



**Western Cape
Government**

Provincial Treasury

BETTER TOGETHER.

WC - CIGFARO CONFERENCE

**“ETHICAL LEADERSHIP FOR MAXIMUM CITIZEN IMPACT
THROUGH CLEAN GOVERNANCE”**

GOLDEN VALLEY CASINO WORCESTER

MS L SALLIES

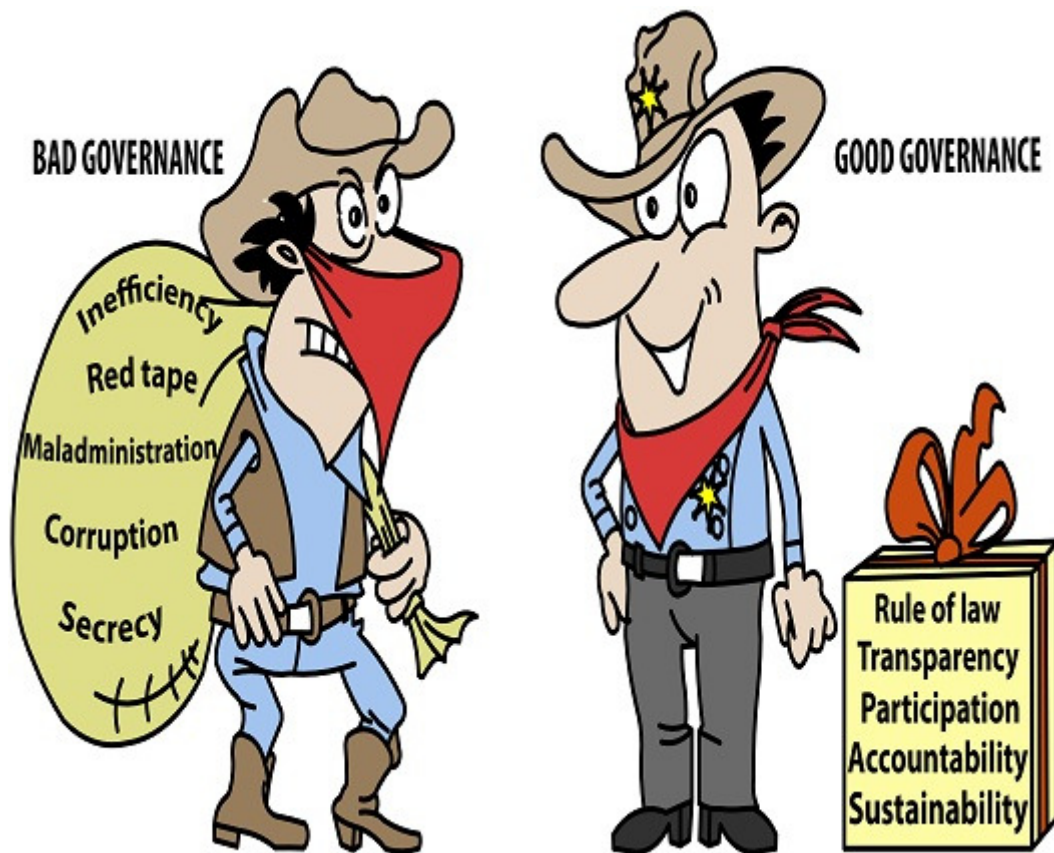
03 JUNE 2019

OVERVIEW

- Pillars of Good Governance
- The role of Leadership
- SCM Audit Findings: 2017/18 FY
- Deviations
- Local Production and Content
- Way Forward
- Conclusion

