RAL
GÜTEZEICHEN

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 the **RAL QUALITY ASSURANCE** and **RAL QUALITY MARKS**.

Furthermore, it provides information on the most important aspects of the **RAL QUALITY ASSURANCE SYSTEM**. Public administrations currently have access to around **160 RAL QUALITY MARKS** and their comprehensive sets of rules.

CONSUMER PROTECTION, RATIONALISATION AND TRANSPARENCY WITH ONE LABEL

RAL QUALITY ASSURANCE SCHEMES are transparent, promote consumer protection and also help to rationalise the economy.

Consumers benefit from the **RAL QUALITY ASSURANCE SCHEMES** because the Quality Assurance and Test Specifications encompass all significant aspects that are important for the use of products and services from a consumer's perspective. In addition, the specifications can be viewed at all times because all quality assurance schemes and thus the corresponding Quality Assurance and Test Specifications are freely accessible in the public domain. This transparency also serves to provide consumer protection. It enables every consumer to check whether a company using a **RAL QUALITY MARK** is honouring the associated quality promise.

RAL QUALITY MARKS are also published in the German Federal Gazette.

The special advantage for business is that those products and services issued with **RAL QUALITY MARKS** always fulfil the Quality Assurance and Test Specifications defined in the **RAL QUALITY ASSURANCE SCHEMES**. Clients can thus avoid elaborate preliminary examinations and review processes. Furthermore, the quality assurance schemes can reduce error rates for manufacturers and suppliers. The reliability of the quality assurance schemes is one reason why they are used in public invitations to tender to simplify the tendering and awarding processes.

THE UNIQUE RAL QUALITY ASSURANCE SYSTEM

RAL Deutsches Institut für Gütesicherung und Kennzeichnung e. V. has been creating **RAL QUALITY MARKS** for almost 95 years. They are all based on the Fundamental Guidelines for Quality Marks. This non-profit and independent organisation defines the criteria according to which every single **RAL QUALITY MARK** is awarded – the so-called "RAL Quality Assurance and Test Specifications".

THE NEUTRAL AND PUBLICLY ACCESSIBLE PROCESS GUARANTEES OBJECTIVE CRITERIA AND PREVENTS ANY ADVANTAGES BEING GIVEN TO CERTAIN COMPANIES

RAL involves specialist institutions such as industry associations, consumer organisations, testing institutes and federal and state ministries in the process.

RELIABILITY AND TRUSTWORTHINESS THANSK TO STRICT MONITORING

Once a RAL Quality Mark has been awarded, continuous monitoring by neutral bodies ensures that companies reliably comply with the Quality Assurance and Test Specifications. Companies that use a RAL Quality Mark on a product or service are obligated to continuously monitor their own processes and are subject to regular independent monitoring by external testing institutions. Penalties can be imposed if a company violates the rules and specifications – ranging from sanctions through to the withdrawal of the quality mark.

MAXIMUM TRANSPARENCY

The criteria for the award of every RAL Quality Mark are publicly accessible. Everyone is thus able to check for themselves whether a product or service fulfils the strict requirements and is entitled to carry the RAL Quality Mark.

RAL QUALITY ASSURANCE COMPLIES WITH THE PROCEDURAL PRINCIPLES OF EUROPEAN AND GERMAN LAW

In general, the legal regulations stipulate 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 assurance schemes fulfil the requirements for awarding public contracts. They not only cover existing standards and legal requirements but also focus 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. These serve as verification of a company's compliance with the RAL quality assurance scheme. When defining the specific criteria associated with a particular RAL quality assurance scheme, 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 assurance. 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 scheme, has a neutrally staffed and autonomous Quality Committee.

The Quality Committee is an important body in every Quality Assurance Association because according to the statutes it is the sole body responsible for awarding the right to carry the RAL Quality Mark and is also tasked with developing the Quality Assurance and Test Specifications.

