposal are not desired or required. Elaborate artwork and expensive visual and other presentation aids are not necessary.

6.3 Illegible content, alteration and erasures

6.3.1 Incomplete Tenders may be disqualified or assessed solely on the information contained in the Tender.

6.3.2 VicHealth may disregard any content in a Tender that is illegible and will be under no obligation whatsoever to seek clarification from the Tenderer.

6.3.3 VicHealth may permit a Tenderer to correct an unintentional error in their Tender where that error becomes known or apparent after the Closing Time, but in no event will any correction be permitted if VicHealth reasonably considers that the correction would materially alter the substance of the Tenderer's Response.

6.4 Obligation to notify errors

- 6.4.1 If, after a Tenderer's Response has been submitted, the Tenderer becomes aware of an error in the Tenderer's Response (including an error in pricing, but excluding clerical errors which would have no bearing on the assessment of the Tender), the Tenderer must promptly notify VicHealth of such error.

6.5 Responsibility for Tendering Costs

- 6.5.1 The Tenderer's participation or involvement in any stage of the Tendering Process is at the Tenderer's sole risk, cost and expense. VicHealth will not be responsible for, nor pay for, any expense or loss that may be incurred by Tenderers in relation to the preparation or lodgement of their Tenders.

- 6.5.2 In addition to clauses 3.1.1 and 3.1.2, VicHealth is not liable to the Tenderer for any costs on the basis of any contractual, promissory or restitutionary grounds whatsoever as a consequence of any matter relating to the Tenderer's participation in the Tendering Process, including without limitation, instances where:

- (a) the Tenderer is not engaged to perform under any contract; or
- (b) VicHealth exercises any right under this RFT or at law.

6.6 Disclosure of Tender contents and Tender information

- 6.6.1 Tenders will be treated as confidential by VicHealth. The State will not disclose Tender contents and Tender information, except:

- (a) as required by law (including, for the avoidance of doubt, as required under the *Freedom of Information Act 1982* (Vic) (FOI Act));
- (b) for the purpose of investigations by the Australian Competition and Consumer Commission or other government authorities having relevant jurisdiction;
- (c) to external consultants and advisers of VicHealth engaged to assist with the Tendering Process; or
- (d) general information from Tenderers required to be disclosed by government policy.

6.7 Use of Tenders

- 6.7.1 Upon submission in accordance with the requirements of clause 5 (Submission of Tenders) of RFT Part A and clause 1.7 of the Establishment Details of RFT Part A, all Tenders become the property of VicHealth. Tenderers will retain all ownership rights in any intellectual property contained in the Tender. The submission of a Tender does not transfer to VicHealth any ownership interest in the Tenderer's intellectual property rights, or give VicHealth any rights in relation to the Tender, except as expressly set out below.

- 6.7.2 Each Tenderer, by submission of their Tender, is deemed to have licensed VicHealth to reproduce the whole, or any portion, of their Tender for the purposes of enabling VicHealth to assess the Tender.

- 6.7.3 Further, in submitting a Tender, the Tenderer accepts that VicHealth may, in accordance with the requirements of applicable Victorian Government policy, publish (on the internet or otherwise):

- (a) the name of the successful or recommended Tenderer(s);
- (b) the value of the successful Tender; and
- (c) the Tenderer's name together with the provisions of the contract generally.

6.8 Period of validity

- 6.8.1 All Tenders must remain valid and open for acceptance for a minimum of 120 days from the Closing Time. This period may be extended by mutual agreement between VicHealth and the Tenderer.

6.9 Status of Tender

- 6.9.1 Each Tender constitutes an irrevocable offer by the Tenderer to VicHealth to provide the Goods and/or Services required under, and otherwise to satisfy the requirements of, the Specification (RFT Part B of this RFT) on the terms and conditions of the Proposed Contract (subject to the Statement of Compliance contained in RFT Part D of this RFT).

