



GGAWB e.V. Cologne

**Legal opinion on the use of the RAL- quality
mark 951/1**
in public procurement procedures under
current public procurement law
Short version

June 2017

GGAWB e.V.,
Cologne

GüteGemeinschaft Abfall- und Wertstoffbehälter (Quality Association for
Containers for Waste and Recyclables)

RAL-GZ 951/1 in public tenders



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Introduction

Tenders according to RAL-GZ 951/1 and equivalent have been common practice for decades with high acceptance in many countries worldwide.

In addition to the requirements of EN 840, the RAL quality mark ensures the quality and system compatibility of containers for waste and recyclables - above all, with continuous external monitoring by independent testing institutes.

Recent court rulings create uncertainty regarding the use of the RAL quality mark in tenders.

For clarification and classification of the arguments, the GüteGemeinschaft Abfall- und Wertstoffbehälter e.V. (GGAWB - Quality Association for Containers for Waste and Recyclables) has had a legal opinion drawn up by the prestigious office specialising in the economic and legal framework for tendering.

Background

The GGAWB is a registered association whose members are different manufacturers of containers for waste and recyclables. It has the right to grant the RAL quality mark 951/1 in accordance with the valid quality and test specifications in relation to the manufacturer and the product and to issue an award certificate for this purpose.

The members of the GGAWB are obligated to subject their RAL-quality-assured products and their components according to the latest technical and testing standards to strict model examinations, self-monitoring and neutral monitoring before, during and after production to ensure the highest and most consistent quality.

The quality mark RAL-GZ 951/1 was developed by the independent institution RAL in 1997 with the participation of the BMWi, associated professional circles and the relevant authorities.

Case law according to old procurement law

The case law of the Rhineland Chamber of Commerce and the Higher Regional Court of Düsseldorf regarding a procurement procedure of Rhein-Sieg Abfallwirtschaftsgesellschaft mbh (RSAG) has raised the question of whether a claim of the RAL quality mark in public tenders is lawful.

The judgments were made according to old procurement law.

As early as the grounds for the judgment, it is pointed out that with the entry into force of the new procurement law, an entirely new situation will arise in relation to quality marks in tenders.

RAL-GZ 951/1 also ensures quality beyond the EN 840.

RAL quality mark currently still in public tenders

The GGAWB – a RAL quality association

RAL-GZ 951/1: Open and transparent procedure involving all relevant administrative districts.

Procurement procedure OLG Düsseldorf

Judgments expressly refer to the old procurement law before 18.4.2016

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Quality marks in public tenders according to new procurement law

The GGAWB has a legal opinion with the renowned specialist lawyer for public procurement and administrative law, Dr. Dageförde, commissioned to clarify whether the new - come into force since 18.4.2016 - applicable public procurement law in Germany therefore justifies a quality assurance to be require for EU-wide tenders for waste containers according to RAL-GZ 951/1 and if so, how this can be achieved in a legally compliant and legally secure manner in practice.

Result of the expert opinion

The expert opinion comes to the conclusion that RAL-GZ 951/1 can continue to be required by public procurement law in public tenders.

"In our understanding, the European legislator has created a legal framework under Article 42 (1) sub-para. 3 of Directive 2014/24/EU, within which contracting authorities can move relatively freely under public procurement law, for example to the production process of an advertised delivery service to influence in a qualitative or innovative way.

As proof of compliance with these requirements a quality mark can then serve in the sense of section 34 VgV."

"The RAL-GZ 951/1 of the GGABW complies with the requirements for a quality mark standardized in section 34 VgV."

"A contracting authority may go beyond the quality standards of EN 840 in the specification of services in order to define the characteristics of the performance and demand higher quality aspects in application of section 31 (3) VgV, if these have a factual relation to the subject of the contract and are not disproportionate to the order value and procurement target. In our opinion, a contracting authority may therefore specify the additional and increased requirements of RAL-GZ 951/1 such as, for example,

- Warm storage
- Check of rotation angle of the comb lifting
- Lid testing
- Initial assessment by an independent test institute
- Self-monitoring
- External monitoring by an independent test institute

in the service description as additional features or aspects of quality and innovation."

RAL-GZ 951/1 in public tenders

Legally compliant and legally secure in practice

New procurement law

Legislature creates a framework for stronger influence by contracting authorities

Quality mark can serve as proof of

Description of services may exceed the quality standards of EN 840

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Implementation in the procurement procedure

If public contracting authorities wish to ensure the best possible quality and safety of containers for waste and recyclables, they can continue to tender according to RAL-GZ 951/1.

The expert opinion recommends the following procedure for a procurement procedure that is legally compliant:

"The characteristics and requirements of the containers for waste and/or recyclables in the tender, which are contained in the DIN EN 840, should be formulated by the contracting authority according to section 31 paragraph 2 No. 2 a) VgV with reference to the DIN EN 840 with the addendum, or equivalent."

The requirements for the quality of the containers for waste and/or recyclables in the tender, which go beyond the requirements of DIN EN 840, should then be described in detail in the specifications of the contracting authority. The description of these requirements should be explicitly rewritten as 'characteristics according to section 31 paragraph 3 VgV'. As evidence that the container offered by the bidder meets these characteristics or requirements, the contracting authority should request the presentation of the quality mark RAL-GZ 951/1. The contracting authority should explicitly refer to section 34 VgV."

"In any case, the contracting authority should substantiate in the contract award notice in a factual manner, and for each request separately, why it sets it up. Furthermore, it should document in the contract award notice that it has checked whether the individual quality requirements beyond DIN EN 840 have a comprehensible,

- material reference to the tendered subject of the contract (container),
- in each case not disproportionate in relation to the order value and the procurement target."

Formulations for the call for tenders may be drawn up

- on the basis of the draft specifications for "containers for waste and recyclables made of plastic"
- and the proposal for a price adjustment clause as part of the contractual terms and conditions for the evaluation of tenders by the GGAWB.

The full expert opinion will be gladly provided by the GGAWB. Please contact

us by e-mail at info@ggawb.de or call us at +49 221 - 94699-79.

Legally
compliant
implementation