

**Open Report on behalf of Andrew Crookham,
Deputy Chief Executive and Executive Director - Resources**

Report to:	Executive
Date:	04 July 2023
Subject:	Re-Commissioning of Property Services
Decision Reference:	I029605
Key decision?	Yes

Summary:

This report outlines the re-commissioning recommendations for the various property services currently delivered under a contract with Vinci which expires on the 31 March 2025.

Recommendation(s):

That the Executive

- 1) approves the re-procurement of Property Services based upon two separate contracts for (i) Facilities Management (FM) and (ii) Professional Services respectively using the NEC4 form of contract.
- 2) approves the insourcing of
 - (a) the Estates and Property Data service
 - (b) FM – Energy and Environmental management services
 - (c) The FM Asbestos management services
 - (d) Professional Services Technical Support (Technical Project Managers, Clerk of Works, Quantity Surveyors)
- 3 Delegates to the Executive Director for Resources in consultation with the Leader of the Council and the Executive Councillor for People Management Legal and Corporate Property authority to take all decisions necessary to
 - (a) Conduct the procurement processes referred to in paragraph 1 up to and including the award of contracts; and
 - (b) Manage the transfer of services referred to in paragraph 2 back to the Council

Alternatives Considered:

- 1) Re-procure as one single contract (no change to existing arrangement)
This does not meet the future needs of the Council, is overly complex with many sub and sub-subcontractor relationships and with key technical services and personnel remaining outsourced.
- 2) Insource all services.
This is not a viable option due to the large volume of work with micro-transactions and specialisms within facilities management. Furthermore, the Council would have to manage a large supply chain which would be cumbersome and require significant resources.
- 3) Do nothing.
This is not a viable option as the contract expires in March 2025. Key services are provided through property services which help the Council meet its statutory obligations.

Reasons for Recommendation:

The existing Property Services contract expires 31st March 2025 therefore a new innovative solution is required.

The current contract established in 2015 consists of 3 distinct service areas of Facilities Management, Professionals Services and Estates and Property Data and no longer meets the future requirements of LCC.

The Council has adopted a Corporate Landlord approach to the management of its land and property assets, therefore a stronger intelligent client team is required to drive the future property portfolio forward. Furthermore, it places an additional focus on compliance to ensure property is safe to occupy and use and meets current legislation.

The recommended insourcing of the various areas will add significant value to the Council in providing technical and professional assurance which will result in improved value for money.

1. Background

- 1.1 This report makes recommissioning recommendations for those property services currently delivered under the Vinci Facilities contract. It also includes proposals for insourcing, to further enable the Corporate Property Department to evolve into a professional, intelligent client and align itself with the Council's adopted Corporate Landlord model whilst subsequently reducing risks and costs to the Council.
- 1.2 A visual representation of the current contractual model is shown in Figure One below and the proposed new property model is shown in Figure Two below. More detail is available in Appendix A which includes the specific operations within each function for each model.

The Current Commissioned Property Contract

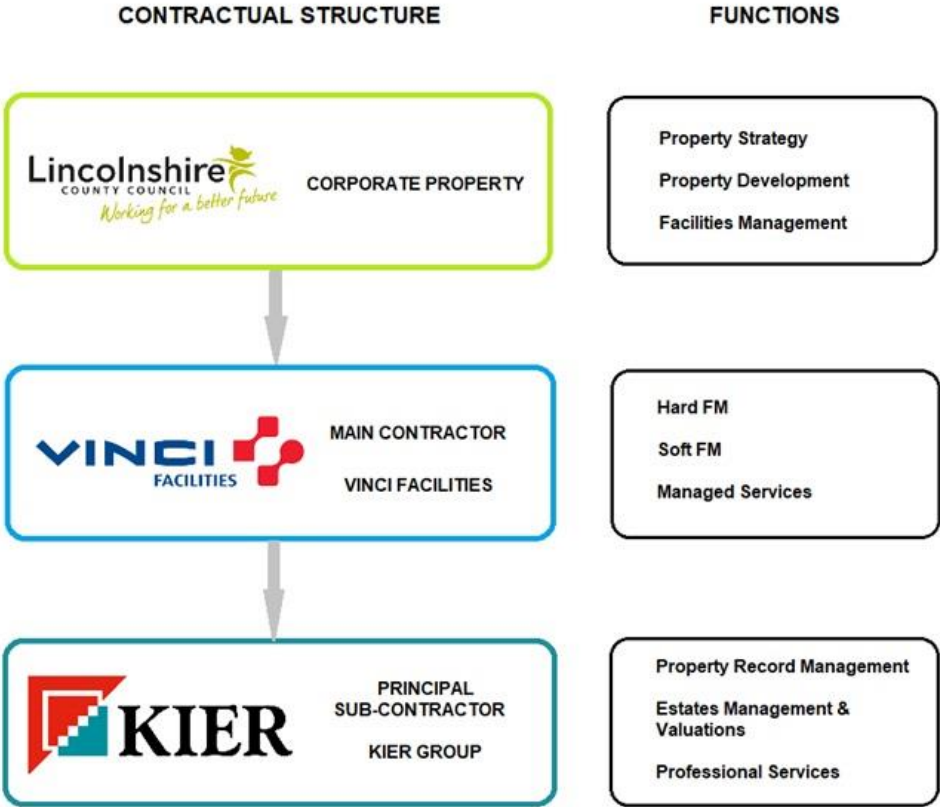


Figure 1: Current Commissioned Property Contract

The Proposed Property Service Structure

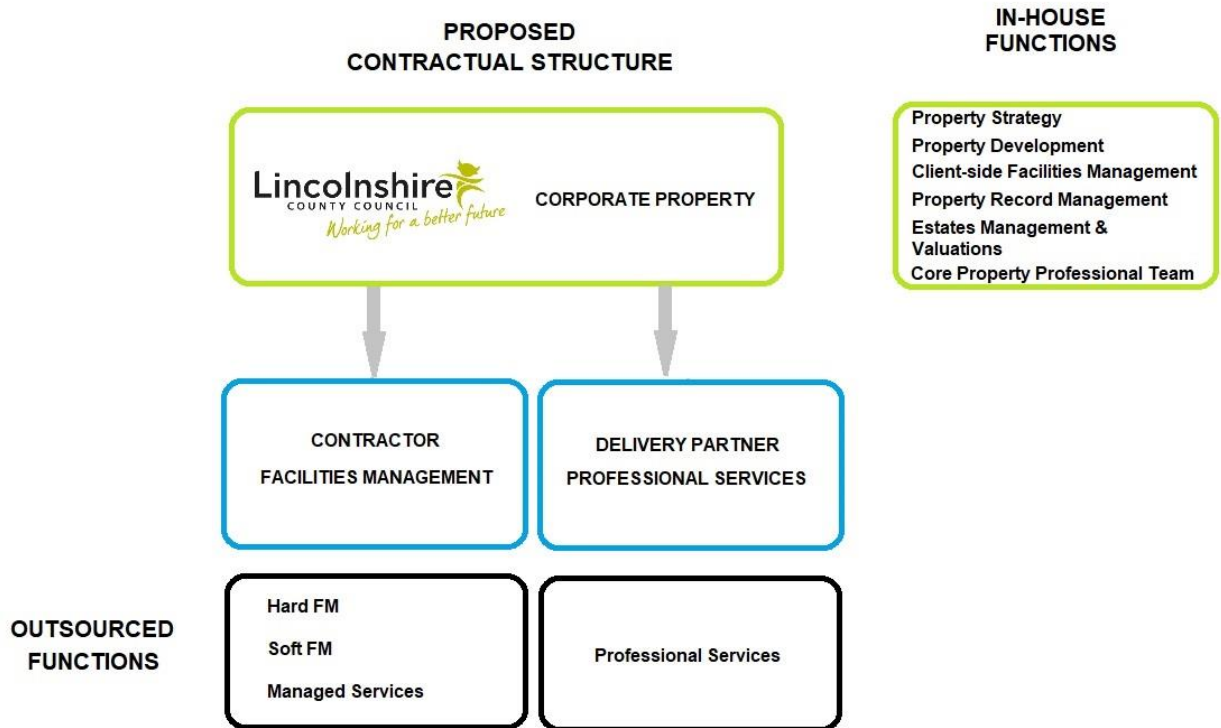


Figure 2: Proposed Contractual Structure

Section 2. Background and Current Arrangements

2.1. The Corporate Property Department continues to evolve with its objective to deliver high quality, responsive and value for money property solutions for Lincolnshire County Council.

