

## Disadvantaged Business and Small Business Enterprise Program

Board Adopted: 2/2012  
Last Board Approval: 9/15/2020

Last Revision Date: 9/15/2020  
Effective Date of Last Revisions: 10/1/2020

### 1. Objectives and Policy Statement (26.1, 26.23)

The St. Cloud Metropolitan Transit Commission (Metro Bus) has established a Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Metro Bus has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, Metro Bus will comply with 49 CFR Part 26.

It is the policy of Metro Bus to ensure that DBEs and SBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. The objectives of this program and of 49 CFR Part 26 are:

1. To ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. To create a level playing field on which DBEs/SBEs can compete fairly for DOT assisted contracts;
3. To ensure that the DBE/SBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs/SBEs;
5. To help remove barriers to the participation of DBEs and SBEs in DOT assisted contracts;
6. To promote the use of DBE's in federally-assisted contracts and procurement activities conducted;
7. To assist the development of firms that can compete successfully in the market place outside the DBE/SBE Program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBE's.

Implementation of the DBE/SBE program is accorded the same priority as compliance with all other legal obligations incurred by Metro Bus in its financial assistance agreements with the Department of Transportation.

### 2. Definitions of Terms

- A. Disadvantaged Business Enterprise or DBE means a for-profit small business concern.
  1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals, and
  2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- B. The United States Small Business Administration (SBA) defines a small business concern as one that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, listed below, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three year period. The general size standards for small businesses to be applied to this Program are:

1. Manufacturing: Maximum number of employees may range from 500 to 1500, depending on the type of product manufactured;
2. Wholesaling: Maximum number of employees may range from 100 to 250, depending on the particular product being provided;
3. Services: Annual receipts may not exceed \$8.0 to \$41.5 million, or 200 employees, depending on the particular service being provided;
4. Retailing: Annual receipts may not exceed \$8.0 to \$21.0 million, depending on the particular product being provided;
5. General and Heavy Construction: General construction annual receipts may not exceed \$30.05 to \$39.5 million, depending on the type of construction;
6. Special Trade Construction: Annual receipts may not exceed \$16.5 million;
7. Agriculture: Annual receipts may not exceed \$1.0 to \$30.0 million, depending on the agriculture product.

The figures used above are from the Small Business Administration Table of Small Business Size Standards, updated August 2019. The terms used throughout this program have the meanings defined in 49 CFR 26.5.

### **3. Nondiscrimination (26.7)**

Metro Bus will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE/SBE program, Metro Bus will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE/SBE program with respect to individuals of a particular race, color, sex, or national origin.

### **4. DBE/SBE Program Updates (26.21)**

Metro Bus will continue to carry out this program until all funds from DOT financial assistance have been expended. Metro Bus will provide to DOT updates representing significant changes in the program.

### **5. Quotas (26.43)**

Metro Bus does not use quotas in any way in the administration of this DBE/SBE program.

### **6. DBE/SBE Liaison Officer (DBELO) (26.25)**

Metro Bus has designated the Director of Finance as our DBE Liaison Officer. This position is responsible for implementing all aspects of the DBE program and ensuring that Metro Bus complies with all provisions of 49 CFR Part 26. This position has direct, independent access to the Chief Executive Officer (CEO). An organization chart displaying the DBELO's position in the organization is found in Attachment A to this program.

### **7. DBE/SBE Financial Institutions (26.27)**

Metro Bus will investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make

reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

## **8. Directory (26.31, 26.81)**

Metro Bus is a participant in the Memorandum of Agreement for the Minnesota Uniform Certification Program for Disadvantaged Business Enterprises, and as such, utilizes the Minnesota UCP Directory. The Directory is located at [www.dot.state.mn.us/civil rights/dbedirectory.html](http://www.dot.state.mn.us/civil%20rights/dbedirectory.html).

## **9. Over concentration (26.33)**

There has not been identified an over concentration in one or more types of work by DBEs/SBEs.

## **10. Required contract assurance and clauses (26.13, 26.29)**

### **10.1 Metro Bus assurance**

Metro Bus has signed the following assurance, applicable to all DOT-assisted contracts and their administration:

Metro Bus shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE/SBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE/SBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to Metro Bus of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

### **10.2 Contract assurance clause**

Each contract Metro Bus signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

1. Withholding progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsible.

### **10.3 Prompt payment clause**

Metro Bus will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from Metro Bus. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Metro Bus. This clause applies to both DBE/SBE and non-DBE/SBE subcontractors.

