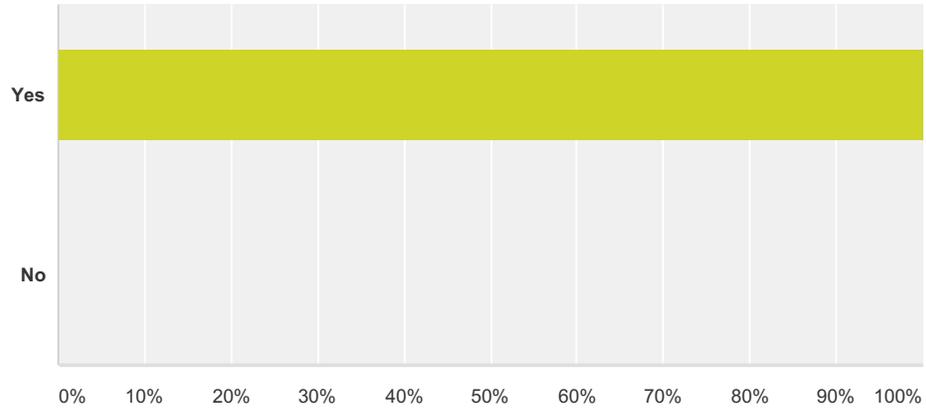


Q1 Have you reviewed the waiver request submitted by the Ohio Department of Transportation to the US DOT?

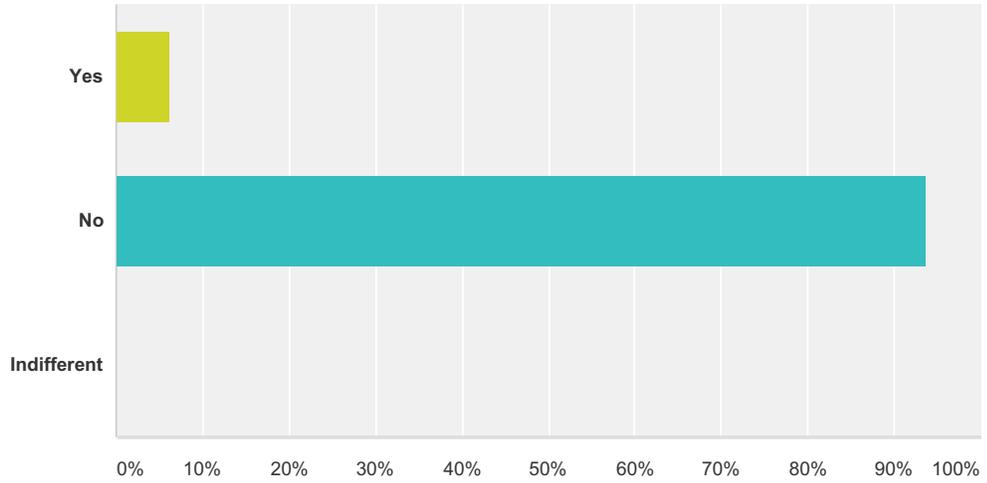
Answered: 17 Skipped: 2



Answer Choices	Responses
Yes	100.00% 17
No	0.00% 0
Total	17

Q2 Having reviewed the waiver request do you agree with the request submitted to the US DOT by ODOT?

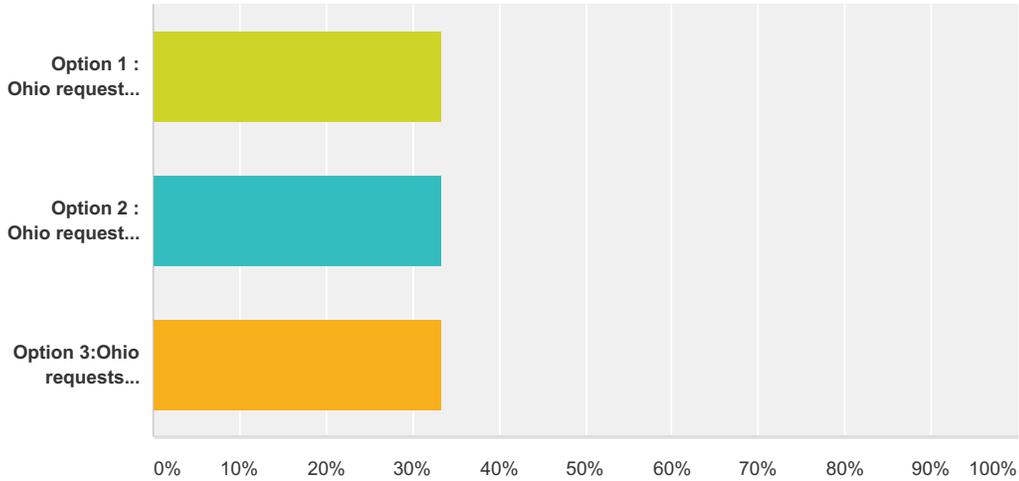
Answered: 16 Skipped: 3



Answer Choices	Responses	
Yes	6.25%	1
No	93.75%	15
Indifferent	0.00%	0
Total		16

Q3 Which option of the waiver request do you believe would best impact the Small and Disadvantaged Business Enterprise Program?

