

## CONTRACTOR INSOLVENCY PROCEDURE

### 1.0 INTRODUCTION

- 1.1 This procedure describes the action we will take in the event of a contractor becoming insolvent, and in particular going into liquidation.

The action detailed relates mainly to new-build or refurbishment contracts with defined sites, but relevant parts of the procedure may also be applied to some types of planned maintenance or major repairs contracts.

- 1.2 The procedure supports our policy on [Contractor Insolvency](#) and supports the Risk Management Policy: G08.

### 2.0 ACTION IN THE EVENT OF LIQUIDATION

- 2.1 Immediately we are advised or become aware that an appointed contractor has gone into liquidation we will:

- a) secure the site (see paras. 2.2 – 2.3 below)
- b) notify our insurers (para. 2.3)
- c) cease payments to the contractor (para. 2.4)
- d) write to the Liquidator to advise them that the contract has been determined (terminated) and that no further payments will be made (para. 2.5)
- e) notify the lead Consultant and any other Design Team members, where appointed (para. 2.6)
- f) notify our solicitors (para. 2.6)
- g) notify any relevant external agencies, e.g. any grant providers, and/or any private finance funder (para. 2.7)
- h) notify the Chairperson (para. 2.8)
- i) assess the contract and agree the action required to complete it (paras. 2.9 – 2.13).

#### Securing the site

- 2.2 The Head of Property Management (HOPM), failing whom the Director of Finance & Housing (DFH) or the Chief Executive Office (CEO) will proceed as soon as possible to the site with the Clerk of Works (where appointed) or a Maintenance staff colleague, with the aim of making it secure, to prevent Property stripping and/or vandalism.

Where the site is more than a half-day's travel distance from Head Office the HOPM will seek to appoint a local agent to act on our behalf.

2.3 The HOPM will also:

- notify the Head of Quality and Compliance who will contact our insurers to arrange insurance cover for the site, works and materials
- where deemed appropriate, arrange as quickly as possible for a security company to provide 24-hour on site security, the selected company being registered with the Security Industry Authority (a requirement from November 2007).

#### **Ceasing payments to the contractor**

2.4 The HOPM will liaise with Finance staff to ensure that any outstanding payments due to the contractor are stopped.

#### **Contacting the liquidator**

2.5 The HOPM (failing whom the DFH) will make enquiries to identify the Provisional Liquidator and will not wait for the Liquidator to make contact. The DFH (or CEO) will write to the Liquidator to:

- provide our details as owners of the site and its contents;
- advise that payments to the contractor are being withheld, referring to the relevant contract conditions;
- advise that we wish to determine (terminate) the contractor's employment, ensuring that the required seven days formal notice is given and that the letter is sent by either Registered post or Recorded Delivery.

#### **Notifying the Design Team and Solicitors**

2.6 The HOPM will contact the Lead Consultant and thereafter the other members of any Design Team appointed and arrange an immediate meeting to assess the current stage of the contract and take advice on the relevant contract conditions applying.

The HOPM (or DFH) will also contact our solicitors for relevant advice at this stage.

The HOPM may commission a video survey of the site.

#### **Notifying external agencies, grant providers etc.**

2.7 Depending on the involvement of external agencies, funders etc. the HOPM or the DFH will advise the relevant grant funder and any private finance funder. Initial notification will be verbal, followed up by written confirmation.

The CEO will notify the Scottish Housing Regulator in accordance with the Notifiable Events procedure.

Any other notification will depend on the extent other parties are involved. If Building Guarantees are being sought from e.g. N.H.B.C, Zurich Municipal etc. the HOPM will advise the company involved.

### **Reporting to the Board**

- 2.8 The CEO (failing whom the DFH) will advise the Chairperson as soon as possible after notice of liquidation has been received. The DFH will provide the Board with regular reports on the situation.

### **Assessing the contract & deciding on action**

- 2.9 The HOPM, in consultation with any Consultants and/or Clerk of Works involved and the Finance Manager, will ascertain the financial position of the contract with regard to Certificates/invoices paid, Certificates/invoices due, retention monies and potential claims.
- 2.10 Progress on site will be assessed against the contractor's programme and the contract completion date. The HOPM, Clerk of Works or an appropriate Consultant will identify any outstanding defective work and evaluate the costs of remedial work.
- 2.11 The Design Team Quantity Surveyor, or a QS appointed for the purpose, will value all completed work on site plus any unfixed materials, and agree the valuation with the HOPM, DFH and the Liquidator's Surveyor.
- 2.12 The DFH, following receipt of professional advice (including legal advice) and discussion with the SLT, will consider the following options and submit a recommendation to the Board for approval:
- a) we approach the next lowest tenderer to complete the work;
  - b) we re-tender for completion of the work.
- 2.13 The option selected will be the one that is most appropriate to the specific circumstances and minimises our financial loss. The option approved will be formally agreed with the Liquidator.

## **3.0 IMPLEMENTATION & REVIEW**

- 3.1 The Property Manager is responsible for ensuring that this procedure is implemented when required, and will ensure that it is reviewed at least every three years.

**Version 3.0 Approved by SLT: Aug 2018**

**Review of procedure due by: May 2021**

**Complies with: Scottish Social Housing Charter**