## **11. Monitoring and enforcement mechanisms (26.37)**

Metro Bus will monitor DBE contracts and subcontracts with the following actions:

1. Require contractors to provide written documentation of efforts to obtain DBE/SBE subcontractors.
2. Review payment documentation made to sub-contractors to ensure prompt payments are made.
3. Keep a written record that Metro Bus has reviewed contracting records and monitored its work sites. Monitoring will be done in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

Metro Bus will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107. Metro Bus will also consider similar action under its own legal authorities, including responsibility determinations in future contracts.

The following regulations, provisions, and contract remedies are included in the procurement documents and are available to Metro Bus staff in the events of non-compliance with the DBE/SBE regulation by a participant in our procurement activities.

Failure by the contractor or sub-contractor to carry out these requirements is a material breach of the contract or agreement, which may result in the termination of this contract or agreement or such other remedy as Metro Bus deems appropriate.

### **11.1 Provisions for resolution of disputes or breaches**

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract, which is not disposed of by agreement, shall be decided by the Chief Finance and Administration officer, who shall produce the decision in writing and mail or otherwise furnish a copy thereof to the contractor. The decision of the Chief Finance and Administration Officer shall be final and conclusive unless within 30 days from the date of receipt of such copy, the contractor mails or otherwise furnishes to the FTA a written appeal. The decision of FTA's duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessary to imply bad faith, or not supported by substantial evidence.

In connection with any appeal proceeding under this clause, the contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a

dispute hereunder, the contractor shall proceed diligently with the performance of the contract and in accordance with the Chief Finance and Administration Officer's decision.

This clause does not preclude consideration of law questions in connection with decisions provided for in this clause, provided that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

## 12. Overall goals (26.45)

Determining Metro Bus's three year goal will be based on the following steps:

1. Determining a base figure.
  - a. Metro Bus will determine a base figure for the relative availability of DBEs. This base figure will be obtained by using the Minnesota UCP Directory. This will show the number of ready, willing, and able DBEs in the area market.
  - b. Using the Census Bureau's County Business Pattern (CBP) data base, Metro Bus staff will determine the number of all ready, willing and able businesses available in the area market that perform work in the same NAICS codes (information is available at: [www.census.gov/epcd/cbp/view/cbpview.html](http://www.census.gov/epcd/cbp/view/cbpview.html)).
  - c. Finally, the number of DBEs will be divided by the number of all businesses to derive a base figure for the relative availability of DBEs in the area market.
2. Determine any adjustments needed. If evidence does not suggest an adjustment is necessary, then no adjustment will be made. The following are areas to look at when determining adjustments:
  - a. The current capacity of DBEs to perform work as measured by the volume of work DBEs have performed in recent years;
  - b. Evidence from disparity studies conducted anywhere within the jurisdiction;
  - c. If available, evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:
    - i. Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in the program;
    - ii. Data on employment, self-employment, education, training and union apprenticeship programs, to the extent that Metro Bus can relate it to the opportunities for DBEs to perform in the program.
3. When a percentage has been determined, the overall goal will be expressed as a percentage of all funds, (exclusive of FTA funds to be used for the purchase of transit vehicles) that will be expended in FTA assisted contracts in the three forthcoming fiscal years.
4. The overall goal will then be submitted to the DOT by August 1st, in three year intervals.

### 12.1 Consultation and publication

In establishing the overall goal, Metro Bus may provide for consultation and publication. This includes:

1. Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts to establish a level playing field for the participation of DBEs. The consultation will include interactive exchange with as many interested stakeholders as possible relevant to the goal setting process. The consultation will

- occur before the methodology is submitted to the operating administration for review.
2. A published notice announcing the proposed overall goal before submission to the operating administration. The notice will be posted on the Metro Bus official Internet Web site, [www.ridemetrobus.com](http://www.ridemetrobus.com). If the proposed goal changes following review by the operating administration, the revised goal will be posted on the Metro Bus official Internet Web site.
  3. At Metro Bus's discretion, the public may be informed that the proposed overall goal and its rationale are available for inspection during normal business hours at our Administration office for a 30-day comment period. This notice will include the address to which comments may be sent.

## 12.2 Process

Metro Bus has established the following schedule in order to submit its overall goal to the DOT prior to August 1, every three years:

1. April 15th every third year: Consultation process begins with local minority, women's and general contractor groups, community organizations and other officials or organizations to gather information concerning the availability of DBEs/SBEs.
2. Third Tuesday in May every three years: The Proposed DBE/SBE Program and Goals for the upcoming three year period will be adopted by the Metro Bus Board, and published on our website allowing a total of 30 days from the date of the notice for written comments/feedback.
3. Third Tuesday in July, every three years: The DBE/SBE Program and Goals will be adopted by the Metro Bus Board and sent to the Federal Transit Administration prior to August 1.

