

CONTRACTOR INSOLVENCY POLICY

1.0 INTRODUCTION

- 1.1 This policy describes our arrangements for minimising the risks and potential impact on the organisation arising from the insolvency of a contractor involved in new-build, refurbishment, planned maintenance or major repairs projects.
- 1.2 The policy is part of our overall Risk Management Strategy and supports Risk Management Policy ref: G08
- 1.3 This policy is supported by the [Contractor Insolvency procedure ref: AM28a](#), describing the action we will take in the event of contractor insolvency.

2.0 TYPES OF INSOLVENCY

- 2.1 There are four main types of corporate insolvency:
 - a) Company Voluntary Agreement
 - b) Administration
 - c) Receivership
 - d) Liquidation
- 2.2 Insolvency in itself does not automatically terminate (determine) a contract but the company may not be able to fulfil its legal obligations and the other party (i.e. ARK) may legitimately determine the contract.
- 2.3 So long as the company continues to trade, it may be possible to continue with the contract. However legal advice will immediately be obtained so that the Association is ready to take further action should the company go into liquidation.
- 2.4 Should an appointed contractor go into liquidation while on site we will always regard the contract as being terminated (determined).

3.0 MINIMISING THE RISK

- 3.1 To minimise the potential risks we will:
 - a) carry out an appraisal on all contractors being considered for each tendering exercise , or for other forms of procurement such as partnering;
 - b) carry out an assessment on the preferred contractor on Quality & Standards of Work, Performance and References prior to the contractor being appointed;
 - c) ensure that, where a contractor's performance deteriorates between initial acceptance onto a list and the final selection of tenderers for a project, the contractor is not invited to tender;
 - d) where we are considering a design and build contract, enter into collateral warranty agreements with the designers before any contract is finalised, and ensure that the designers and contractor also enter into collateral warranties with any private funder involved in the project;

- e) use the appropriate form of contract containing the required provisions on contractor insolvency;
- f) ensure that provision for liquidated and ascertained damages is always included in any contract, and that such damages are applied promptly when a contract runs over without an extension of time having been formally approved;
- g) where a potential contractor is a subsidiary in a group structure, ensure that we have an appropriate financial guarantee from the parent company;
- h) ensure that we receive an independent, professional evaluation of all tenders received for major new-build or refurbishment projects where Consultants are involved and that, for all tenders, where the lowest tender is more than 10% below the second lowest, a rigorous review is carried out before the lowest tender is considered for acceptance;
- i) following a start on site, be alert to early warning signs of possible difficulties such as the non-payment of any sub-contractors, programme slippage without good reason and apparent difficulty in obtaining labour and materials, taking any action required.

3.2 Any action we take will comply with insolvency legislation and seek to protect our interests while complying with our duty under contract law to mitigate any losses incurred.

3.3 The general principles of this policy and the action described in the procedures will apply whenever insolvency occurs during a contract, but in particular during the 'on site' period which is the period of greatest financial risk.

4.0 IMPLEMENTATION & REVIEW

4.1 The Head of Property Management is responsible for ensuring that this policy is implemented when required, and will ensure that this policy is reviewed at least every three years.

Approved by the SLT

January 2017

Approved by Board of Management

March 2017

Next Review of policy due by

January 2020

Complies with

Scottish Social Housing Charter