

AWARDING PUBLIC CONTRACTS AND RAL QUALITY ASSURANCE

Rationalise and reliably design
invitations to tender



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INTRODUCTION

Preparing public invitations to tender requires a lot of effort: Starting with the formulation of the specifications through to checking the bids and the verifications provided by the bidders. In addition, it is not permitted for the award process to favour or discriminate against any market participant. The specifications and bidder verifications must be clear and comprehensible.

This brochure describes how public administrations can simplify and reliably design their invitations to tender with the aid of RAL Quality Assurances. Furthermore, it provides information on the most important aspects of the RAL Quality Assurances, which are available for nearly all public sectors. As a result, public administrations are provided with a diverse range of possibilities for simplifying their invitation to tender processes with the help of a RAL Quality Assurance.

THE LAW AGAINST RESTRAINTS ON COMPETITION GIVES THE GREEN LIGHT TO USING RAL QUALITY ASSURANCES FOR AWARDING PUBLIC CONTRACTS

The Law Against Restraints on Competition (Gesetz gegen Wettbewerbsbeschränkungen – GWB) creates the framework for public procurement law. It states that in the case of an invitation to tender: „the contract is to be awarded to the bid that appears the most reasonable after taking into account all technical and economic factors, as well as any design and functional aspects where relevant“. In general, the GWB stipulates the following procedural principles for public invitations to tender:

- Transparency clause
- Equal treatment clause or non-discrimination clause
- Clause governing the offer of products and services
- Cost efficiency clause
- Clause requiring that the interests of small and medium-sized companies are taken into account

RAL QUALITY ASSURANCES COMPLY WITH THE PROCEDURAL PRINCIPLES IN THE GWB

RAL Quality Assurance not only covers existing standards and legal requirements but also focuses on other important aspects of a product or service. Environmental friendliness, for example, is another important factor just like safety, reliability, efficiency, customer orientation and the expertise of personnel. The RAL Quality Assurance system controls the development of quality regulations, the organisation of monitoring activities and the use of the RAL Quality Marks (Gütezeichen). These serve as verification of a company's adherence with the RAL Quality Assurance. When defining the specific criteria associated with a particular RAL Quality Assurance, RAL incorporates a number of different institutions such as German Federal and State Ministries, consumer organisations and the affected associations and testing institutes into the process. This independence from the interests of individual market participants and sectors guarantees the neutrality of RAL Quality Assurances. This is also true of the issuing body RAL Deutsches Institut für

Gütesicherung und Kennzeichnung e. V. Furthermore, every RAL Quality Assurance Association, which is jointly formed by the users of the relevant RAL Quality Assurance, has a neutrally staffed and autonomous Quality Committee. Its responsibilities include:

- Monitoring the proper management of the RAL Quality Mark (Gütezeichen)
- Issuing penalty measures in the case of infringements
- Naming qualified testers or testing institutions, who regularly check that the users of the quality marks are adhering to the Quality Assurance and Test Specifications
- Further development of the RAL Quality Assurance

In the context of the GWB, this means adherence with the procedural principles:

TRANSPARENCY CLAUSE

RAL Quality Assurances are developed, defined and finally approved by RAL in a broad-based public approval process. This process includes:

- intensive checks of the technical content of the RAL Quality Assurances
- checks of all statutes and quality mark documentation in accordance with competition, cartel, association and trademark law

All RAL Quality Assurances are published by RAL and are freely available to everyone in digital or paper form. The RAL Quality Marks (Gütezeichen) are announced in the Federal Gazette (Bundesanzeiger) and entered into the register maintained by the German Patent and Trademark Office.

EQUAL TREATMENT CLAUSE OR NON-DISCRIMINATION CLAUSE

The requirements imposed by a RAL Quality Assurance correspond to the equal treatment clause because they have been defined in consensus with relevant professional and commercial groups. RAL Quality Assurances and the corresponding RAL Quality Marks (Gütezeichen) are open to all companies both at home and abroad. All suitably

qualified testers and testing institutes are also able to apply to the Quality Committee to become a testing body. Therefore, they comply with the non-discrimination clause.

CLAUSE GOVERNING THE OFFER OF PRODUCTS AND SERVICES

RAL Quality Assurances simplify the process for designating extended requirements within the specification profile because these requirements are already comprehensively described in itself. In the process, RAL Quality Assurances ensure that all important aspects have been taken into account.

COST EFFICIENCY CLAUSE

RAL Quality Assurances stand for economic efficiency and outstanding value for money because they offer, for example, a special level of quality, durability and the use of specialist personnel, as well as reliable customer service provision.

CLAUSE REQUIRING THAT THE INTERESTS OF SMALL AND MEDIUM-SIZED COMPANIES ARE TAKEN INTO ACCOUNT

As RAL Quality Assurances are often used by small and medium-sized companies, they can also be taken into account in those invitations to tender that use RAL Quality Assurances.

As a result of this conformity, awarding authorities comply with the procedural principles of the GWB when they utilise RAL Quality Assurances in the process for awarding public contracts.