2.2. The Council has recently adopted a Corporate Landlord approach to the way it manages its property portfolio. Phase One is now complete with the transfer of circa 657 additional properties into the Corporate Centre. Phase Two, when developed will provide a comprehensive oversight and assurance of LCC's property estate and enable non-property colleagues to focus on effective service delivery from fit for purpose property assets.

2.3. The Chartered Institute of Public Finance and Accountancy (CIPFA) recommends that a fully effective Corporate Landlord model should comprise several key areas of professionalism, these are:

- Property Strategy (currently delivered by LCC Corporate Property)
- Estates Management and Property Records Management (currently delivered by Kier)
- Facilities Management (including statutory compliance and repairs and maintenance - currently delivered by Vinci)
- Capital Project Delivery/Property Development (currently delivered by Vinci, Kier and LCC Corporate Property)

2.4. The next 12-18 months will focus on progressing the Corporate Landlord model from its infancy to developing and embedding the concept across the organisation. This fundamental task will be undertaken in conjunction with the development of a robust Corporate Property Strategy aligned with CIPFA best practice (as detailed in section 2.3).

Existing Property Services Contract

2.5. The Corporate Property Department is responsible for overseeing the delivery of key property services via a commercial contract with Vinci (FM services), and Kier Group (under a sub-contract with Vinci) for the following: -

- Estates and Property Records Management
- Professional and Project Services
- Hard and Soft FM
- Managed services including Energy, Construction Design Management (CDM), Environmental Management and Asbestos Management.

- 2.6. The property services contract commenced in April 2015. Following an initial contract term of five years, and one yearly extensions for a further five years, the existing contract is due to terminate on 31 March 2025.
- 2.7 When the contractor started in 2015 it was a joint venture between Vinci Facilities and Mouchel Business Services called VinciMouchel, this contract replaced the previous 15 year back-office services contract including property services with Mouchel. In 2017, Vinci Facilities became the main contractor having bought out the Mouchel share of the contract with key elements of it subcontracted to Kier Group.
- 2.8 At the commencement of the contract, a client project team was established to manage the Property Services contract and ensure the contract meets the requirements of the organisation. This client team currently comprises the following key functions: -
- Property Strategy
 - Responsible for setting the strategy and direction of travel for Council land and property assets.
 - Facilities Management
 - Contract management of the outsourced Hard FM, Soft FM, and Managed Services.
 - The delivery of all Property Projects managed by Corporate Property

Section 3. Contract Review Overview

3.1. A comprehensive review of the existing contract service delivery and associated contractual arrangements has been undertaken, in conjunction with internal/external stakeholders and external contract experts. In general terms the stakeholder view was that service delivery overall was reasonable with positive relationships and an amenable and responsive provider, although issues were raised about the speed of response to reactive work and ensuring staff are more visible (i.e., more site inspections). Member stakeholders expressed concerns regarding a lack of professionally qualified staff within the Corporate Property department, the level of scrutiny over costs and the lack of responsiveness in some areas. The key findings are highlighted below (with further detailed narrative in Section Four).

3.2. Effectiveness of Existing Client Team and Alignment with Corporate Landlord

A fully informed, intelligent client is fundamental to ensuring the Council manages its contract effectively and subsequently derives maximum value from it. An effective client team should add robustness and financial challenge to ensure value for money. The existing lean client team is deemed not robust/resilient enough to be fully effective for the reasons detailed below. Further, it should be noted that within the Corporate Property Department, the existing Assistant Director is the only professionally qualified Chartered Surveyor holding full membership of the Royal Institution of Chartered Surveyors (RICS), thus making the team vulnerable to a single point of service failure.

3.2.1. Strategy Service

The Property Strategy Service currently oversees the transactional management of the outsourced Estates Management team and consequently is often diverted away from strategy related activities. An effective Corporate Landlord approach requires a fully functioning Property Strategy service that will consistently work with key stakeholders in a “business partnering” capacity to (i) establish service needs and (ii) use property resources, insight, and intelligence to provide property solutions. A robust Property Strategy will ensure the Council has suitable accommodation in optimum locations to enable effective service delivery.

3.2.2. Estates and Property Records

The Estates and Property Records teams are both currently outsourced and the functions are managed and delivered by Kier. The lack of in-house property professional expertise (Chartered Surveyors) and internal control regarding both Estates and Property Records exacerbates the issues outlined in section 3.2.1 within the Strategy service.

3.2.3. Capital Delivery / Property Development

There is currently a lack of client-side expertise to offer robust challenge around fee levels, both from Vinci-Kier and construction contractors in general. Furthermore, because the cost control /quantity surveyor elements are outsourced, the contractor is effectively checking their own fees. This is considered a ‘structural weakness’ within the existing arrangements for overseeing the significant programme of capital delivery projects.

3.2.4. Energy and Environment Team

LCC’s property portfolio has a significant role to play in driving forward the organisation’s Green Agenda and Carbon Energy Plan as it continues its journey to reaching Net Zero. This is a key workstream that will be embedded within the new developing Corporate Property Strategy. Currently, key resource to assist in the development and implementation of the Green Agenda is managed via the outsourced provider Kier and consequently it is harder for the Council to dictate the pace of this work and opportunities to add value to this vital programme may not be realised.

3.3. Current Contract Form

The current arrangement comprises of one overarching contract with three distinctive parts of FM, Professional Services and Estates and Property Records management. It consists of an NEC3 contract, which is now outdated having been established in 2015.

The “one contract” approach for all services has resulted in several challenges including:

- An overly complex client-contractor relationship,
- A contract that was not designed to fit the different categories of services,
- A contract that is past its “sell by date”,
- Difficulties in managing and deriving full value from the contract due to the scale and size leading in some instances to higher costs for services.

3.4. Financial Costs

Following a review of the Professional Services element of the contract by two independent external experts over the past twelve months, key areas have been identified where lack of expertise within the Council has hampered the Council’s ability to manage finances robustly and ensure value for money: -

3.4.1. There are some significant variances between some initial individual task order values compared to the final task order value. Variance might be down in part to compensation events where the scope of the project has been expanded, this is something construction projects are prone to. Comprehensive information is now being gathered on this; however, when setting the task order budgets and evaluating the impact of compensation events the Council in the absence of technical expertise is only able to take a high-level view using historical data primarily provided by the provider for previous task orders.

Similarly, the Council has insufficient expertise on a day-to-day basis to challenge the appropriateness of the grade of staff used to deliver the required professional services and the time charged for the work. To move forward on the above the Council needs direct access to technical expertise.

3.4.2. The existing rate card model has resulted in higher costs charged to the Council due to an increasing number of professionals at the highest possible rate per hour (Director / Partner). This is due to the annual review of the provider’s staff development against the rate card whether the relevant individuals have been promoted to that level within the provider organisation. This will be rectified in the new contract. It should be noted that negotiations are ongoing regarding the change in hourly professional service rates that Kier/Vinci are currently applying via the rate card model. It is proposed that, subject to agreement by all parties, the agreed cost-plus model will take immediate effect and be implemented until the end of the contract in 2025.

3.4.3. In addition, the contractor Vinci charges a 4% fee on top of the rates Kier charge for professional services (a common model often encountered with contractor and subcontractor relationships). This will also be rectified in the new contract.

Section 4. Proposed Changes and Future Delivery

4.1 This section of the report incorporates the findings from Section Three and proposes various changes that will affect the main contract areas of Professional Services, Facilities Management and Estates and Property Records.