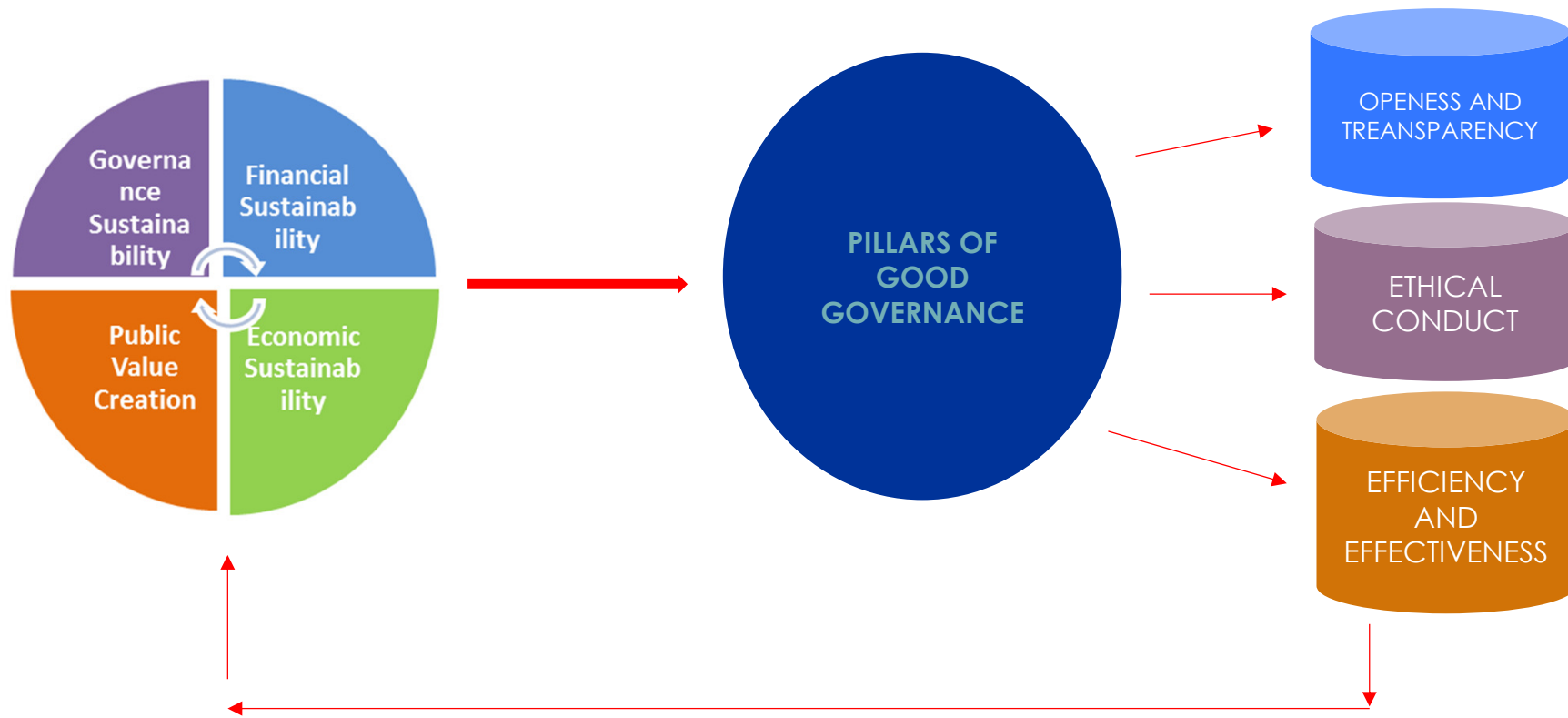
Pillars of Good Governance

Good Governance VERSUS Bad Governance



Pillars of Good Governance

Provincial Treasury's Mandate:



Unpacking the pillars of Good Governance in SCM

OPENESS AND TRANSPARENCY

OPENESS AND
TRANSPARENCY

- Be as open as possible about decisions and actions taken
- Give reasons for decisions and restrict information only if it is in the public interest to do so
- Public access to information (PAIA, PAJA)
- Processes to be transparent and open for review by all stakeholders

Unpacking the pillars of Good Governance in SCM

EFFICIENCY AND EFFECTIVENESS



- The use of public funds to be managed with efficiency
- Are we getting value for money?
- Are resources being used to its optimal capacity?
- Are processes duplicated and ineffective?

Unpacking the pillars of Good Governance in SCM

ETHICAL CONDUCT

ETHICAL CONDUCT

Code of Conduct for SCM role players (National Treasury Guide):

- Fair and impartial in performance of duties
- Perform duties with integrity
- Public resources are administered responsibly
- Conflict of interest
- Accountability
- Openness
- Confidentiality



Ethical conduct continued...