The legal framework of the GWB allows public authorities to either completely or partially integrate RAL Quality Assurances into the award process because they conform to the procedural principles of the GWB.

BELOW AND ABOVE THE THRESHOLD VALUE: A DIVERSE RANGE OF APPLICATIONS FOR RAL QUALITY ASSURANCES

The German Regulation on the Award of Public Contracts (Vergabeverordnung) leaves a great deal of scope for the use of RAL Quality Assurances when issuing public invitations to tender. Public authorities can utilise RAL Quality Assurances both above and below the contractual threshold values set for the invitation to tender. The relative size of the contract is crucial in deciding whether invitations to tender are subject to just national law or are also additionally subject to European procurement law. The awarding authority must conform with the relevant requirements that are based on the threshold values.

There is no discrimination against foreign competitors because these companies also have access to the RAL Quality Assurances and the RAL Quality Marks (Gütezeichen).

RAL QUALITY ASSURANCES RATIONALISE THE PROCESS FOR ISSUING INVITATIONS TO TENDER

The regulations for awarding contracts stipulate that contracts may only be awarded to specialist, efficient and reliable bidders. These requirements have to be taken into account by the awarding authorities when issuing their invitations to tender. In addition, the awarding authority defines the technical specifications for the relevant products or services.

The body issuing the invitation to tender must clearly inform the bidders about the specific requirements expected of them and what verifications they are expected to provide.

REQUIREMENTS

RAL Quality Assurances rationalise invitations to tender because they remove the need for authorities to formulate their own clear and detailed specifications. RAL Quality Assurances offer awarding authorities a diverse range of technical specification profiles. This is because the relevant RAL Quality Assurance comprises the central elements needed for developing an invitation to tender including those requirements:

- testing expertise, efficiency and reliability
- describing the technical requirements imposed on the products/services

The specification profile demanded by the awarding authority must be justifiable based on the particular contract in question. This can lead to a situation where only certain elements of a RAL Quality Assurance can be utilised by the awarding authority in individual cases. Therefore, the bidder learns which requirements must be fulfilled and which criteria are being used by the awarding authority to test their suitability.

RAL involves relevant professional and trade groups when defining the requirements in the relevant Quality Assurance and Test Specifications. This process ensures that their specialist expertise flows into the respective set of regulations, which benefits awarding authorities in the invitation to tender process.

VERIFICATIONS

The awarding authority will consider the requirements in a RAL Quality Assurance as having been fulfilled when a bidder holds the corresponding RAL Quality Mark. This significantly rationalises the award process.

Due to the non-discrimination clause, it is not permitted for an invitation to tender to disadvantage any bidder. Bidders that do not hold a RAL Quality Mark but nevertheless fulfil the requirements of the RAL Quality Assurance are thus required to submit a test certificate in place of the RAL Quality Mark (Gütezeichen) that verifies complete compliance with the requirements set by the RAL Quality Assurance including monitoring by independent bodies. This test certificate is only recognised for this specific invitation to tender. In contrast, a RAL Quality Mark can be permanently used as verification of bidder eligibility thanks to regular self-monitoring and monitoring carried out by independent institutions.

FOLLOW-UP REVIEWS

Rationalisation of the invitations to tender by:

- Eliminating the need for any follow-up review of adherence with the requirements of the RAL Quality Assurance because this is already delivered due to regular self-monitoring and monitoring carried out by independent institutions, which is incorporated into every RAL Quality Assurance.
- Eliminating any other follow-up reviews after the contract has been awarded. This is because in contrast to a one-off check, the RAL Quality Assurance ensures that the company permanently complies with the requirements set by the RAL Quality Assurance scheme for their particular products and services.

SUMMARY: RATIONALISE AND RELIABLY DESIGN INVITATIONS TO TENDER WITH RAL QUALITY ASSURANCES

RAL Quality Assurances not only rationalise the process for issuing public invitations to tender but also make it easier for public authorities to fulfil their own remit. This is because RAL Quality Assurances stand for reliable quality, which is beneficial for public institutions and thus also for their citizens.

- As a result of their neutrality, transparency and non-discrimination, RAL Quality Assurances fulfil the prerequisites for use in the award process. At the same time, the RAL Quality Assurances provide awarding authorities with reliable requirements for bidder eligibility and performance, which can be adopted in the documentation issued with the invitation for tender. All RAL Quality Assurances are published by RAL and are freely available to everyone in digital or paper form.
- RAL Quality Assurances are available for products and services in almost all public sectors. As a result, public administrations are provided with a diverse range of possibilities for rationally designing their invitation to tender processes with the help of RAL Quality Assurances.
- The legal framework of the GWB allows public authorities to either completely or partially integrate RAL Quality Assurances into the award process. RAL Quality Assurances comply with the procedural principles in the GWB.
- RAL Quality Assurances save awarding authorities time and money by:
 - providing clear and detailed requirements in the technical specifications
 - enabling the simple verification of bidder eligibility
 - eliminating the need for follow-up reviews
- Due to their reliability, products and services holding the quality marks help local authorities to fulfil their remits.
- RAL Quality Assurance Associations offer their support to public authorities in the development of invitations to tender by providing, for example, specific technical specifications.
- Public authorities have access to two different contact partners in the form of the Quality Committee formed by every Quality Assurance Association and the testers or testing institutes commissioned by the Quality Committee.