4.2. Overarching Commissioning Arrangements

It is proposed that the existing contract will move away from one overarching contract of Facilities Management, Professional Services and Projects, and Estates Management and Property Record management and will be divided into two distinct contracts of (i) Facilities Management which will include soft and hard FM (for further details refer to section 4.3.1 below) and (ii) Professional Services.

The Professional Services covered by (ii) are required to support the outcomes of the Council's Property Strategy through the delivery of capital projects.

The Facilities Management contract will be based on the NEC4 Facilities Management Contract (FMC). The Professional and Project Services contract will be based on NEC4 Professional Service Contract (PSC).

These contracts are tailor-made for these types of services and offer ready-made payment mechanisms, performance criteria and terms and conditions. They are understood and endorsed by the market. This change will remedy the challenges outlined in section 3.2 and result in two simplified contracts that are easier to manage.

It will reduce the fee-on-fee approach often encountered with contractor and sub-contractor relationships, but it will mean that the Council will have an additional contractor to manage.

Moreover, using NEC4 contracts provides the following benefits: -

- Streamlined processes and updated definitions
- Improved contract administration
- Greater clarity and early sight of issues
- Improved risk management
- Internationally recognised form of contract within the construction industry
- Flexibility: the ability to include new properties and properties from other public sector bodies e.g. South Park Tri-Service Station

Market research undertaken with other public sector providers has been positive and both Leicestershire County Council and Lincoln University successfully use the NEC4 FMC for their respective outsourced Hard and Soft FM provision.

The proposal is to insource the Estates Management and Property Records services which therefore will be omitted from any outsourced contract (further detail is provided in section 5).

4.3. Professional Services

Professional and Project Services currently use a call-off arrangement with the principal subcontractor Kier Group when the Council requires specific expertise to design and plan a property construction project using architects or procure and manage a construction contractor in line with the Royal Institution of British Architects (RIBA) Plan of Work stages. The types of professional roles typically used for this purpose include technical project managers, clerk of works, quantity surveyors, building and land surveyors and mechanical and electrical (M&E) Engineers.

The proposal is to use a stand-alone Professional Services Contract (Delivery Partner) via a Professional Service Framework. Selecting a single Delivery Partner will enable the Council to source the appropriate property professionals required on a project-by-project basis (where that work cannot be undertaken by the core in-house team detailed in section 5.2) without the need to go out to procure such resource for each new project. These services will include property professionals such as M&E engineers and surveyors to assist with the management of construction projects as well as supporting the Council with its Property Strategy outcomes.

Most construction contracts will be delivered using a Design and Build arrangement obliging the contractor to hold responsibility for undertaking all elements of the project. The benefit to this approach is that there is no possibility of a conflict between contractors. Currently, where Kier undertakes the design prior to managing the build with a different build contractor, liability can be contested as to whether there has been design or construction flaws. Under the Design and Build arrangement, one contractor carries liability for both types of flaws.

These construction contracts will be managed by the core Council team or via the Delivery Partner arrangement at the Council's discretion. There would be no minimum guarantee of work for the Delivery Partner and no exclusivity. The PSC contract is used routinely by professional services providers such as YORConsult, Pagabo and Crown Commercial Services as well as several Local Authorities including Sheffield City Council, East Riding Council and Lancashire County Council.

The Professional Services contract (subject to the rules of the Framework) would be for an initial term of 3 years, with a further 2 + 2 years extensions (7 years maximum term) at the Council's discretion. This would allow the Council to maintain service continuity if things are going well, be attractive to the market and reduce the resource demand on property and commercial services.

4.4. Facilities Management

The Facilities Management contract will cover hard (general maintenance, health and safety related servicing) and soft FM (including grounds maintenance, cleaning and waste management), and managed services such as property compliance work, commissionaires, security service and catering provision. It will also continue to assist the Council in meeting its legal duties in respect to property management and health

and safety of the workforce (e.g., fire risk assessments, radon monitoring, legionella testing).

The proposed term for the FM outsourced contract will be an initial period of 5 years, plus opportunities to extend by up to a further 5 years as per the current contractual period at the Council's discretion. This is in line with industry standard for FM services, with the majority between 5-10 years.

The responses to the soft market testing and engagement were positive and indicates sufficient interest for a competitive tender. Both the contract form (NEC4 FMC) and duration 5+5 years is seen as positive.

The NEC4 contracts have financial options called main options. One is Option A: Priced Contract with Price List which is used most frequently within other outsourced FM contracts. Moreover, there was a favourable response to this through the recent market engagement exercise with no alternatives suggested. Another option under consideration is Option C: Target Cost with Price List, however the experience of using this within the current arrangement is that it is overly complex, but it does incentivise the contractor and can be linked to key performance indicators.

It is intended that the procurement exercise will be conducted as a Competitive Procedure with Negotiation. This procedure allows us to work with bidders to negotiate and refine their tenders so that there are no surprises and will enable improved value for money. LCC has used this procedure on several large value/complex procurements including the Highways Alliance Contract, Mixed Dry Recycling, and most recently on the Customer Service Centre.

Section 5. Insource Proposals

5.1 This section of the report sets out the recommendations for insourcing various services from within the existing Property Services contract.

5.2 Estates Management and Property Records

The Estates Management service is a professional transactional service currently provided by Vinci Facilities' principal subcontractor Kier Group. It is contracted to deliver: -

- Annual statutory Red Book valuations of LCC's fixed assets specifically for the balance sheet (of critical importance to the Council impacting on the Council's ability to borrow)
- Disposals Programme (to generate capital receipts in support of the Council's Capital Programme)
- Property Acquisitions
- Lease management services (including lease renewals, terminations, rent reviews)

The service is heavily supported by the Property Records Team ensuring property data is accurate and updated.

There are 5.8 FTEs in the existing Estates Management service of which five are full Members of the Royal Institution of Chartered Surveyors (MRICS) and Registered Valuers (ability to undertake Red Book Valuations). There are two FTEs within the Property Records team. A business case has been compiled to analyse the potential insourcing of the Estates Management and Property Records service, on the basis that it would equate to 7.8 FTEs with similar professional qualifications as the existing arrangement. This insource would:-

- Create greater synergies between client service areas to develop an effective Corporate Landlord function (aligned to CIPFA best practice in section 2.3) enabling: -
- accurate and robust property data to contribute to an effective Property Strategy and;
- an effective property strategy to drive the transactional Estates function FM and Property Delivery (as outlined in section 3.2.1)
- Strengthen the client team (and fill a current void), with much needed professional expertise (Chartered Surveyors) to provide responsive property advice more quickly in accordance with Council priorities.
- Enable the internal Strategy service to focus on the Corporate Landlord and Property Strategy development as opposed to managing the Estates / Property records function (as outlined in section 3.2.1)
- Enhance control over and improve performance (e.g., drive the disposals programme to ensure increased Capital Receipts to support the Council's Capital Programme)
- Better use of current insight and data to influence effective property decision making.

5.2.1. Financial Modelling

The costs paid under the contract can be broken down by staff salaries, on-costs (including pensions), IT and other support/overhead costs and profit. Using the cost breakdown of the respective areas taken from year eight of the contract, it is estimated that the insourcing of these two services would result in an overall saving to the Council of circa £34k per annum having accounted for the Local Government Pension scheme contributions and the Council's overheads.

5.3 Professional Services Core Team Proposal

Corporate Property Development Team Background

- 5.3.1 The Council's Corporate Property Development Team delivers a diverse range of projects and programmes which support the delivery of Council services through improved property solutions as well as achieve ambitions defined within the Council's Corporate Plan.

