

ARE ADEQUATE RESOURCES CHECKED COMPETENTLY?

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The checking of competence is commonplace within the construction industry and has been normal practice now for some time, as it should be. Before clients appoint duty holders such as designers, contractors, or project supervisors for design or construction, they regularly check training, experience and knowledge appropriate to the nature of the work to be undertaken to ensure competence.

The words *competent* and *adequate resources* appear in the same sentence within the Safety, Health and Welfare at Work (Construction) Regulations 2013. The Construction Regulations do not prioritise competence over resources or vice versa. There is no point in having a competent person available without sufficient resources and, similarly, no point having unlimited resources without competent persons to apply them.

How often are clients asking whether a duty holder has adequate resources? Are they checking it as often as competence? Do they ask the question if a duty holder has adequate resources appropriate to the nature of the work to be undertaken having regard to the task required to be performed and taking account of the size or hazards? Unfortunately adequate resources are not being checked to the same level and standard as competence within the Industry today.

There is some guidance that can be used for assessing competence such as the Health and Safety Authority's, (HSA) questionnaires BCP 1 and BCP 2. Tools and guidance to assist in checking adequate resources may not be as abundant but nonetheless are available. For example, the Construction Safety Partnership's Project Supervisor Design Process (PSDP) Case Study gives a client a step by step guide as to the actions a PSDP undertook on a sample project (<http://csponline.ie/publications/>). This case study could educate the client to ask questions in order to determine the level of resources being committed to a project by a PSDP, including for example the number of design team and site meetings to be attended.

Similarly, clients can ask at Project Supervisor Construction Stage (PSCS) how often site audits are planned, and site inductions are undertaken. The answers should be compared against the actions as suggested by recognised bodies such as the HSA and CIF in published documents such as the HSA's Guidelines to the Construction Regulations and HSA's Clients in Construction - Best Practice Guidance.

Where the project is carried out in furtherance of the clients business (i.e. non-domestic projects), the duty of assessing both competence and adequate resources of duty holders falls on the client, who is usually one of the least informed members of a project team. However ignorance is no defence in law. A client has a statutory obligation to only appoint those who are competent and have adequate resources. A failure to do so can lead to criminal conviction. Asking the duty holders to confirm they are competent and have adequate resources does not relieve the client of their statutory obligations. Where the work is carried in a domestic home, the duty holders are obliged to confirm to the client that they are competent and have adequate resources. In this case the client has few obligations.

If a client for a project in furtherance of their business does not provide a fair and reasonable fee to a contractor or designer, how can they argue that adequate resources were available for the successful completion of the project? Likewise a contractor or designer who does not ensure the fee they proposed for a domestic project provides adequate resources is equally guilty of a breach of a statutory provision.

In the event of an accident on a construction site, the HSA is obliged to investigate all the relevant contributory circumstances in every case. This could, and should, include an assessment as to whether competent duty holders with adequate resources were appointed. There is no doubt that it is only a matter of time before we see convictions for these breaches of a statutory obligation. Many public sector clients mistakenly believe that they are obliged to appoint the lowest tenderer in any procurement competition. However, they are actually obliged to appoint the most economically advantageous tender. They have been provided with a suite of procurement documents by the Government Contracts Committee. These documents allow the selection of an appropriate quality price-ratio depending on the complexity of the project. An appropriately selected quality price-ratio, correctly applied takes the emphasis away from the lowest cost and is far more likely to end up with the appointment of adequately resourced duty holders. Any individual public servant who fails to follow the Government Contracts Committee Procurement Procedures leaves themselves personally liable for a breach of statutory obligation and consequently open to a potential criminal conviction.