Its responsibilities include:

- Naming qualified testers or testing institutions, who regularly monitor that users of the quality marks are complying with the Quality Assurance and Test Specifications
- Monitoring the proper management of the RAL Quality Mark
- Issuing penalty measures in the case of infringements
- Further development of the RAL Quality Assurance Scheme

LEGAL BASIS FOR USING RAL QUALITY ASSURANCE WHEN AWARDING PUBLIC CONTRACTS

EU PUBLIC PROCUREMENT DIRECTIVE

The European Public Procurement Directive1 applies to the award of contracts above a defined threshold value. According to Article 43 of this Directive, public authorities can require a specific label (otherwise known as a quality mark) as means of proof that the works, services or supplies correspond to the required characteristics. Article 43 of the Directive also sets specific conditions for the permitted labels, namely that:

- the label requirements are based on objectively verifiable and non-discriminatory criteria,
- the labels are established in an open and transparent procedure in which all relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations, may participate,
- the labels are accessible to all interested parties,
- the label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.

These are conditions that were already obligatory for the award of **RAL QUALITY MARKS** long before the Public Procurement Directive was enacted:

- RAL Quality Marks are created based on scientific information or on other objectively verifiable criteria.
- They are developed in an open and transparent process in which all interested parties and professional and trade groups, such as supplier associations for the products or services affected by the quality assurance process, consumers, testing institutes and authorities can participate.

[1] Directive 2014/24/EU of 26 February 2014 on public procurement.
[2] See the Fundamental Guidelines for Quality Marks.

- RAL makes them accessible to all parties by publishing the RAL Quality Marks in the German Federal Gazette and entering them into the register maintained by the German Patent and Trademark Office.
- The criteria are developed by RAL – i.e. a third party that is independent of the user of the quality mark – in cooperation with those professional and trade groups affected.

The European Public Procurement Directive was transposed into German national law in the Act to Modernize Public Procurement Law (Vergaberechtsmodernisierungsgesetz, VergRModG), which came into force on 18 April 2016. This Act introduced the required changes to the Law Against Restraints on Competition (Gesetz gegen Wettbewerbsbeschränkungen, GWB). Section 13 of this Act contains a right for the Federal Government to issue ordinances, which was used to issue an Ordinance on the Modernisation of Public Procurement Law (Verordnung zur Modernisierung des Vergaberechts, VergRModVO). Section 34 of this Public Procurement Ordinance (Vergabeverordnung, VgV) corresponds to Article 43 of the European Public Procurement Directive.

VOB (GERMAN CONSTRUCTION CONTRACT PROCEDURES)

In the building sector, the regulations in the second section of VOB/A 2019 (German Construction Contract Procedures, Part A 2019) apply to the award of public construction contracts above a certain threshold value (as of 01.01.2019: EUR 5,585.00 excluding VAT, Section 106 GWB) in Germany. These contract procedures also give public authorities the ability to require a label or quality mark as a means of proof that the services provided by a company comply with the required characteristics of the services listed in the invitation to tender. Section 7a (6) EU VOB/A 2019 lists the criteria in Article 43 of the European Public Procurement Directive as a requirement for these labels.
In the case of public contracts below this threshold value, section 1 of VOB/A 2019 applies to construction services and the Ordinance on the Award of Below-Threshold Contracts (Unterschwellenwertvergabeordnung, UVgO) applies to other works, services or supplies. Although labels or quality marks are only expressly mentioned as permitted verifications in Section 24 UVgO, it is now generally accepted that a label or quality mark that meets these criteria can be required and accepted as verification for suitability criteria and also for technical and other performance specifications that the public authority must specifically state in the invitation to tender. Overall, it should be noted that "equivalent" verifications must be accepted for the award of contracts both above and below the threshold value. Such verification is considered to be " equivalent" if it fulfils identical or at least comparable requirements to the desired label or quality mark that is justified in the invitation to tender for the contract.

[3] Siehe § 7a Abs. 6 EU VOB/A 2019.