- 5.3.2 The Development Team has delivered projects and programmes accumulating to approximately £290million since 2015. Currently, these include the SEND (Special Educational Needs and Disability) Programme, Lincolnshire Secure Childrens Home, Property Rationalisation to support the Medium-Term Financial Plan (MFTP), Children in Care (CiC) Programme, Basic Need Programme, and the Extra Care Housing and Supported Living Programme. The team manage approximately sixty live projects concurrently, from minor projects costing approximately £100,000, through to major projects with construction costs totalling more than £60million.
- 5.3.3 The Development Team consists of Project Managers who are responsible for the overall delivery of capital projects and programmes. Professional Services are currently provided via the Vinci Facilities Property Services Contract which enables the Council to access the required technical expertise to manage chosen contractors effectively to ensure projects are delivered successfully in accordance with required legislation and regulations and the contract.
- 5.3.4 A review of the Vinci Facilities Property Services Contract completed by an independent Quantity Surveyor highlighted the Council's lack of independent challenge as a weakness within the existing Corporate Property Team (see section 3.4). To challenge and benchmark effectively LCC must have the appropriate skills and expertise to manage construction contractors, monitor quality, and achieve value for money. To address this, it is proposed that a core team of technical expertise is added to the Council's Corporate Property Development Team.

Strategic Case

Successful Project Delivery

- 5.3.5 Each capital construction project that LCC undertake must:
- Represent value for money and ensure costs are meticulously scrutinised and managed to deliver within agreed budget.
 - Meet the desired scope/requirements set out by the service.
 - Deliver in line with the specified timescale or programme.
 - Ensure building regulations, health and safety, legal and ecological requirements are met.
 - Establish the quality of both materials and workmanship are in accordance with the design information and specification and meet the recognised quality standards and legislation.
- 5.3.6 There are three fundamental principles/constraints of project management, in conjunction with the Scope, that are applied to every project no matter its size:
- Time
 - Quality
 - Cost/Budget
- 5.3.7 These factors determine both the limits of a project and the basic criteria for measuring the success of a project throughout, and at completion. Introducing any changes to any of the three factors needs to be managed carefully. Ignoring any one

constraint brings the risk of making bad decisions which impact adversely on the Council’s desired outcomes.

5.3.8 Currently, the Council does not have the necessary capability to carry out effective management and meticulous monitoring and control.

Current Delivery Model

5.3.9 The types of professional services required by LCC to ensure the principles in section 5.2.6 are met are identified below. These technical functions are currently outsourced to Kier Group as the main subcontractor for Vinci Facilities. They support the development of construction works, develop the project scope and in addition manage the chosen contractor and oversee the specified works on the Council’s behalf against the three principles. The technical functions are:

- Architects
- Construction Supervisors (Clerk of Works)
- Building Surveyors
- Cost Consultants (Quantity Surveyors)
- Mechanical and Electrical Service Engineers
- Structural Engineers
- Technical Project Managers

5.3.10 The diagram below in Figure Three demonstrates the current delivery model for each project and Appendix A outlines key responsibilities of the key technical roles Technical Project Managers, Cost Consultants and Construction Supervisors (see Table A1).

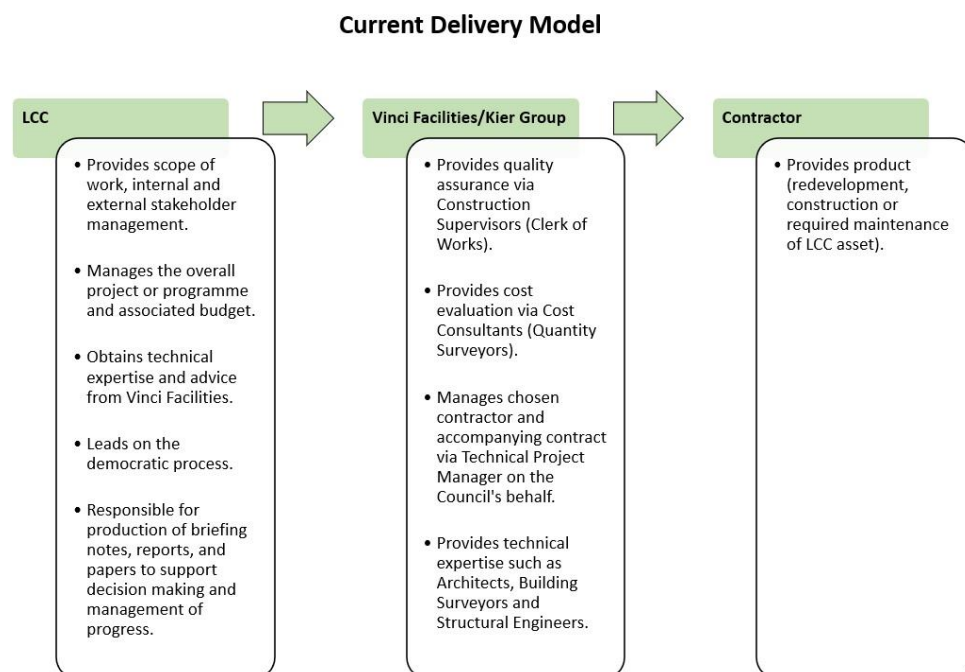


Figure 3: Current Delivery Model

- 5.3.11 Benchmarking of construction costs and the challenging of fees by technically qualified staff is provided by Kier employees. The Council has no expertise in this regard. This poses a potential conflict of interest and weakness within the current delivery model, as in addition to monitoring and challenging costs incurred from the construction contractor, Kier Group are also self-policing the setting of their own technical expertise fees and any changes to their costs throughout a project's lifecycle. Kier fees are subject to high-level review by LCC's Project Manager (based largely on previous Kier charges), however there is no formal benchmarking or qualified resource internally within the Council to intelligently challenge or ensure value for money for technical expertise as this role is outsourced to Vinci Facilities/Kier Group. Consequently, there can be no assurance that professional services deliver value for money.
- 5.3.12 Quality and Time are the other key principles in successfully managing any project. The monitoring, management, and control of both factors is also carried out by Kier.
- 5.3.13 In the future, to ensure and have confidence that the Council can successfully manage construction projects, and manage its repairs and maintenance programme against time, quality and cost whilst achieving its desired outcomes and value for money the Council needs to develop their resources and cost and commercial knowledge internally to become an intelligent client with the ability to challenge effectively and hold to account all delivery partners. This will equip the Council to deliver cost-effective, high-quality property solutions to meet the needs of service users and is proportionate to the scale of the Council's development programme of £290 million since 2015.

Proposed Future Delivery Model

- 5.3.14 The diagram below in Figure Four shows the proposed delivery model and Appendix A sets out the key responsibilities (see Table A1).

Proposed Delivery Model

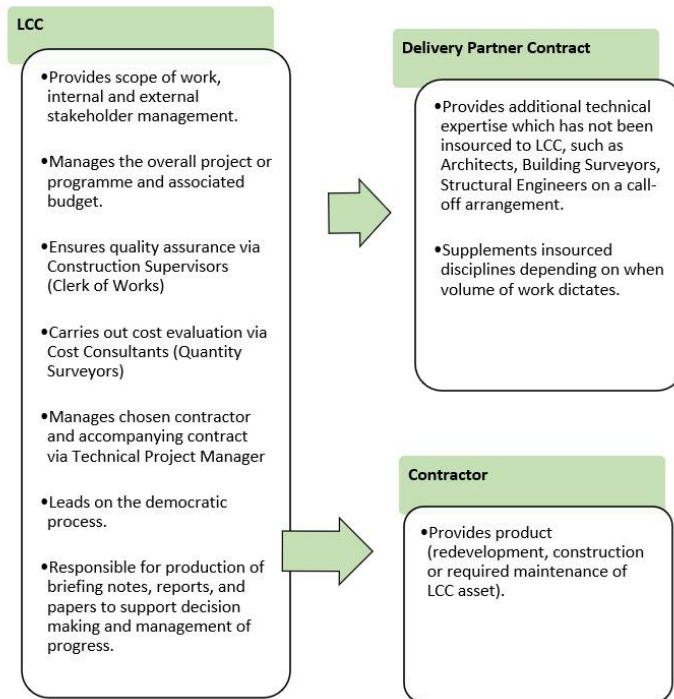


Figure 4: Proposed Professional Services Model

5.3.15 To achieve the proposed delivery model it is recommended a core team of technical expertise is insourced to focus on the management of Cost, Quality, Time, and Scope, across the capital construction projects and the Repairs and Maintenance Programme.