Effective and Ethical Leadership

- Political leadership
 - Collective approach and integrated support to address the effective function of council e.g. functioning of council committees
 - Specialised projects that address root causes regarding the effective oversight role of councillors
- Administrative leadership
 - Emphasis on administration enforcing the legislative requirements, harmonising good governance and service delivery
 - Competent, astute and principle based administrative leadership

Monitoring, support and empowering – utilising platforms and working methodology

Governance: Integrated thinking and reporting

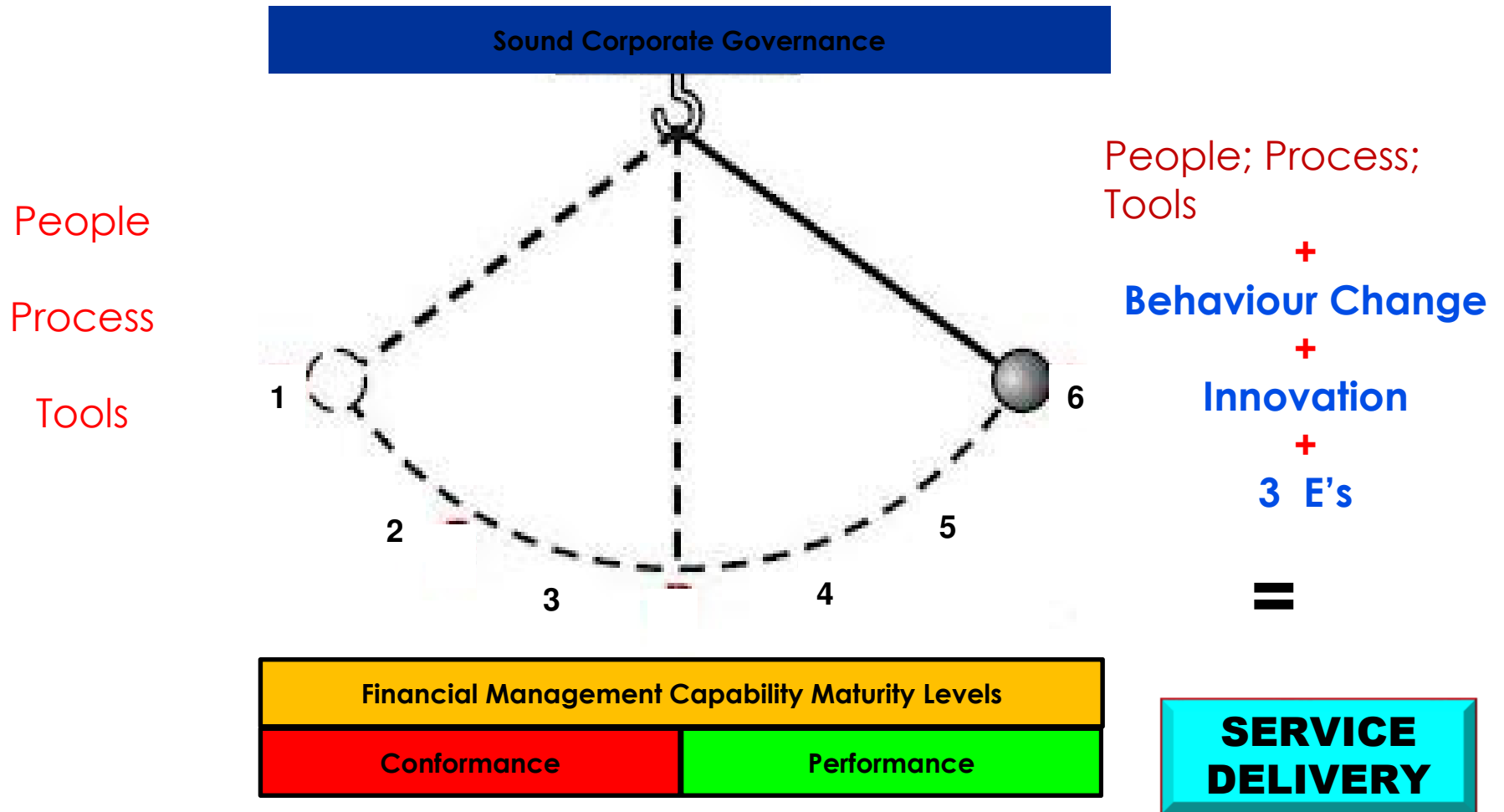
Integrated Thinking and Reporting

- Linking performance to governance thereby improving value
- Better risk management processes
- Supports improved decision making
- More focused reporting
- Enriched communication

In order to:

- Respond to the needs of stakeholders,
- Initiate enlightened leadership; and
- Achieve a higher and faster level of service delivery