- 6.9.2 A Tender must not be conditional on:

- (i) board approval of the Tenderer or any related body corporate of the Tenderer being obtained;
- (ii) the Tenderer conducting due diligence or any other form of enquiry or investigation;
- (iii) the Tenderer (or any other party) obtaining any regulatory approval or consent;
- (iv) the Tenderer obtaining the consent or approval of any third party; or
- (v) the Tenderer stating that it wishes to discuss or negotiate any commercial terms of the contract.

- 6.9.3 VicHealth may, in its absolute discretion, disregard any Tender that is, or is stated to be, subject to any one or more of the conditions detailed above (or any other conditions).

- 6.9.4 VicHealth reserves the right to accept a Tender in part or in whole or to negotiate with a Tenderer in accordance with clause 8.3 (Unreasonable disadvantage) of RFT Part A.

7. Compliance with Specification and Proposed Contract

7.1 Compliance with Specification

- 7.1.1 Under RFT Part D of this RFT, a Tenderer must submit a tabulated statement showing, in order of the relevant clauses, its level of compliance with the Specification contained in RFT Part B of this RFT.

- 7.1.2 In particular, Tenderers must state if they will not comply with the Specification, or will only comply with the Specification subject to conditions. Full details of the non-compliance (including the nature and extent of the non-compliance and any reasons for such non-compliance) must be stated in the space provided in the tabulated statement contained in section 3 (Compliance with the Specification) of RFT Part D. No response is required in respect of a particular section of the Specification where Tenderers will comply with the Specification.

Only sections that Tenderers will not comply with, or will only comply with subject to conditions, should be noted in the tabulated statement.

- 7.1.3 VicHealth is prepared to contemplate minor variations or departures from the Specifications proposed by Tenderers. However, Tenderers should note that significant or substantive variations or departures from the Specifications will not be viewed favourably unless the Tenderer is able to demonstrate to the satisfaction of VicHealth the necessity for such variations or departures.

Note to Tenderers: VicHealth will assume that a Tenderer's Response complies in all relevant respects with the Specification unless the Tenderer states otherwise. Failure to notify VicHealth of any non-compliance may result in a Tenderer's Response being disregarded.

- 7.1.4 For the purposes of this clause 7.1:

- (a) **Complies** means that in all respects the Tenderer's Response meets or otherwise satisfies all specified outputs, characteristics or standards.
- (b) **Will comply subject to conditions** means that the specified outputs, characteristic or performance standard can only be met by the Tenderer subject to certain conditions.
- (c) **Will not comply** means that the specified outputs, characteristic or performance standard is not met by the Tenderer's Response.

7.2 Compliance with the proposed contract

- 7.2.1 Under RFT Part D of this RFT, a Tenderer must also submit a tabulated statement, with numbering corresponding to the relevant clauses, detailing its level of compliance with the Proposed Contract contained in RFT Part C of this RFT.

- 7.2.2 In particular, Tenderers must state if they will not comply with the Proposed Contract, or will only comply with the Proposed Contract subject to conditions. Full details of the non-compliance (including the nature and extent of the non-compliance and any reasons for such non-compliance) must be stated in the space provided in the tabulated statement contained in section 10 (Risk and insurance) of RFT Part D, together with any proposed amendments that would render the contractual provision acceptable to the Tenderer. No response is required in respect of a particular clause of the Proposed Contract where Tenderers will comply with the Proposed Contract. Only clauses that Tenderers will not comply with, or will only comply with subject to conditions should be noted in the tabulated statement.

- 7.2.3 VicHealth is prepared to contemplate minor variations or departures from the Proposed Contract proposed by Tenderers. However, Tenderers should note that significant or substantive variations or departures will not be viewed favourably unless the Tenderer is able to demonstrate the necessity for such variations or departures.

Note to Tenderers: VicHealth will assume that a Tenderer is able to and will in fact comply in all relevant respects with the Proposed Contract unless the Tenderer expressly states otherwise. Failure to notify VicHealth of any non-compliance may result in a Tenderer's Response being disregarded.