5.3.16 In addition to the core technical team, the Council will need to supplement this with a Delivery Partner Contract via a Professional Services Framework for those areas of technical expertise (set out in paragraph 5.2.9) which will not be insourced and for when work demand peaks. This will enable the Council to access the required services such as Architects, Building Surveyors, Mechanical and Electrical Engineers, and Structural Engineers.

Proposed Core Team of Technical Expertise

5.3.17 It is recommended that the following professional disciplines would be insourced to form part of a new core team of technical expertise (the numbers of staff reflect the numbers in those services as of May 2023 who spend 70% or more of their time on these activities for the Council):

- 3 Technical Project Managers
- 2 Cost Consultants (Quantity Surveyors)
- 2 Construction Supervisors (Clerk of Works)

5.3.18 The roles identified above are crucial to helping the Council regain its control of the fundamental elements of a project and ensure successful delivery and achieve value for money in terms of professional services. Table A1 (shown in Appendix A) is an indication of some of the key responsibilities the roles would conduct to support this.

Benefits of Insourcing to the Council

5.3.19 Insourcing of these roles and adding a core team of technical expertise will:

- Ensure LCC has the ability internally to benchmark and offer robust challenge around fee levels incurred from professional services and construction contractors.
- Furnish the Council with greater oversight and control to ensure that appointed contractors conduct high quality work in accordance with the contract whether that be in terms of materials, workmanship, construction standards or building regulation statutory compliance.
- Protect the Council and its interest and provide greater scrutiny and assurance on high-cost activity.
- As mentioned within section 4.2.1; removes conflict of interest currently experienced when Vinci Facilities/Kier Group act as designers and a contractor is procured through a framework.
- Place greater control in the hands of the Council in relation to the delivery of construction work.

- Build a team which is commercially intelligent and has professional and technical capability, helping to fill an identified skills gap and weakness and currently a single point of failure.
- Re-sets the Council's in house team investing in capability so that it is fit for purpose and able to attract apprentices.
- Enables the Council to be more agile through the ability to access resources directly and to flex that resource against changing priorities.
- Deliver savings in professional services costs see below.

Financial Case

5.3.20 Between 1 April 2022 and 31 March 2023, the Council has spent over £1.25m accessing the services of Technical Project Managers, Cost Consultants, and Construction Supervisors through the Vinci Facilities Property Services Contract. It is these disciplines that the Council uses most. This expenditure is in relation to capital construction projects and any support required to deliver the Repairs and Maintenance programme.

5.3.21 Based on the expenditure between 1 April 2022 and 31 March 2023, and the total number of hours purchased and the assumption that each member of staff works 1650 hours per annum it is possible to compare the fees paid under the contract against the likely costs of employing those 7 staff referred to in paragraph 5.3.17 above which indicates a potential saving of £350,000 p.a. though detailed TUPE information is still awaited. Further savings or cost avoidance are also likely as we would be able to robustly challenge the professional services fees charged by the new Delivery Partner.

5.4. Facilities Management

It is proposed that Facilities Management will remain a mainly outsourced provision except for Energy and Environmental Management and Asbestos Management as detailed below.

5.4.1 To provide enhanced capacity and assurance on its journey to meet its targets for carbon reduction and deliver the green masterplan, it is proposed that the environmental services currently outsourced are insourced into the Facilities Management Team. This equates to 2 FTE. This will generate a saving of circa £9k per annum.

Statutory Legislation and Property Compliance

5.4.2 The Health and Safety at Work etc Act 1974 (HASAWA) states that employers must protect the 'health safety and welfare' at work of all their employees, as well as others on their premises. The HASAWA is an absolute duty and, LCC as the employer is the responsible body. Other pertinent legislation includes: -

- Regulatory Reform Fire Safety Order 2005.
- Building Safety Act 2022.

- 5.4.3 Property compliance has undergone significant scrutiny in recent years due to the Grenfell Tower tragedy, in which 72 people lost their lives and has resulted in the development of new legislation (coming into force from 1st October 2023). This legislation places an increased onus on building owners and employers to manage fire risk more effectively.
- 5.4.4 Legionella responsibilities have come to the fore with several high-profile prosecutions for failure to manage Legionella risk effectively. These factors, coupled with general health and safety of staff, visitors and the public while on Council premises further highlights the need to manage and monitor this effectively.
- 5.4.5 The new legislation is placing more responsibility on accountable bodies and individuals that must now be identified as the “Responsible Person” under the legislation. It should be noted that such responsibilities cannot be passed onto contractors. The duty and responsibility sit with LCC as the accountable body and the individual responsibility sits with the identified responsible person in LCC, usually at Assistant Director or Executive Director level.
- 5.4.6 Employers are required to appoint one or more competent persons (dependant on the size of the organisation and preferably from within the organisation) to oversee, supervise and assist in all matters of property legislation compliance.

Compliance at Lincolnshire County Council

- 5.4.7 Phase One of the Corporate Landlord project has brought 358 additional properties under the direct responsibility of the client-side FM team in the last two years, doubling the number of properties managed by the FM Team. This has significantly increased the workload and responsibilities in the team. To ensure LCC is fulfilling its statutory duties extra resource is required to monitor and enforce statutory legislation to reduce the risk of prosecution for LCC and individual officers.
- 5.4.8 As a result of previous prosecutions, most Local Authorities have recognised the legislative requirement for ‘Responsible Persons’ and have subsequently reviewed their structures to include the main compliance roles, with particular focus on the three highest property risk areas, Fire, Legionella and Asbestos.

Asbestos Management

- 5.4.9 Asbestos legislation places a duty on employers and building owners to manage asbestos effectively to reduce risk of exposure. This includes updating asbestos registers and management plans, carrying out surveys where required and monitoring contractors.
- 5.4.10 Asbestos is present in circa 300 Council properties; therefore, the condition of the asbestos must be actively managed to ensure it does not deteriorate. Asbestos may be present in hidden areas of any building constructed before the year 2000, therefore surveys must be implemented prior to any intrusive work carried out by contractors. Corporate Property holds a budget for asbestos removal or

management work; this budget and the overall condition work must be managed by the Council and requires a suitably qualified and experienced person. This person must hold an independent/objective point of view as their work may include enforcement actions against the contractors. This role would be free to monitor contractors and stop any work that contravenes Asbestos legislation. This will mitigate the risk of the Council facing prosecution in the future.

5.4.11 If this service was insourced it would provide the Council with extra resilience, transparency and control under the Control of Asbestos Regulations 2012 as highlighted within section 5.3.9. Based on the size of the existing resource carrying out this work it would involve 2 FTEs.

5.4.12 **Construction Design Management (CDM) Advisors**

All construction work must comply with CDM Regulations, including maintenance work, repairs, minor works, and construction projects. CDM advice is managed through the existing property contract via 2FTE posts. Consideration has been given to insourcing this service, however the salary level for the two CDM advisors currently conducting this work is such that it would undermine the current LCC staffing and payment structure making a TUPE transfer impractical and unaffordable. Therefore, the recommendation is to retain the CDM Advisor role(s) as an outsourced function, but ensure it is independent from the overarching FM contract to provide the necessary assurance to the Council's property related activities.

5.4.13 **Fire and Legionella Management**

Several findings and learning have emerged from previous incidents of Legionella outbreaks, including:

- The requirement for top-level commitment for clear and relevant management systems, coupled with effective training.
- A lack of leadership meant that people did not understand the risks associated with legionella.
- The lack of a 'responsible person' to take control for water treatment and preventative controls.
- Senior management failed to define the responsibilities of everyone along the chain of command.
- The lack of systems to support effective monitoring and reporting to ensure leaders are being kept informed about any significant health and safety failures.