Answered: 6 Skipped: 13



Answer Choices	Responses
Option 1 : Ohio requests permission to reduce credit towards DBE contract goals for non-underutilized DBE (non-UDBE) firms that is proportionate to the group's over-utilization. Ohio would continue counting underutilized DBE (UDBE) firms at a 1:1 ratio. For example, if a firm is utilized at a rate of 200% based upon availability, then the firm's DBE credit would only count at 50%.	33.33% 2
Option 2 : Ohio requests permission to reduce credit towards DBE goals for non-UDBE firms at a rate that is proportionate to group's over-utilization and apply additional credit toward DBE goals for UDBE firms proportionate to the group's under-utilization. For example, if a firm is utilized at a rate of 50% based upon availability, then the firm's DBE credit would count at 200%, whereas a firm utilized at a rate of 200% based upon availability would count for only 50% DBE credit.	33.33% 2
Option 3:Ohio requests permission to set racially subdivided goals based on geographic availability. For example, if the availability of African-American firms within the Northeast Ohio region is 30%, ODOT would require 30% of the overall DBE goal to be fulfilled by African-American firms for projects sold in that region.	33.33% 2
Total	6

ODOT Waiver Request Public Comments

Q4 If you do not agree with any of the options in the waiver request, please explain:

Answered: 13 Skipped: 6

#	Responses	Date
1	<p>I do not agree with additional segregation of the DBE certified providers. All opportunities are given equally, all DBE's have the opportunity to bid for work, and provide what they promise in their bid. It is necessary to look at the bids being submitted to primes from the UDBE vs DBE to know what the real problem is. If all UDBE and DBE's are given the same information and the same opportunities it is wrong to segregate those who are doing what is required to obtain work and become successful. Separating UDBE and DBE groups will cause more confusion and work on the part of our government to separate and classify each DBE. I am asking the questions, "why do we want to racially divide again"? Taking that division of groups to a larger or lesser percentage for providing services based on skin color is only going to cost the government and the DBEs money. Some of us as DBEs will loose dollars due to the participation and in turn cause a loss of business.</p>	12/21/2016 11:34 AM
2	<p>Very complicated to administer. Could result in less work going to the underutilized DBEs. Could potentially harm the businesses of the non-underutilized DBEs. Could result in better/more efficient firms being harmed, resulting in less revenue and lost jobs. Would be tough in rural areas.</p>	12/21/2016 9:45 AM
3	<p>I attended the meeting at ODOT on 12/16/16. After considering what was said, I still think the waiver request is a bad idea. Options 1 & 2 could result in even less work going to UDBEs and it will for sure drive the participation rate of non-UDBEs down. Also, option 3 will result in prime contractors having to ask questions that just feel wrong, like "what kind of DBE are you?". I strongly urge that you withdraw this request and do not apply any of these options.</p>	12/20/2016 10:59 AM