- 7.2.4 For the purposes of this clause 7.2:
- (a) **Complies** means that the Tenderer accepts the contractual provision in every respect (including the wording of the provision).
 - (b) **Will comply subject to conditions** means that the Tenderer will comply with the relevant contractual provision subject to certain specified conditions.
 - (c) **Will not comply** means that the Tenderer does not accept the contractual provision.

7.3 General

- 7.3.1 Indefinite responses such as “noted”, “to be discussed” or “to be negotiated” are not acceptable.
- 7.3.2 Where the Tenderer is unwilling to accept a specified condition, the non-acceptance must be clearly and expressly stated. Prominence must be given to the statement detailing the non-acceptance. It is not sufficient that the statement appear only as part of an attachment to the Tender, or be included in a general statement of the Tenderer’s usual operating conditions.
- 7.3.3 An incomplete Tender may be disqualified or assessed solely on the information received with the Tender.

7.4 Alternative Tender

- 7.4.1 A Tenderer may submit an alternative proposal. An alternative proposal will only be accepted if:
- (a) the Tenderer also provides a conforming Tenderer’s Response; and
 - (b) the alternative proposal is clearly identified as an “Alternative Tender”.
- 7.4.2 An Alternative Tender may:
- (a) not comply with the Specifications for the relevant Goods or Services due to inherent design or capability in the operation of the Goods or Services; or
 - (b) provide the Goods or Services in a manner different to that specified in RFT Part B of the RFT.
- 7.4.3 Tenderers are encouraged to offer options or solutions which may, in an innovative way, contribute to VicHealth’s ability to carry out its business in a more cost-effective manner. These may be related to:
- (a) the outputs, functional, performance and technical aspects of the requirement; or
 - (b) minimisation of environmental impact;
 - (c) opportunities for more advantageous commercial arrangements.
- 7.4.4 Any such options or solutions will be considered by VicHealth on a “commercial in confidence” basis if so requested by the Tenderer.

7.4.5 Where a Tenderer submits an offer which meets the requirements of the RFT in an alternative and practical manner, the Tender must also include any supplementary material (including such pricing and costing details as may be necessary to enable VicHealth to fully assess the financial impact of the alternative proposal), which demonstrates in detail that such an alternative will fully achieve and/or exceed all the specified requirements, together with references as to why the additional features may be advantageous.

7.4.6 VicHealth reserves the right to consider such offers on their merits or not to consider them at all.

8. Contract Disclosure Requirements

8.1 Freedom of Information

8.1.1 The Government has a strong presumption in favour of disclosing contracts and, in determining whether any clauses should be confidential, specific freedom of information principles (including a public interest test) will apply. However, if by agreement certain clauses are excised from public contracts, the Government cannot pre-empt the workings of the FOI Act or constrain the Auditor General's powers to secure and publish documents as he or she sees fit.

8.1.2 The Conditions of Tendering include a provision for the disclosure of contract information (refer clause 6.7 (Use of Tender) in RFT Part A dealing with "Use of Tenders").

8.1.3 The provisions of the Proposed Contract in regard to confidentiality and disclosure should also be noted.

8.1.4 This provision is consistent with the Government's presumption of the full disclosure of contracts. Any non-disclosure of contract provisions must be justified by the successful Tenderer by applying the principles for exemption under the provisions of the FOI Act. Section 34(1) of the FOI Act provides that information acquired by an agency or a Minister from a business, commercial or financial undertaking is exempt under the FOI Act if the information relates to trade secrets or other matters of a business, commercial or financial nature and the disclosure would be likely to expose the undertaking unreasonably to disadvantage.

8.1.5 If a Tenderer wishes to withhold the disclosure of specific contract information, the Tenderer must clearly outline how the release of this information will expose trade secrets or expose the business unreasonably to disadvantage.

8.2 Environmental claims

VicHealth wishes to be informed of any claims made by Tenderers about the benefit, including environment benefits, of the Goods or Services that are offered by them.