OUTLOOK: NEW „EU DIRECTIVE FOR THE AWARD OF PUBLIC CONTRACTS“ CONTROLS THE FUTURE USE OF QUALITY MARKS IN INVITATIONS TO TENDER

Awarding authorities that utilise RAL Quality Assurances will comply in future with the requirements set by the European Union. The European Parliament adopted the new directive for the award of public contracts on 15 January 2014. It was later published in the official journal of the European Union on 28 March 2014 and must now be incorporated into national law within two years. It states that public authorities can refer to quality marks if they want to purchase construction services or products and services with specific characteristics. Therefore, any legal uncertainties in this area have now been clarified.

In accordance with the new EU directive, quality marks can cover environmental, social and other characteristics.

The prerequisites for incorporating quality marks into invitations to tender as specified in the EU directive are thoroughly met by RAL Quality Marks (Gütezeichen):

- They are created based on scientific information or on other objectively verifiable criteria.
- They are enacted in an open and transparent process in which all interested parties can participate.
- They are accessible to all parties involved.
- The criteria are defined by a third party that is independent of the user of the quality mark.

This conformity between the requirements set for quality marks by European legislators and the fundamental guidelines governing RAL Quality Marks (Gütezeichen) is striking.

Public authorities that utilise the Quality Assurance and Test Specifications set by the RAL Quality Assurances for their invitations to tender will find themselves complying in future with the current directives issued by the European Union. Therefore, there is nothing standing in the way, even from a European perspective, of awarding authorities simplifying their invitations to tender with the aid of RAL Quality Assurances.

ABOUT RAL AND ITS QUALITY ASSURANCE ASSOCIATIONS

RAL DEUTSCHES INSTITUT FÜR GÜTESICHERUNG UND KENNZEICHNUNG E. V.

In 1925, German industry together with the government of the time decided to standardise and clarify technical delivery conditions. They defined the quality requirements for selected products and ensured that adherence to these requirements was monitored. And so the idea was born for RAL Quality Assurance and Quality Marks (Gütezeichen). The foundation of the "Reichsausschuss für Lieferbedingungen" (National Board for Delivery Conditions) – since known as RAL – by business and politics established an independent institution that is to this day responsible for the approval of RAL Quality Marks (Gütezeichen).

RAL Deutsches Institut für Gütesicherung und Kennzeichnung e. V. has become a trusted trademark over the almost 90 years it has been in existence. As an instrument for the voluntary self-regulation of the economy, the institution has when seen against its current responsibilities far exceeded the expectations of its original founders.

- RAL is an umbrella organisation for all Quality Assurance Associations.
- RAL is the independent institution responsible for the creation of RAL Quality Assurance processes in Germany.
- By defending (in terms of clarity and truth) the RAL Quality Assurance system in the competitive market, RAL ensures that RAL Quality Marks (Gütezeichen) offer reliable and trustworthy orientation for consumers.

RAL QUALITY ASSURANCE ASSOCIATIONS

RAL Quality Assurance Associations are an amalgamation of particularly quality-conscious manufacturers and service providers. They are the organisation recognised by the RAL Deutsches Institut für Gütesicherung und Kennzeichnung e. V. (RAL German Institute for Quality Assurance and Certification) for the implementation and monitoring of the RAL quality assurance process.

RAL Quality Assurance Associations

- are legally responsible associations recognised by RAL for implementing the RAL Quality Assurance for a particular product group or service category.
- issue companies with the right to carry the RAL Quality Marks (Gütezeichen), who then voluntarily submit to adhering to the quality regulations and quality monitoring. The members of the Quality Assurance Associations are manufacturers or suppliers whose products or services are authorised to hold the relevant RAL Quality Mark (Gütezeichen).
- monitor the adherence to the RAL Quality Assurance & Test Specifications, as well as the correct use of the RAL Quality Mark (Gütezeichen) and protect the RAL Quality Mark (Gütezeichen) from misuse.

There are currently around 130 RAL Quality Assurance Associations with over 160 RAL Quality Marks (Gütezeichen) across almost all areas of the economy.

PUBLICATIONS



The overview of the RAL Quality Marks (Gütezeichen) contains the RAL Quality Marks:

- each with information on the relevant RAL Quality Mark (Gütezeichen) number
- each with a short description of the RAL Quality Assurance
- each with contact details for RAL Quality Assurance Associations
- in the construction sector
- in the service sector
- in the agricultural and food industries
- and in other sectors

An English version of the brochure „The RAL Quality Assurance System“ – Our values and basic principles“ is available for download here www.RAL-Guetezeichen.de.

DAS SYSTEM DER RAL GÜTESICHERUNG

Unsere Werte
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The brochures (only German version) can be requested free of charge on Tel.: +49 (0) 22 41 - 16 05 - 40 E-mail: RAL-Institut@RAL.de or they are available for download on www.RAL-Guetezeichen.de.

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