5.4.14 **Fire: Grenfell Tower 2017**

On 14 June 2017, the Grenfell Tower fire broke out in the 24-storey Grenfell Tower block of flats in North Kensington, West London, it caused 72 deaths. More than 70 others were injured. It was the deadliest structural fire in the United Kingdom since the 1988 Piper Alpha disaster.

The subsequent Hackitt Review, highlighted the following:

- In too many cases people who should be accountable for fire safety have failed in their duties.
- In future, the Government will ensure that those responsible for a building must demonstrate they have taken decisive action to reduce building safety risks and will be held to account.

The report reiterated that although contractors can be appointed to carry out work, the responsibility still falls with the accountable body and their 'responsible person' to monitor contractors and ensure that compliance work is being undertaken correctly, and that resources should be made available to achieve assurance.

5.4.15 LCC Position and Proposal

As highlighted in 5.3.14, the Grenfell tragedy has put the emphasis on building owners and employers to manage fire risk more effectively.

Currently, the existing Compliance Officer within the client-side FM team manages and monitors the fire and legionella risk areas in addition to their usual workload. There are currently no identifiable roles within the existing contract to directly manage these risks. This lack of resource and expertise therefore creates a significant risk to the Council potentially leading to fines and legal prosecution if not managed effectively.

As responsibility cannot be passed to the contractor, it is proposed to create two new positions within the client-side FM team to directly manage these risk areas, comprising of one Fire Management Officer and one Legionella Compliance Officer. These posts are required to ensure the work undertaken by the contractor is fulfilling the County Councils Statutory responsibilities and duties. As these are both technical areas the post holders will need to have relevant experience, expertise, and qualifications to carry out the duties.

The creation of these posts does not impact the existing contract as they are not currently included.

5.4.16 Minor Works Projects

Minor works are small projects, generally below £50k in spend or where no design work is needed e.g., replacing a boiler, upgrading insulation, drainage repairs, refurbishing toilets etc. During the 2022/23 financial year, the Council spent circa £1.6m on minor works tasks (159 tasks in total) at an average cost of circa £10k per task.

The new NEC4 Facilities Management contract will have a 'call off' section called service orders which will enable contractors to be more responsive to minor works requests (this will resolve concerns around the timeliness of tasks and control of costs previously raised via the stakeholder engagement work).

This function will need to be directly managed by the client-side FM team, and will include producing service orders, developing outline specifications, managing the

programme, acting as spend manager and ensuring work complies with CDM and other construction and procurement regulation. A Minor Works manager role is therefore required within the client-side FM Team. This is not currently provided through the existing contract and leaves the Council vulnerable to the risks associated with a thin client model. This role will assist the Council become more of an intelligent client, deliver better value for money from the £1.6million programme, improve quality control and enforce action against non-compliant contractors. The management of the programme will be undertaken by the client-side FM team and the actual work will be undertaken through the outsourced Facilities Management contract. Work is ongoing to facilitate the use of local contractors within this role to ensure improved responsiveness which in turn will assist in meeting the Council's Corporate Social Responsibility.

5.4.17 The indicative financial implications of the three client-side FM roles are circa £166k.

5.4.18 **Summary of Recommendations**

It is recommended that 4 FTE posts associated with asbestos management and energy and environmental management transfer are included within the client-side FM team. There are currently posts within the contract arrangements that would be covered by TUPE on the re-procurement.

To provide robust compliance management a Fire Management Officer, Legionella Compliance Officer and Minor Works manager are required, these will be new posts created within the client-side FM team which are not currently covered within the contract and therefore have no impact on potential insource recommendations. These posts will be critical to adding robustness and challenge to the intelligent client model. These roles are also required to effectively manage the extra properties that that are now the full responsibility of Corporate Property (see point 5.3.7). The number of properties that Corporate Property are responsible for has doubled in the last two years because of the corporate landlord project.

It should be noted that day-to-day operations including, fire risk assessment reviews, legionella risk assessments, legionella monthly testing and CDM advice will still sit within the outsourced Facilities Management contract model.

5.4.19 The responsibility for ensuring contractors are performing their duties under the contract and are fulfilling Council's statutory requirements, cannot be passed on to the contractor, it is the legal responsibility of the Council.

5.5. **Financial Summary – Insource**

The proposed insourcing of services would equate to 19 FTE which represents 13% of the overall FTE (146) employed by Vinci (94) and Kier (52). Insourcing 19 property professionals will help to strengthen the intelligent client model proposed above and at the same time generate significant annual savings of circa £383k per annum.

5.6. Insourcing Risks

The approach outlined above will bring considerable benefits to the organisation regarding the quality of the delivery of property related activities. It is the preferred and recommended approach. It must however be noted, that due to a shortage of qualified Chartered Surveyors within the marketplace, this approach does bring a high risk associated with recruiting and retaining property professionals. However, Local Authorities 'grow their own' property professionals through apprenticeship schemes such as those adopted by Rotherham & Lancashire respectively. Furthermore, following a market analysis exercise the Council should be able to offer competitive salaries within current pay structures and with attractive pension options which helps mitigate the risk.

Section 6 – Outcomes and Benefits

6.1. Re-commissioning the property services will support the Council in fulfilling its statutory and regulatory duties in respect to property, such as:

- Health and Safety at Work Act 1974
- The Workplace (Health, Safety and Welfare) Regulations 1992
- Regulatory Reform (Fire Safety) Order 2005
- Construction (Design and Management) Regulations 2015
- Electrical (Equipment) Safety Regulations 2016
- Gas Safety (Installation and Use) Regulations 1998
- Control of Substance Hazardous to Health Regulations 2002 (COSHH)
- HSE (Health and Safety Executive) Codes of Practice

6.2. Facilities Management services, especially soft FM helps promote good staff productivity i.e., clean, hygienic, and safe workspaces. This was essential during the pandemic crisis. The property contract played a key role in assisting with facilitating staff returning to office bases.

6.3. Furthermore, it will be key to the Council achieving its Green Masterplan and UK Government targets to become carbon neutral by 2050. Examples include optimising energy usage on existing sites and identifying and implementing a strategy to reduce energy usage and opportunities to generate green energy and reduce or offset carbon emissions.

6.4. A front-facing support service would be achieved by utilising the Property Service Centre offering prompt reactive maintenance and emergency callouts to properties and property-related assets 24 hours a day, 7 days a week.

6.5. Direct control of LCC's own property records will help to maintain data integrity and to better manage data loss risk. The Council also proposes to purchase the licence for the Computer-Aided Facilities Management (CAFM) system named Concerto. This is to reduce the risks of data loss when transferring the data to a new provider, to minimise transition work, to prevent a new provider providing a new system which will result in additional work and cost for the Council and the provider, and the need to retrain staff who are already familiar with the system. The client-side

property records team will manage the data quality and continuous improvement and development of the system.

- 6.6. The proposals should lead to increased financial, quality and project scrutiny including further enhancement of day-to-day monitoring of Council's outsourced provisions.

Section 7 Cost Implications

- 7.1. Using the historic financial information from contractual spend for Hard FM, the Council will need to identify a budget of circa £4.8m for planned and reactive Hard FM across the estate for 25/26 financial year to achieve comparable levels of activity. This calculation is based on the existing contractual inflation rate.
- 7.2. Using the same methodology for Soft FM; a budget of circa £3m for planned and reactive tasks will be required for 25/26 financial year.
- 7.3. The tender process will test the deliverability of service expectations within the constraints of the available budget, and competitive tension will ensure value for money is maximised.
- 7.4. Purchase of the existing Computer Aided Facility Management (CAFM) system, Concerto, would cost circa £40k per year in licencing costs but that cost would then fall out of the contract payments required.