8.3 Trade secrets

8.3.1 In considering whether specific information should be categorised as a trade secret, Tenderers should assess:

- (a) the extent to which it is known outside of the Tenderer's business;

- (b) the extent to which it is known by the persons engaged in the Tenderer's business;
- (c) any measures taken to guard its secrecy;
- (d) its value to the Tenderer's business and to any competitors;
- (e) the amount of money and effort invested in developing the information; and
- (f) the ease or difficulty with which others may acquire or develop this information.

8.4 Unreasonable disadvantage

8.4.1 In determining whether disclosure of specific information will expose a Tenderer's business unreasonably to disadvantage, you should consider section 34(2) of the FOI Act. Broadly, you should consider:

- (a) whether the information is generally available to competitors; and
- (b) whether it could be disclosed without causing substantial harm to the competitive position of the business.

8.4.2 VicHealth will consider these applications in the Tender assessment and negotiations with Tenderers.

9. Assessment of Tenders

9.1 Assessment process

9.1.1 Following the Closing Time, VicHealth intends to assess the Tenders received. Tenders will be assessed against the Assessment Criteria specified in clause 9.2 (Assessment Criteria Format) of RFT Part A.

9.1.2 Without limiting VicHealth's rights in the RFT, VicHealth may at any time during the Tendering Process choose to:

- (a) shortlist one or more Tenderers;
- (b) commence or continue discussions with all or some Tenderers without shortlisting any Tenderers; or
- (c) accept one or more of the Tenders.

9.1.3 Unless the Assessment Criteria explicitly require, VicHealth may, but is not in any way bound to, shortlist, to select as successful, or to accept the Tender offering the lowest price.

9.1.4 Should VicHealth choose to include a shortlisting stage in its assessment process, VicHealth is not, at any time, required to notify Tenderers or any other person or organisation interested in submitting a Tender.

9.1.5 A Tenderer's Response will not be deemed to be unsuccessful until such time as the Tenderer is formally notified of that fact by VicHealth. The commencement of negotiations by VicHealth with one or more other Tenderers is not to be taken as an indication that any particular Tenderer's Response has not been successful.

9.2 Assessment criteria format

- 9.2.1 The assessment criteria can be weighted to reflect the importance of project requirements noted in RFT Part B of the Specifications.
- 9.2.2 In assessing Tenderer's Responses, VicHealth will have regard to:
- (a) specific assessment criteria identified in the list below;
 - (b) the overall value for money proposition presented in the Tenderer's Response; and
 - (c) particular weighting assigned to any or all of the criteria specified in the table below (noting that any criteria for which a weighting has not been assigned should be assumed to have equal weighting).
- 9.2.3 For the purposes of clause 9.2.2, "value for money" is a measurement of financial and non financial factors, including:
- (a) quality levels;
 - (b) performance standards; and
 - (c) environmental benefits/impacts.
- 9.2.4 Value for money will be assessed on a 'whole of life' basis (including the transitioning-in, the contract term and the transitioning-out phases of the relationship between VicHealth and a Tenderer), with a view to long-term sustainability of the value for money proposition and with a focus on ensuring that value for money outcomes are promoted and protected following the conclusion of any contract that may result from this RFT.

Assessment criteria	Assessment approach
	<i>Weighting and Scores</i>
1. Compliance with Functional Specifications as outlined in Part B 2. Capability 3. Past performance and current work 4. Quality systems for deliverables 5. Customer service 6. Strategic 7. Technical 8. Social Procurement	40% 5% 10% 10% 10% 5% 20% Not weighted
9. Harmful Industry Relationships with tobacco, alcohol, unhealthy food, sugary drink and gambling industries	Assessed against guiding principles
Mandatory Assessment Criteria	Pass/ Fail
10. Contractual Compliance 11. Financial viability 12. Risk and Insurance 13. Individual Conflict of Interest 14. Supplier Code of Conduct 15. Any other matters	
Financial	Ranked 1st, 2nd, 3rd etc (not weighted)
16. Price	Not weighted

9.3 Clarification of Tender

- 9.3.1 VicHealth may seek clarification from and enter into discussions with any or all of the Tenderers in relation to their Tender. VicHealth may use such information in interpreting the Tender and assessing the cost and risk to the Lead Departing of accepting the Tender. Failure to supply clarification to the satisfaction of VicHealth may render the Tender liable to disqualification.
- 9.3.2 VicHealth is under no obligation to seek clarification of anything in a Tender and VicHealth reserves the right to disregard any clarification that VicHealth considers to be unsolicited or otherwise impermissible in accordance with the rules set out in this RFT Part A.