FROM CONFORMANCE TO PERFORMANCE



The role of leadership



The Role of Administration

- ❑ The importance of understanding the role of leadership in good governance
- ❑ Implementers and trend setters for good governance
- ❑ Impact of decisions made on all role players and the public
- ❑ Reviewing audit findings and implementing improvements
- ❑ The drivers of change

Oversight Role of Council

- ❑ Council must ensure that the Accounting Officer executes the Council's policy
- ❑ Approve SCM structure
- ❑ Consider the Accounting Officer's progress report on implementation of the SCM policy
- ❑ Council cannot reverse or override a decision of a bid once it has been awarded by the bid adjudication committee or Accounting Officer
- ❑ Compliance to Section 117 & 118 of the MFMA, restricts the interference by Council

Oversight Role Of Council continued:

The oversight responsibility of Council is to ensure that a quarterly SCM implementation report in terms of regulation 6 of the Municipal SCM regulation is received from MM to address the following:

- Deviations, all the necessary steps have been taken before approving deviation and its in line with regulation 36(1) of Municipal SCM Regulation;
- Irregular, unauthorised expenditure and fruitless and wasteful expenditure and how the municipality will implement consequence management before council consider condoning the expense and how many matters have been referred to MPAC for investigation;
- New National SCM reforms that will have an impact on policy changes and the municipal SCM processes , for example PPPFA Regulations, MSCOA, Infrastructure Procurement standards (SIPDM);

Implementing Supply Chain Management

COUNCIL NEED TO ENSURE THAT:

- A SCM Policy is adopted by Council and that its in line with Section 112 of the MFMA;
- All necessary support and resources are provided to the Accounting Officer (MM) to implement a SCM Policy that focuses on integrity, efficiency and best value for money;
- NO interference with any SCM systems/processes that is implemented by the MM can be hindered or negatively influenced by any councillor or officials in terms of section 117 and 118 of the MFMA; and
- A sufficient consequence management system is in place to address councillors and officials that part-take in fraud, corruption, favouritism, unfair and irregular practices in the municipal supply chain management.

Prohibition Of Council In Terms Of SCM

- Council can not part-take in any tender process, especially when the municipality has considered having open bid evaluation and adjudication committee sessions with the public in terms of section 117 of the MFMA and this includes being as observers;
- Councillors must refrain from intimidating officials to award tenders or quotations to identified/specific suppliers to benefit a specific group because it would be a violation in terms of section 118 of the MFMA;
- No tender must be awarded to any councillor in terms regulation 44 of the municipal SCM regulation;
- Councillors should refrain from unsolicited biddings which might have an impact on interference in the SCM systems. Unsolicited bids refers to proposal received outside the normal bidding process, which is generally not been subjected to a transparent and accountable process.

SCM Audit Outcomes: 2017/18 FY

SCM Audit Outcomes - 2017/18 Audit

Transversal issues addressed in the PT Inputs submitted to NT:

- **Application of local content and production prescripts;**
- Non-Compliance to SIPDM;
- MFMA Section 116;
- SCM Regulation 13 (MBD4) versus the CSD;
- Application of SCM Regulation 32;
- **SCM Regulation 36 repetitive deviations and reasons not properly justified;**
- Interpretation of CIDB Regulations;
- Inconsistencies of the audit on application of VAT; and
- Inconsistencies of the overall audit practices and processes when auditing SCM across the WC.

Deviations

Legal Prescripts

Legislative Framework:

SCM regulation 36: The Accounting Officer may dispense with official procurement processes if it becomes impractical to invite competitive bids for specific requirements namely:

- **Emergency cases:** where immediate reaction is necessary in order to avoid a dangerous or risky situation or misery or disaster such as floods and fires
- In the case of a **sole supplier**
- The **acquisition of special works** of art or historical objects where specifications are difficult to compile
- Acquisition of **animals for zoos**; or
- In any other exceptional cases where it is **impractical or impossible** to follow the official procurement process

Possible Challenges and Pitfalls

- Not testing the market vs sole suppliers
- Emergency cases vs lack of proper planning
- Deviating without the necessary delegation
- Failure to record deviations
- Repetitive deviations and reasons for impracticality, not justifiable.
- Reasons not adequately motivated
- Improved planning linked to the request for Deviations
- By-passing laws and legislation governing SCM to motivate a deviation
- Increases the risk of fraud and corruption
- Are motivations supporting deviations a true reflection of the requirements of Regulation 36?