Section 8 Risks and Dependencies

- 8.1. A failure to maintain the existing services could result in a failure by the Council to meet its property statutory and legislative obligations which could lead to significant financial penalties if a member of staff, visitor or end user were to become ill or suffer injury or death as a result.
- 8.2. Ensuring the continuation of critical facilities management services such as Hard FM reactive callouts to remedy issues and compliance management helps protect the Council from business continuity threats such as office or building closures.
- 8.3. There is a risk that tasks are not completed during handover, this can be mitigated with robust mobilisation/exit meetings and through the early commissioning of Concerto.
- 8.4. There will be a need to ensure projects undertaken through the NEC Task order process are managed effectively if they go beyond the contract end date and/or in transition to the new contractor.
- 8.5. There will be a need to ensure that Serco and the new contractor(s) work closely in respect to IT support for contractor staff. Examples include contractor Wifi access does not interfere with LCC Wifi. Working together to have shared access to diaries.
- 8.6. Ensuring the contractor and principal sub-contractor retain staff in the lead up to the expiry of the contract is a critical risk and will need to ensure effective communication by all parties.

8.7. Service specific requirements have dependencies on property management undertaken through the property services contract.

9. Legal Issues:

Public Services Social Value Act

In January 2013, the Public Services (Social Value) Act 2013 came into force. Under the Act the Council must before starting the process of procuring a contract for services consider two things. Firstly, how what is proposed to be procured might improve the economic social and environmental wellbeing of its area. Secondly, how in conducting the process of procurement it might act with a view to securing that improvement. The Council must only consider matters that are relevant to the services being procured and must consider the extent to which it is proportionate in all the circumstances to take those matters into account. In considering this issue the Council must be aware that it remains bound by the PCR 2015 which itself through its requirement for transparency, fairness and non-discrimination places limits on what can be done to achieve these outcomes through a procurement.

The proposals in this Report will improve wellbeing through the provision of safe spaces for employees and public and by improving the focus on delivery of the Green Masterplan

Ways will be explored of securing social value through the way the procurement is structured. The competitive procedure with negotiation process enables the potential for social value to be explored with bidders whether that be the use of local supply chains or employment and training opportunities.

Under section 1(7) of the Public Services (Social Value) Act 2013 the Council must consider whether to undertake any consultation as to the matters referred to above. The service and the value it delivers is well understood. Best practice recently adopted elsewhere has been reviewed. This and the market consultation carried out is considered to be sufficient to inform the procurement. It is unlikely that any wider consultation would be proportionate to the scope of the procurement.

Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under the Act.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, the need to:

- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
- Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

Compliance with the duties in section 149 may involve treating some persons more favourably than others.

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision-making process.

There are not considered to be any Equality Act implications arising out of the choice of recommended commissioning models for future services for Facilities Management, Estates and Property Records and Professional and Project Services.

There are however potential impacts on those staff with protected characteristics resulting from any change in the delivery model and the transition to that change. The impacts are a consideration with the mitigations which include effective staff engagement and consultation, the requirement for any new providers to comply with TUPE regulations and the Equality Act, and the availability of local Council accommodation and Smarter Working for any services insourced and depending on the decisions made for any services externalised reducing any requirement to relocate.

Joint Strategic Needs Assessment (JSNA and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health and Wellbeing Strategy (JHWS) in coming to a decision.

There are not considered to be any direct JSNA or JHWS impacts of the decisions required by this Report. Indirectly, the Council's support services underpin the work of the Council and the way it interacts with its customers and communities. The proposals put forward in this Report are considered to be the best way of ensuring the ongoing availability, performance and development of services that fully support the aspirations of the Corporate Plan which directly contribute to the achievement of JHWS objectives.

Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

There are not considered to be any direct impacts of the decisions required by this Report on the considerations. Indirectly, the Council's support services underpin the work of the Council in fulfilling its crime and disorder functions. The proposals put forward in this Report are considered to be the best way of ensuring the ongoing availability, performance and development of services that fully supports the Council and its partners in that work.

10. Conclusion

It is recommended that the Council reprocures Property Services based upon two separate outsourced contracts for Facilities Management using the NEC4 FMC contract and Professional Services using NEC4 PSC contract as detailed within section 4 of this report.

Insourcing of the Estates and Property Data Team, the Energy and Environmental, Asbestos management and Core Professional Services team (total 19 FTE) will generate circa £383k saving p.a. as detailed within section 5 of this report.

Creation of three new posts within the Facilities Management team is recommended to further strength the management of the Council's regulatory duties.

These recommendations will add significant value to the Council in providing technical and professional assurance which will result in improved value for money.

11. Legal Comments:

The Council has the power to procure the contracts proposed. The proposed procurement methodology is compliant with the Council’s procurement obligations.

The decision is consistent with the Policy Framework and within the remit of the Executive

12. Resource Comments:

The recommendations set out in the report are expected to lead to an improvement in service performance, a reduction in the cost base (both directly and indirectly), enable areas to be addressed which have been identified as not being managed sufficiently tightly to ensure value for money, and provide greater scrutiny and assurance on high-cost activity. Whilst there are risks associated with the proposal, these are well identified and are far outweighed by the potential benefits that could be realised through the change in service delivery model.

13. Consultation

a) Has Local Member Been Consulted?

N/A

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

The decision will be considered by the Overview and Scrutiny Management Board at its meeting on 29 June 2023 and the comments of the Committee will be reported to the Executive

d) Risks and Impact Analysis

See Section 8 within main body of report.

14. Appendices

These are listed below and attached at the back of the report	
Appendix A	Supporting Information

15. Background Papers

The following background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

Background Paper	Where it can be viewed
Executive Report – Property Services Contract Award – 29 July 2014	Property Services - Contract Award.pdf (moderngov.co.uk)

This report was written by Jayne Sowerby-Warrington, who can be contacted on 07436845557 or jayne.sowerby-warrington@lincolnshire.gov.uk.