9.4 Discussion with Tenderers

- 9.4.1 VicHealth may elect to engage in detailed discussions with any one or more Tenderers, with a view to maximising the benefits of the RFT as measured against the assessment criteria set out in clause 9.2 and fully understanding a Tenderer's offer, including risk allocation.
- 9.4.2 As part of this process, VicHealth may request such Tenderer(s) to improve one or more aspects of their Tender, including any technical, financial, corporate or legal components.

- 9.4.3 In its absolute discretion, VicHealth may invite some or all Tenderers to give a presentation to VicHealth in relation to their submissions, including (where the RFT relates in whole or in part to Goods), a demonstration of the Goods.
- 9.4.4 VicHealth is under no obligation to undertake discussions with, or to invite any presentations from, Tenderers.
- 9.4.5 In addition to presentations and discussions, VicHealth may request some or all Tenderers to:
- (a) conduct a site visit;
 - (b) provide references or additional information; and/or
 - (c) make themselves available for panel interviews.

9.5 Best and final offers

- 9.5.1 Tenderers or, where the Tendering Process involves a shortlisting process, shortlisted Tenderers, may be invited by VicHealth to submit a best and final offer in relation to all or certain aspects of their respective Tenders.
- 9.5.2 VicHealth is under no obligation to give Tenderers the opportunity to submit a best and final offer. If VicHealth chooses to give Tenderers the opportunity to submit a best and final offer, it is under no obligation to give notification before the Closing Time that such opportunity will be given.
- 9.5.3 Notwithstanding the possibility that VicHealth may give Tenderers the opportunity to submit a best and final offer, Tenderers should be aware that VicHealth will, in conducting its assessment of Tenders, rely on all information (including all representations) contained in such Tenders. Tenderers are therefore encouraged to submit their best and final offers in the first instance.
- 9.5.4 Any one or more Tenderers may be required to submit an executed contract based on the Tender as part of their best and final offer. Unless and until VicHealth executes such contract, submission of a contract capable of acceptance by VicHealth does not and will not be taken to give rise to a binding contract (express or implied) between a Tenderer and VicHealth.

10. Successful Tenders

10.1 No legally binding contract

- 10.1.1 Selection as a successful Tenderer does not give rise to a contract (express or implied) between the successful Tenderer and VicHealth for the supply of the Goods or Services. No legal relationship will exist between VicHealth and a successful Tenderer for the supply of the Goods or Services until such time as a binding contract is executed by them.

10.2 Pre-contractual negotiations

- 10.2.1 VicHealth may, in its absolute discretion, decide not to enter into pre-contractual negotiations with a successful Tenderer.
- 10.2.2 A Tenderer is bound by its Tender (including the Statement of Compliance to the Proposed Contract forming part of the Tenderer's Response) and, if selected as a successful Tenderer, must enter into a contract on the basis of the Tender without negotiation.

10.3 No Obligation to enter into contract

10.3.1 VicHealth is under no obligation to appoint a successful Tenderer or Tenderers (as the case may be), or to enter into a contract with a successful Tenderer or any other person, if it is unable to identify a Tender that complies in all relevant respects with the requirements of VicHealth, or if to do so would otherwise not be in the public interest. For the avoidance of any doubt, in these circumstances VicHealth will be free to proceed via any alternative process.

10.3.2 VicHealth may conduct a debriefing session for all Tenderers (successful and unsuccessful). Attendance at such debriefing session is optional.

11. Supplier Code of Conduct

11.1.1 VicHealth as a statutory body under the Victorian State Government, is committed to ethical, sustainable and socially responsible procurement. In ensuring that our suppliers maintain the same values as the Government, the State has established a [Supplier Code of Conduct](#) (the Code). Please complete the Supplier Code of Conduct Commitment in Appendix B.