## 13. Meeting overall goals (26.39, 26.51)

Metro Bus will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE and SBE participation. Metro Bus uses the following race-neutral means to increase DBE participation:

1. Arranging solicitations, times for presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and SBE participation. For example:
  - a. Unbundling large projects to make them more accessible to small businesses.
  - b. Ensuring that contract solicitations do not contain unnecessarily restrictive requirements.
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing.
3. Allow consortia or joint ventures of small and disadvantaged businesses to bid as prime contractors.
4. Providing technical assistance and other services, including but not limited to:
  - a. Assisting in preparation of bid submissions to assure bids are technically correct.

- b. Assisting potentially eligible firms in applying to the contract compliance function of the Minnesota Unified Certification Program for DBE certification.
  - c. Explaining terms, conditions and specifications of bidding documents and procurement regulations that may apply.
5. Carrying out information and communications programs on contracting procedures and specific contract opportunities, including but not limited to:
    - a. Ensuring the inclusion of DBEs/SBEs on Metro Bus’s mailing lists for bidders.
    - b. Ensuring adequate lead-time in advertisements to allow DBE/SBE firms sufficient opportunity to develop bid packages.
    - c. Linking interested DBEs/SBEs with appropriate buyers, contract administrators and project managers to inquire about short and long-range needs of Metro Bus for procurement of goods and services within their areas of specialization.
    - d. Providing information on contracts, procedures and specific contracting opportunities to those DBE/SBE firms that are certified and organizations that work in support of DBE/SBE firms.
  6. Conducting outreach to DBEs and SBEs to inform them of upcoming contract opportunities. Examples of these outreach measures include, but are not limited to:
    - a. One-on-one
    - b. Emails
    - c. Special link on our website – [www.ridemetrobus.com](http://www.ridemetrobus.com)
  7. Annually review, by May 15th, past SBE and DBE contracting and purchasing history, and revise future methods (race neutral and race conscious) when necessary.

#### **14. Contract goals (26.51)**

Metro Bus will use contract goals to meet any portion of the overall goal Metro Bus does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means.

Metro Bus will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. Metro Bus need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs/SBEs to perform the particular type of work).

#### **15. Transit vehicle manufacturers (26.49)**

Metro Bus will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, Metro Bus may, at its discretion and with FTA approval, establish project-specific goals for DBE/SBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

#### **16. Good faith efforts (26.53)**

- A. When a DBE contract goal has been established, the contract will only be awarded to a bidder/offeror who makes a good faith effort to meet it. This can be done by either:

1. Documentation that it has obtained enough DBE participation to meet the goal; or
  2. Documentation that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.
- B. Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information at any time before Metro Bus can commit to performance of the contract:
1. The names and addresses of DBE/SBE firms that will participate in the contract;
  2. A description of the work that each DBE/SBE will perform;
  3. The dollar amount of the participation of each DBE/SBE firm;
  4. Written documentation of commitment to use a DBE/SBE subcontractor whose participation it submits to meet a contract goal;
  5. Written confirmation from the DBE/SBE that it is participating in the contract as provided in the prime contractor's commitment; and
  6. If the contract goal is not met, evidence of good faith efforts.

### **16.1 Demonstration of good faith efforts**

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts.

The Procurement Manager is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible.

### **16.2 Administrative reconsideration**

Within 14 days of being informed by Metro Bus that it is not responsible because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to: Metro Bus Board Chair, 665 Franklin Avenue NE, St. Cloud, MN 56304.

The Reconsideration Official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. Metro Bus will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

### **16.3 Good faith efforts when a DBE/SBE is replaced on a contract**

Metro Bus will require a contractor to make good faith efforts to replace a DBE/SBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE/SBE, to the extent needed to meet the contract goal. Metro Bus will require



the prime contractor to notify the DBELO immediately of the DBE's/SBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, Metro Bus will require the prime contractor to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, the Procurement Manager will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the Procurement Manager may issue a termination for default proceeding.

## **17. Counting DBE participation (26.55)**

Metro Bus will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

## **18. Certification (26.61 – 26.91)**

### **18.1 Unified Certification Program and certification process**

Minnesota now has established a Unified Certification Program for the DBE requirements, and Metro Bus has signed a Memorandum of Agreement acknowledging the recognition and concurrence that the MN/UCP will follow all certification procedures and standards.

For information about the certification process or to apply for certification, firms should contact St. Cloud Metro Bus, Attn: DBELO, 665 Franklin Avenue NE, St. Cloud, MN 56304.

In the event Metro Bus proposes to remove a DBE's certification, procedures consistent with 26.87, paragraphs (a) thru (j), excluding (e) will be followed as addressed hereupon: To ensure separation of functions in a decertification, Metro Bus has determined that the Board Chair will serve as the decision maker in decertification proceedings. Metro Bus has established an administrative "firewall" to ensure that same official or office named in previous sentence will not have participated in any way in the decertification proceeding against the firm (including in the decision to initiate such a proceeding).