APPENDIX A Supporting Information

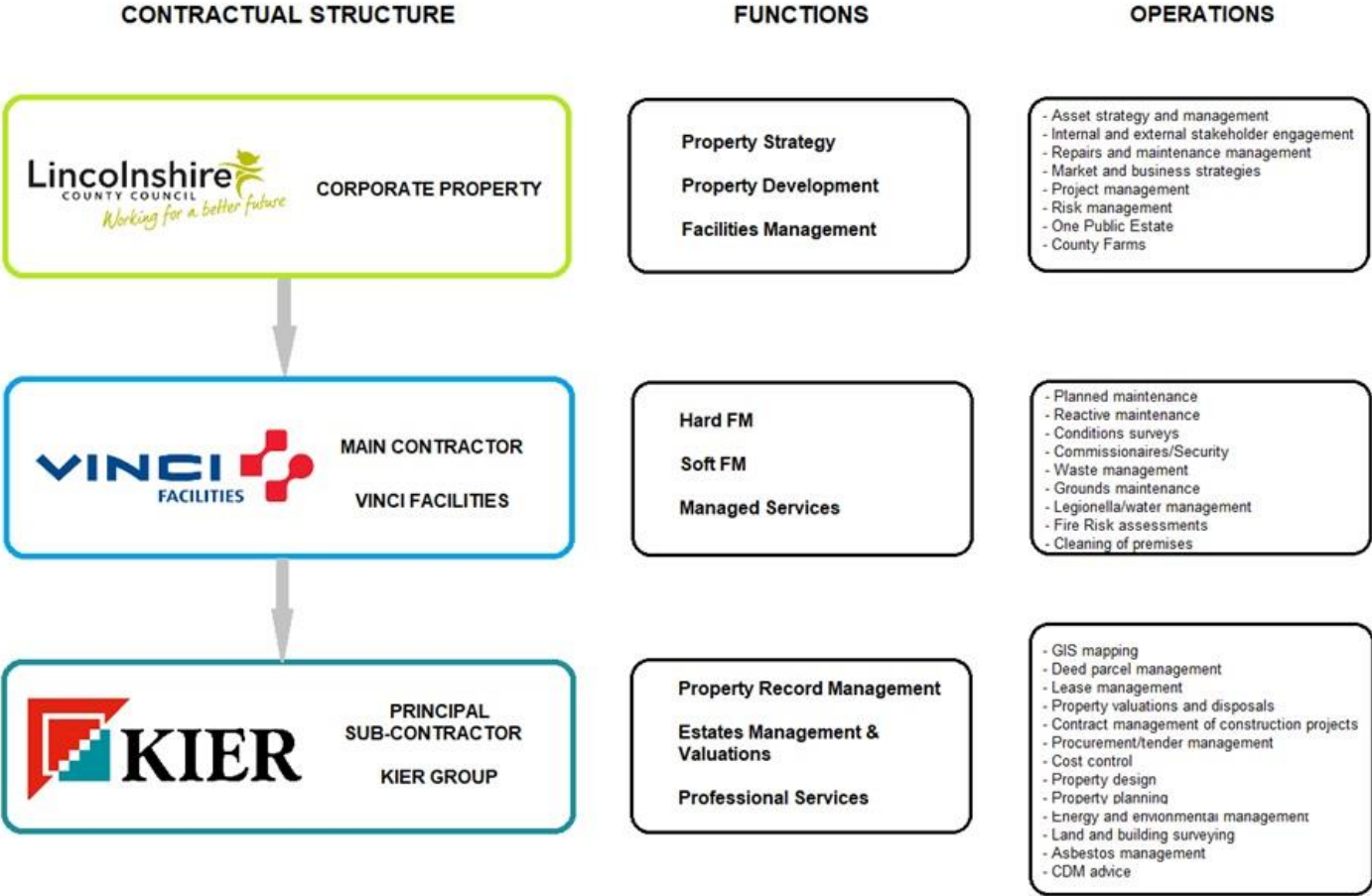


Figure 3: Current Structure with Detailed Operations

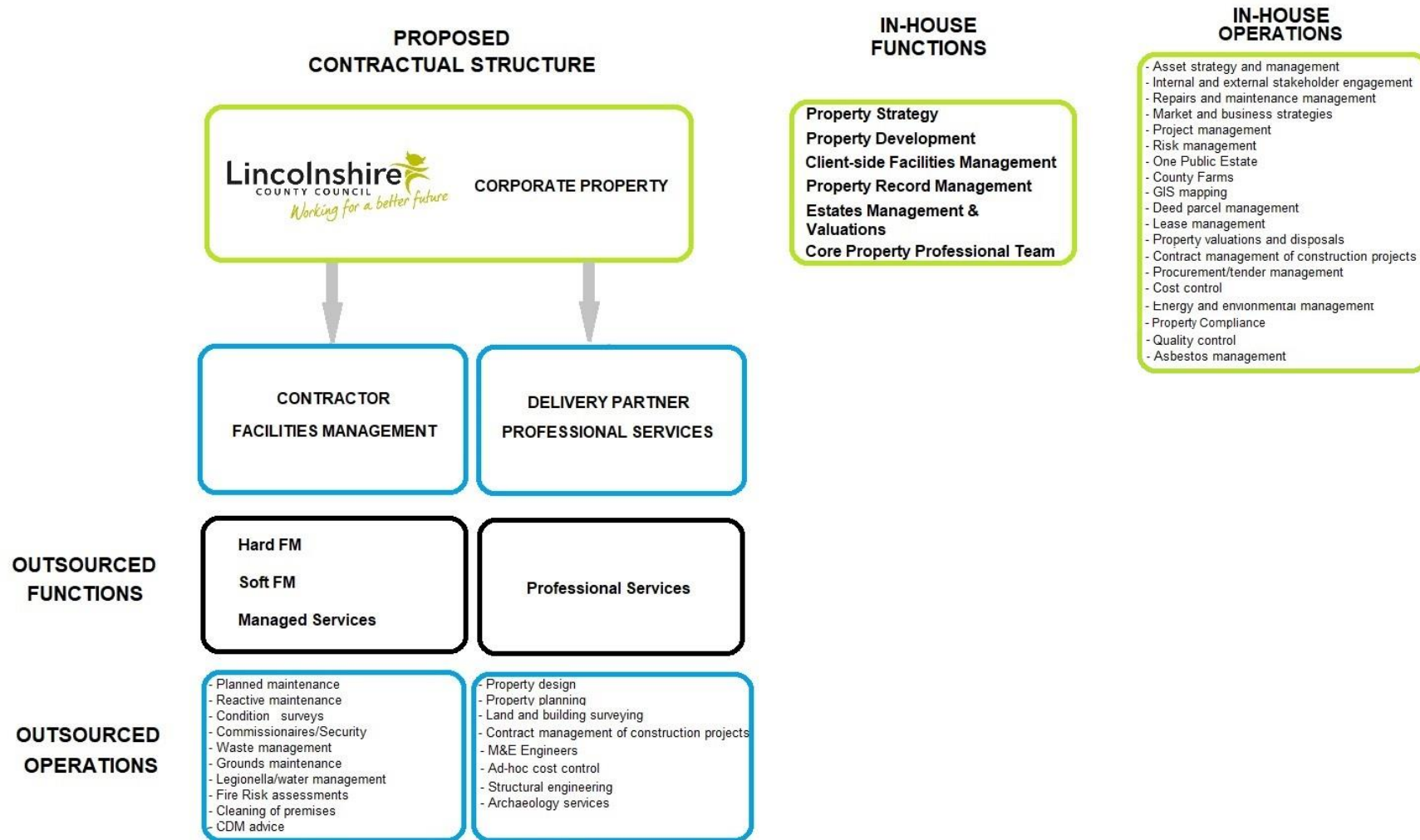


Figure 4: Proposed Model Detailed Operations

Table A1

<p>Technical Project Manager</p>	<ul style="list-style-type: none"> • Function as Contract Manager between contractor and the Council. • Lead all technical and design team meetings with the contractor on behalf of the Council. • Coordinate all technical and design services and function as main point of liaison for technical and design teams. • Lead all site meetings with contractor and ensure construction programme is being delivered as specified through effective management and challenge. • Hold LCC's chosen contractor to account at every stage of construction. • Provide guidance on time, cost, and quality and advise LCC Project Manager where tolerances are likely to be exceeded. • NEC accredited and able to interpret the contract and ensure the contractor is adhering to the relevant contract in place. • Interpret technical information from the contractor to support the LCC Project Manager in providing updates and reports to the service. • Accountable for accepting and rejecting contractor construction programme and consulting with LCC Project Manager where projects could overrun. • Review identified risk and issues and apply calculations, ensuring the Council's risk pot is sufficient. • Raise Compensation Events and Early Warnings from the contractor. • Collate all documentation for pre-construction and main work agreements. • Linchpin for all technical services surrounding the project. • Identify, analyse, and develop responses to commercial risks.
<p>Cost Consultant (Quantity Surveyor)</p>	<ul style="list-style-type: none"> • Minimise the cost and risk of a construction project through effective management and challenge. • Enhance value for money while still achieving the required legal standards and quality. • Ensure statutory building regulations are met. • Analyse and challenge contractor estimates and fees. • Keep track of any variations to the contract that may affect costs. • Assist in establishing requirements and undertake or assist with feasibility studies to ensure proposals will work. • Perform risk, value management and cost control during construction projects. • Detailed examination of contractor's tender packages, allowances and compliance with framework if used. • Analyse project costings for tenders, such as materials, quantities, labour, and time. • Undertake cost analysis for repair and maintenance project work.
<p>Construction Supervisor (Clerk)</p>	<ul style="list-style-type: none"> • Conduct independent inspections and compare construction work with drawings and specifications.

of Works)	<ul style="list-style-type: none">• Ensure projects are achieved at the best value for money.• Identify defects and suggest cost effective ways to correct them.• Monitor progress and help to reduce risks or issues.• Inspect the building's structural integrity and keep detailed records of work.• Ensure that the most appropriate materials and components are being implemented and will identify their use and any limitations or alternatives that should be considered.• Check that building regulations, health and safety, legal and ecological requirements are met.• Ensure LCC's interests are protected throughout the construction process.• Ensure the quality of both materials and workmanship are in accordance with the design information and specification.• Ensure the quality of both materials and workmanship meet the recognised quality standards and legislations.• Will use their experience to interpret, record, inspect, and guide the construction process.
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