12. Additional Rules

13.1.1 Any rules governing the RFT or the Tendering Process in addition to those set out in this RFT Part A, are set out in clause 1.7 Additional Rules of RFT Part A.

13. Tenderer Warranties

14.1.1 By submitting a Tender, a Tenderer warrants that:

- (a) in lodging its Tender it did not rely on any express or implied statement, warranty or representation, whether oral, written, or otherwise made by or on behalf of VicHealth, its officers, employees, agents or advisers other than any statement, warranty or representation expressly contained in the RFT;
- (b) it did not use the improper assistance of VicHealth employees or information unlawfully obtained from VicHealth in compiling its Tender;
- (c) it is responsible for all costs and expenses related to the preparation and lodgement of its Tender, any subsequent negotiation, and any future process connected with or relating to the Tendering Process;
- (d) it otherwise accepts and will comply with the rules set out in this RFT Part A of the RFT; and
- (e) it will provide additional information in a timely manner as requested by VicHealth to clarify any matters contained in the Tender.

14. VicHealth's Rights

15.1.1 Notwithstanding anything else in this RFT, and without limiting its rights at law or otherwise, VicHealth reserves the right, in its absolute discretion at any time, to:

- (a) cease to proceed with, or suspend the Tendering Process prior to the execution of a formal written contract;

- (b) alter the structure and/or the timing of the RFT or the Tendering Process;
- (c) vary or extend any time or date specified in this RFT for all or any Tenderers or other persons;
- (d) terminate the participation of any Tenderer or any other person in the Tendering Process;
- (e) require additional information or clarification from any Tenderer or any other person or provide additional information or clarification;
- (f) negotiate with any one or more Tenderers and allow any Tenderer to alter its Tender;
- (g) call for new Tenders;
- (h) reject any Tender received after the Closing Time;
- (i) reject any Tender that does not comply with the requirements of this RFT; or
- (j) consider and accept or reject any alternative tender.

Governing Law

- 16.1.1 This RFT and the Tendering Process is governed by the laws applying in the State of Victoria.
- 16.1.2 Each Tenderer must comply with all relevant laws in preparing and lodging its Tender and in taking part in the Tendering Process.

15. Interpretation

15.1 Definitions

- 17.1.1 In this Request for Tender, unless a contrary intention is apparent:

Assessment Criteria means the criteria set out in clause 9.2 (Assessment Criteria Format) of RFT Part A.

Business Day means a day which is not a Saturday, Sunday or public holiday (being a public holiday appointed as such under the *Public Holidays Act 1993 (Vic)*) in Melbourne.

Closing Time means the time specified as such in clause 1.4 (Indicative Timetable) of RFT Part A by which Tenders must be received.

Contracts, Procurement and Risk Advisor means the person so designated in clause 1.2 (Project Manager and Contracts Procurement and Risk Advisor) of RFT Part A.

Goods means the goods or other products required by VicHealth, as specified in RFT Part B of this RFT.

Harmful Industry Relationships includes brands, companies or organisations who profit from products that are harmful to health and wellbeing including tobacco, gambling, alcohol, unhealthy food and sugary drinks.

Intellectual Property Rights includes copyright and neighbouring rights, and all proprietary rights in relation to inventions (including patents) registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Project Manager means the person so designated in clause 1.2 (Project Manager and Contracts Procurement & Risk Advisor) of RFT Part A.

Proposed Contract means the agreement and any other terms and conditions contained in or referred to in RFT Part C of this RFT.

Reference Schedule means the schedule so designated forming part of RFT Part A of this RFT.

Request For Tender or RFT means this document (comprising each of the parts identified in clause 2 Rules Governing this RFT and the Tendering Process of this RFT Part A) and any other documents so designated by VicHealth.

Services means the services required by VicHealth, as specified in RFT Part B of this RFT.