If Metro Bus denies a firm's application or decertifies it, it may not reapply until 12 months have passed from the action.

### **18.2 Certification appeals (26.89)**

Any firm or complainant may appeal the decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation  
Office of Civil Rights  
Certification Appeals Branch  
400 7th St., SW, Room 2104  
Washington, DC 20590

Metro Bus will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs/SBEs for the DOT-assisted contracting (e.g., certify a firm if DOT has determined that the denial of its application was erroneous).

### **18.3 Recertification**

Minnesota based DBEs will have a review process accomplished by the United Certification Program process.

## **19. Information collecting and reporting**

### **19.1 Monitoring payments to DBEs/SBEs**

Metro Bus will require prime contractors to maintain records and documents of payments to DBEs/SBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of Metro Bus or DOT. This reporting requirement also extends to any certified DBE/SBE subcontractor.

Metro Bus will keep a running tally of actual payments to DBE/SBE firms for work committed to them at the time of contract award.

### **19.2 Reporting to DOT**

Metro Bus will report DBE participation on a semi-annual basis, using the Uniform Report of DBE Awards or Commitments and Payments. These reports will reflect payments actually made to DBEs on DOT assisted contracts.

### **19.3 Confidentiality**

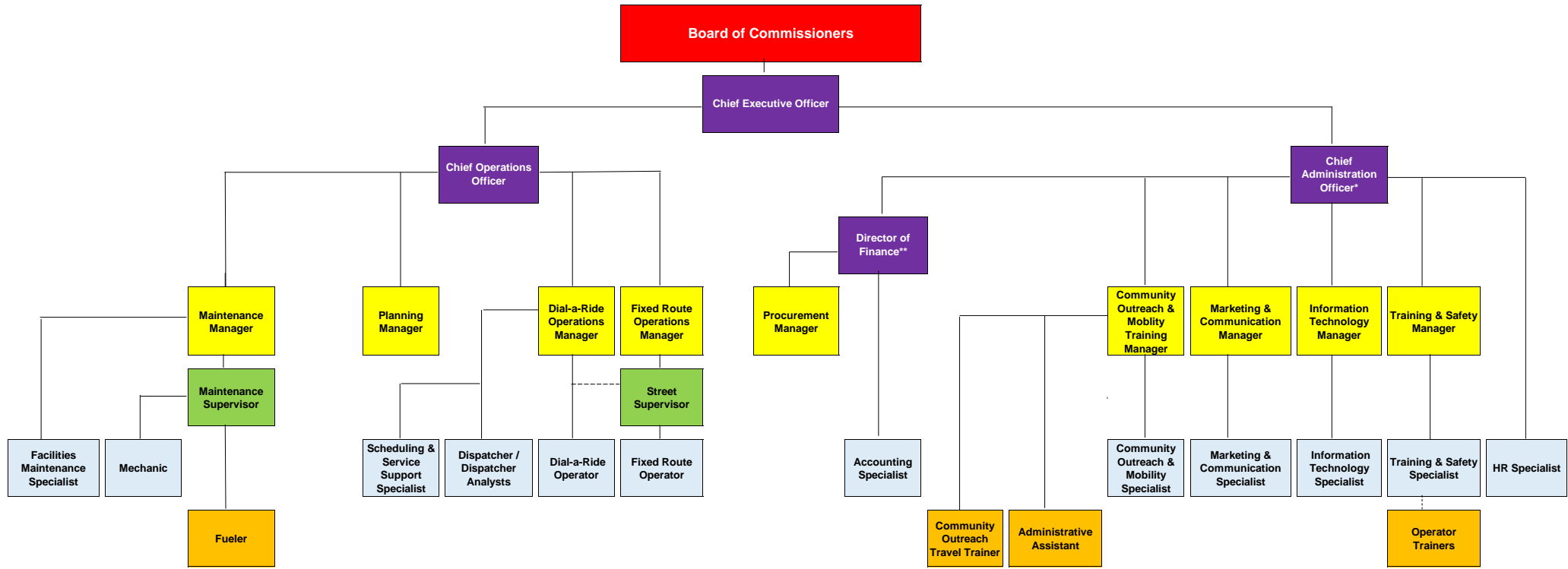
Metro Bus will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with federal, state, and local law. Notwithstanding any contrary provisions of state or local law, Metro Bus will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

## **20. Attachments**

A. St. Cloud Metro Bus Organizational Chart

# St. Cloud Metropolitan Transit Commission Organizational Structure

Effective October 2020



\* Designated as Title VI Manager, EEO Officer