RAL QUALITY ASSURANCE RATIONALISES 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 must 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 which specific verifications they are expected to provide.

REQUIREMENTS

The RAL quality assurance system rationalises invitations to tender because it removes the need for authorities to formulate their own clear and detailed specifications. The public awarding body can instead rely on certain requirements for the award of a quality mark. RAL quality assurance schemes offer awarding authorities a diverse range of technical specification profiles. This is because the RAL quality assurance scheme comprises the central elements needed for developing an invitation to tender including those requirements for:

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

The specification profile demanded by the awarding authority must be objectively justifiable based on the particular contract in question. This can lead to a situation where only certain elements of a RAL quality assurance scheme can be utilised by the awarding authority in individual cases. The standard performance specifications must indicate that the RAL quality assurance scheme is only required where its criteria specifically correspond to the requirements of the contract and where it is suitable for determining specific characteristics of construction work, deliveries or services that are part of the contract. These criteria must be expressly and specifically named.

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 specific requirements in a RAL quality assurance scheme 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 are thus required to submit a test certificate in place of the RAL Quality Mark that verifies complete compliance with the requirements set in the Quality Assurance and Test Specifications including self-monitoring and third-party monitoring.

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 the regular self-monitoring and third-party monitoring.

FOLLOW-UP REVIEWS

- There is no need for any follow-up review of compliance with the requirements of the RAL quality assurance scheme because this is already delivered due to regular self-monitoring and third-party monitoring, which is incorporated into every RAL quality assurance scheme.
- There is also no need for any other follow-up reviews after the contract has been awarded because in contrast to a one-off check, such as in the case of e.g. a test certificate, the RAL quality assurance scheme ensures that the company permanently complies with the requirements set by the RAL quality assurance scheme for their particular products and/or services.

REQUIREMENT SPECIFICATIONS FOR AWARDING CONTRACTS

The requirement specifications must be issued in a

- specific,
- direct,
- project-related and
- contract-related or contractual clause-related

form by the awarding body themselves when the invitation to tender is announced. This means that the public authority itself must make the fixed contractual documents directly available to access in full. A link to a third-party website, such as the RAL Quality Assurance Association, is not sufficient.

SUMMARY

RAL quality assurance schemes allow you to rationalise and reliably design invitations to tender. They 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 the RAL quality assurance schemes and their RAL Quality Marks 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-discriminatory nature, RAL quality assurance schemes fulfil the prerequisites for use in the award process according to European and national law. At the same time, the RAL quality assurance schemes 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 assurance schemes are published by RAL and are freely available to everyone in digital or paper form. The RAL Quality Marks are published in the German Federal Gazette.

RAL quality assurance schemes are available for products and/or services in almost all public sectors (see the Overview of Quality Marks from p. 15). 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 assurance schemes.

The legal framework provided by European and national law allows public authorities to either completely or partially integrate RAL Quality Marks into the award process as required. RAL quality assurance schemes comply with the procedural principles of European and national law.

RAL QUALITY MARKS save awarding authorities time and money by:

- **providing clear and detailed requirements in the technical specifications,**
- **enabling the simple verification of bidder eligibility and**
- **eliminating the need for follow-up reviews.**

Due to their reliability, products and/or 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.

Bidders that do not hold a RAL Quality Mark but nevertheless fulfil the requirements of the criteria for the RAL quality assurance scheme are required to submit a test certificate in place of the RAL Quality Mark that verifies complete compliance with the requirements set by the RAL quality assurance scheme including self-monitoring and third-party monitoring.

AN OVERVIEW OF RAL GÜTEZEICHEN (QUALITY MARKS)

Klick here

for an overview of RAL Gütezeichen (Quality Marks).
Only available in German.

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RAL Deutsches Institut für
Gütesicherung und Kennzeichnung e. V.

Fränkische Straße 7
53229 Bonn

T: +49 (0) 228-688 95-0

ral-institut@ral.de
www.ral.de

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