Specification means any specification or description of VicHealth's requirements contained in RFT Part B of this RFT.

State means the Crown in right of the State of Victoria.

Statement of Compliance means the statement forming part of a Tender indicating the Tenderer's compliance with the Specification and the Proposed Contract.

Tender means a document lodged by a Tenderer in response to this RFT containing an offer to provide Goods and/or Services in accordance with the Specification.

Tenderer means a person or organisation that submits a Tender.

Tendering Process means the process commenced by the issuing of this Request for Tender and concluding upon formal announcement by VicHealth of the selection of a successful Tenderer(s) or upon the earlier termination of the process.

VicHealth means the government department or agency (as specified in clause 1.1 (VicHealth) of RFT Part A) responsible for the Tendering Process.

15.2 Interpretation

17.2.1 In this RFT, unless expressly provided otherwise:

- (a) a reference to:
 - i) "includes" or "including" means includes or including without limitation; and
 - ii) "\$" or "dollars" is a reference to the lawful currency of the Commonwealth of Australia; and
- (b) if a word or phrase is defined its other grammatical forms have corresponding meanings.

15.3 Inconsistency

17.3.1 If there is any inconsistency between any part of this RFT, a descending order of precedence must be accorded to:

- (a) the conditions of tendering in Part A of this RFT and any annexes or attachments;
- (b) the Tenderer's response in Part D of this RFT;
- (c) the Proposed Contract in Part C of this RFT;
- (d) any other part of this RFT,

RFT PART B – SPECIFICATION

VicHealth

Request for Tender (RFT) PRD-01155

For VicHealth Media and Social Media Monitoring.

B.1 About VicHealth

Refer to Introduction section of this RFT for details about VicHealth.

B.2 Background

VicHealth has been a prominent public commentator on health-related topics since its inception in 1987.

Today, it generates significant media and social media discussion on the topics of healthy eating, physical activity, social connection and mental wellbeing, alcohol, and smoking.

VicHealth is seeking a supplier to provide high-quality monitoring and reporting of news media and social media in relation to VicHealth's activities in the above topics, as well as discussion on these health areas more broadly.

For VicHealth to implement its public relations and social media activities most effectively, the External Communications Team staff need to know when VicHealth or its related campaigns are mentioned in the news (including broadcast, print, online, blogs and magazines across Australia) or on social media, and also when key preventative health topics are discussed more broadly.

B.3 Deliverables

VicHealth's External Communications Team requires a combined media and social media monitoring service that can deliver timely and accurate monitoring and analysis of media coverage and social media discussion, including key activities which feature on both news media and social media channels.

VicHealth's work adapts based on what the community requires, so it's important for the successful media and social media monitoring supplier to be able to quickly adapt monitoring briefs at short notice.

With regards to media monitoring, VicHealth requires the ability to monitor key metrics including volume of coverage, key messages, duration/size of media item, the reach or audience, and the ability to track which journalists or outlets are generating the most impactful coverage of VicHealth's activities and about the key health issues the organisation is focused on. It's vital that VicHealth can access content behind any paywalls at no extra cost and that the successful supplier has copyright licencing to capture and share the coverage with VicHealth. Metrics data should be managed according to [Victorian Government data security requirements](#) or equivalent international standards.

For social media monitoring, the team requires the ability to monitor week-on-week growth of owned social channels (including followers and engagement), as well as health trends across the week or month, plus the ability to track conversations and sentiment of conversations about key health topics.

VicHealth also requires the ability to distribute media releases to news contacts at any time of day or night, plus access to an up-to-date media contacts database with ability to create tailored contact lists.



Upon commencement of the contract, VicHealth will require support from the successful supplier to train staff in how to navigate the systems and processes for media and social media monitoring and reporting, as well as press release distribution.

B.4 Functional and non-functional requirements

Please download this spreadsheet which details the functional and non-functional requirements of this Tender:

<https://www.vichealth.vic.gov.au/-/media/Files/Part B tender for media and social media monitoring July 2021.xlsx>

Once complete, please upload to the stakeholder portal as part of your tender application

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