How to improve the process

- Deviations, all the necessary steps have been taken before approving deviation and its in line with regulation 36(1) of Municipal SCM Regulation.
- Improved planning linked to the request for Deviations.
- The reasons for the deviations must be recorded and reported to the next meeting of the council and also be included in the Annual Financial Statements.
- Maintain a proper audit and paper trail.
- Ensure reasons for deviating from the normal procurement process are properly justified.
- Proper checks and balances.
- Training

Clarity to be obtained from National Treasury

- What constitute an emergency case and when is a deviation impractical;
- Clarity on the Rand value of deviations that must be disclosed as a note in the Annual Financial Statements;
- Clarity on the Rand value of deviations that must be reported to Council;
- Should MBD 4 be attached to each deviation; and
- What constitutes “minor breaches which are purely of a technical nature”?

Local content and production

Challenges experienced by municipalities

- Awareness of the legislative requirements in the supplier community
- No database exist of suppliers that comply with local content requirements
- Application of legislative requirements by municipal officials
- Thresholds of when local content should be applied, is not consistent (preferably above R200k)
- Incompleteness of MBD 6.2 and annexures
- Exemption certificates not attached to bid submission
- Negative impact on service delivery because of non-awards
- No database exist of suppliers that comply with local content requirements
- Deliberate non-competition on the part of manufacturers
- Exorbitant bid prices charged by suppliers
- possible false declarations made by bidders on the MBD 6.1 form
- Bid and tender documentation did include the local content requirements.
- Role of SABS regarding the verification local content.
- DTI is the custodian of the local content but NT is the policy maker.

How to improve the process

- ❑ The importance of compliance to the designated sectors identified by the DTI
- ❑ All the designated requirements must be clearly listed on the MBD 6.2 and their minimum threshold for local content.
- ❑ Annex C: Local Content Declaration (Summary Schedule) must be attached.
- ❑ If the bid is for more than one item, local content percentages for each product contained in Declaration C must be declared and used.

- ❑ Bids for all designated sectors/products must contain a specific bidding condition that only locally produced or locally manufactured goods, works and services with a stipulated minimum threshold for local production and content will be considered.

- ❑ If the raw material or input to be used for a specific item is not available locally, bidders should obtain written exemption from the dti should there be a need to import such raw material or input; and
- ❑ A copy of the exemption letter must be submitted together with the bid document at the closing date and time of the bid

Remedies

Impact of the non-compliance:

- Negative impact on service delivery because of non-awards
- Manipulation of bid prices (exorbitant bid prices from suppliers)
- Potential negative effect on audit outcomes due to non-compliance

Section 14 of the PPPFA Regulations, 2017: Remedies

14. (1) An organ of state must, upon detecting that a tenderer submitted false information regarding BBBEE, Local Content or any other matter:

(a) inform the tenderer accordingly;

(b) give the tenderer an opportunity to make representations within 14 days

(c) if it concludes, after considering the representations that false information was submitted – disqualify the tenderer or terminate the contract in whole or part and if applicable claim damages from the tenderer.

14. (2) An organ of state must inform the National Treasury of any actions taken.

14. (3) The National Treasury must decide whether to restrict the tenderer for 10 years and publish on website a list of restricted suppliers

Way forward

Way Forward

- Provincial Treasury is currently in consultation with NT with regard to the Audit challenges and recommendations made;
- Engagements with AGSA on SCM interpretations challenges;
- NT Circulars providing clear directions on all the SCM Transversal issues;
- PT to have a follow-up session with municipalities on audit findings before the next audit;
- Municipalities to address all internal control deficiencies that relates to SCM i.e. address audit findings in the audit action plan; and
- PT to assist municipalities with the improvement of risk and internal control



Conclusion

Not to be Compromised in the SCM Domain

- Overall Good Governance
- Ethical and Professional Behaviour
- SCM Competency
- Procurement Planning
- SCM Norms and Standards
- Effective and Efficient SCM Processes and Procedures
- SCM E-Procurement Systems
- Manage SCM Risk
- Sound SCM Reporting

COMPLIANCE vs SERVICE DELIVERY

- Compliance with legislation leads to good governance and transparency.
- the unequal focus that it is given makes Municipalities a mere compliance institution rather than a service delivery institution that it is supposed to be.
- As a Provincial Treasury we are of the view that it is of utmost importance to ensure differences in interpretation of legislation and the application thereof does not hinder and undermine the efforts by municipalities to improve financial prudence and good governance within municipalities.

Contact Us



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Thank you