ODOT Waiver Request Public Comments

<p>4</p>	<p>OCA Comments on ODOT's DBE Waiver Request December 19, 2016 The Ohio Contractors Association (OCA) is a trade association of approximately 500 contractors, subcontractors, suppliers, and other related companies who are engaged in the heavy/highway construction industry. Our association's membership performs approximately 85% of the competitively bid highway construction work, by dollar volume, advertised by the Ohio Department of Transportation (ODOT) on an annual basis. I would like to take this opportunity to provide input regarding the waiver requested by ODOT to implement a modified race conscious goal calculation methodology. The waiver request provided, in ODOT's opinion, three options for resolving racial disparity in the heavy/highway construction and engineering industries which are intended to address underutilization of some ethnic subdivisions within the DBE community. There is concern about the outcomes of applying these DBE goal calculation options. Within the goal proposal submitted for fiscal years 2017 to 2019, ODOT places high emphasis on their efforts to enhance achievement of the proposed race neutral goal. Based on the anticipated success of those efforts which fall within the requirements of 49 CFR 26, OCA would not support an activity that would require a waiver of current statute. It is clear that currently allowable practices permitted by 49 CFR 26 may well achieve a level of DBE participation without using means or methods that are not provided for in the code. As it stands right now, ODOT sets a project goal based on the ready, willing, and able DBE contractors that have been identified during the advertising phase of the project. Prime contractors must submit their DBE Utilization Plan with their bid and will use any DBE combination necessary to provide ODOT with their lowest bid while still meeting the project goal. These goals can and are being met without regard to a DBE owner's ethnicity or gender. By implementing any of these waiver provisions, a contractor would need to be aware of their subcontractors' ethnicities and gender and would be mandated to take work away from one classification of DBE only to give it to another to meet yet another tier of DBE goal requirements. This, in fact, moves us away from a diversified industry toward one that restricts work opportunities for ready, willing and able firms. Under the conditions of the waiver, work is further tailored for ever smaller segments of a now subdivided DBE community at the expense of other firms which fully comply with the definition of a Disadvantaged Business Enterprise. This makes the objective of goal achievement even more difficult and merely introduces a known act of discrimination into the bidding process. This is clearly contrary to the third item required in an application for a waiver that states, "The proposal would prevent discrimination against any individual or group in access to contracting opportunities or other benefits of the program." An example of this impact would be, under proposed Option 3, a project's overall DBE goal is subdivided based on the geographic availability of racial/gender groups. The total of this subdivision will total 100% of the project's DBE goal. Should the underutilized African-American group represent 30% of the available firms yet a contractor identify one or more African-American firms that could perform 50% of the work, that 20% over the subdivided goal could only be subcontracted to the African-American DBE if all of the other underutilized DBE racial/gender groups have had their subcontracting goals met on that project. In a similar situation, under Options 1 & 2, a project with a goal value of \$100,000 could be met by using an underutilized DBE subcontractor (whose contract values are doubled under these options) for only \$50,000 worth of work. The goal would then be met, and rather than using another underutilized or overutilized DBE, the prime could perform the remainder of the work. This would result in a lower overall utilization of DBEs for this project. While we understand that the ability for ODOT to administer a program of this complexity is not a driving force in making the decision for granting the waiver request or not, we do have concerns regarding the Department's ability to provide any contractor with timely, current information that would be required in making informed, responsive bidding decisions. This concern is borne out of recent examples:</p> <ul style="list-style-type: none"> • There has been consistent industry concern regarding ODOT's ability to set project goals based on "ready, willing, and able" DBEs in the marketplace. We are not aware of the data used to set goals currently, and to further complicate this effort by breaking it down to the various ethnicities and genders involved would raise the level of concern even further. • The Civil Rights Labor System, "mandated" for use by March of 2016, that was to be such a help in collecting and disseminating relevant data and monitoring subcontractor payment verification has yet to be fully functional. • Communication with impacted companies and the contracting community in general during the NAICS code changes proved to be highly problematic. • Other data requests to aid in the bidding process as it relates to the availability of DBE firms, such as sharing the DBE Utilization plans for all bidders on the apparent low-bidder list, have not been realized. With all of the changes being made by ODOT on matters regarding administration of the DBE program, we have experienced a Department that is still learning to walk with these most recent requirements. It is, in our opinion, not yet ready to run with respect to managing yet another level of DBE program sophistication and successfully relaying the needed information to the contracting community in a timely manner. OCA does support ODOT's efforts to grow the DBE community as noted in the FY 2017-2019 goal submission. As an example, recent change to the mentor/protégé program which will target DBEs to be mentored based on the results of ODOT's disparity study is an emphasis area that will require the participation of many OCA member companies as mentors. This revision to the program should have the effect of increasing the pool of certified and prequalified DBEs from underutilized ethnic groups which will then be reflected in their utilization through higher goals and increased opportunities. In summary, the Ohio Contractors Association prefers that none of ODOT's DBE goal calculation options be adopted for use, as they are not consistent with the intent and purpose of the DBE program for all eligible and certified DBE companies. Respectfully submitted, Chris Engle Director, Public Agencies Ohio Contractors Association 	<p>12/19/2016 2:25 PM</p>
<p>5</p>	<p>We understand that the utilization factors developed by the disparity study are based on surveys which included all DBE firms with the potential do to work, however not all of these firms are ready, willing, and able to currently perform work on ODOT project. Prime contractors can only enter into agreements with firms that are currently ready willing and able to perform work. Any method used which requires or incentivizes the use of underutilized DBE groups based on the disparity study results is flawed because those firms are not necessarily ready, willing, and able.</p>	<p>12/19/2016 8:13 AM</p>

ODOT Waiver Request Public Comments

6	I think a better way is to instead of use proportional credits is to bring it into the proposal scoring. Just like the DBE development plans get an extra 5 points on the scoring scale, there should be another 5 points on any project with a DBE percentage. Make the scale represent UDBE weighting there. Getting the scoring to win the projects is what primes care most about, so put the incentive there.	12/16/2016 4:37 PM
7	As it stands now, it is typically pretty hard for a prime contractor to find a way to meet the DBE goal on a project at bid time. Most subcontractors and suppliers (both DBE and non-DBE) wait until the day of or the day before bids are due to send out their quotes (in order to protect against exposing their prices to their competitors). So the prime contractors bidding on the project have very little time to review and input that pricing into their bid, and even less time to determine how to meet the DBE goal with the quotes received. In addition, since prime contractors don't receive most quotes until just before bids are due, they won't have a firm grip on what their total bid price will be until just before it is due either. Which means they won't have a firm grip on what dollar amount of DBE is required to meet the goal until just before the bid is due. What this all adds up to is that it is just very difficult for prime contractors to develop a DBE utilization plan while also supplying a competitive bid during the bidding process. There is just a limited amount of time to balance the constantly changing pricing as it comes in. So, the issues I see with all the DBE Waiver Options ODOT has submitted are that they would all further complicate this already difficult process. Even if these proposed changes forced a major shift in philosophy and got DBE firms to send out their quotes well in advance, all other subs and suppliers wouldn't change. Which still leaves you with an unknown DBE goal dollar amount until right before the bid is due. The existing problem with a DBE Goals during construction is that ODOT puts out unit price bids/contracts that are supposed to adjust with the actual quantities completed for each work item, but if an item subcontracted to a DBE firm runs under or is non-performed, that same unused dollar amount is not waived from the DBE Goal. The contractor is still responsible for meeting the goal in some other way, which is usually very difficult to do. If ODOT were to switch to any of the DBE Waiver Options proposed, it would make resolving a unit price underrun / non-performance even more difficult if not impossible in most cases. In general, unit price contracts and inflexible DBE Goals are counterintuitive.	12/15/2016 5:01 PM
8	I respectfully disagree with all three Options. First, Options 1 and 2 each penalize DBE firms that are "non-underutilized". In other words, DBE firms that fully qualify as a DBE under ODOT's own guidelines, are now going to be penalized because they are "over-utilized"? How can it be possible to over-utilize a DBE firm in a bidding environment where ODOT is looking to increase DBE participation? In addition, ODOT's current DBE goals are already extremely difficult to achieve in many cases. This is going to make it even more challenging, and in some cases impossible, for Primes to exceed the stated project DBE goals. If ODOT elects to do this, thereby discounting DBE participation amounts for DBE firms that ODOT deems to be "over-utilized", requests for GFE waiver requests will certainly increase. This is the exact opposite of what all of us want. I also respectfully disagree with Option 3. Again, ODOT's current DBE goals, especially recently, are becoming more and more challenging to achieve. Based on our review of ODOT's Disparity Study, it appears that the result of ODOT's study do not match market conditions. If there are underutilized DBE firms capable of and seeking more construction work, we are not finding them despite extensive outreach efforts.	12/15/2016 4:47 PM
9	I do not agree with ODOT's plan to openly promote discrimination against certain DBE groups based upon their gender or ethnicity. All DBE firms should be treated equally. This proposed program would be totally contradictory to Title VI of the Civil Rights Act of 1964. Please reconsider your waiver request program that you are submitting to US DOT.	12/15/2016 11:11 AM
10	I feel that this is going to make the DBE process more difficult. It is currently difficult enough to meet certain goals and this will only make it harder. If anything the DBE process should be left alone or eliminated.	12/15/2016 9:11 AM
11	Any of these options would require a complete overhaul of the current DBE program. At this time, there are not designations for group categories so the contractors will not know the difference when trying to achieve the project goal. The contractor should be able to pick a subcontractor based upon the work and the contractor ability, not a goal that may drive up the cost and or completion time. No reduction of credit should be issued do to over utilization without proof that there would be a DBE firm in a under utilized group.	12/15/2016 8:00 AM
12	I think these requests make things too complicated and will limit competition. Also you would have to look at more than just availability of firms, but also work types. I think the DBE goals should be left as they are, or reduced.	12/14/2016 5:10 PM
13	The owner, ODOT, would be picking winners and losers within the Disadvantaged Business Community of contractors ready willing and able.	12/14/2016 3:09 PM

ODOT Waiver Request Public Comments

Q5 Please provide any additional comments you have regarding the waiver request:

Answered: 15 Skipped: 4

#	Responses	Date
1	This is a great disservice to all who have worked to become well-established and respected DBE service providers. You can't just say you provide a service you have to do the work required to provide that service!	12/21/2016 11:34 AM
2	I commend Governor Kasich and Director Jerry Wray for their commitment to all Ohioans. I would like to see all options test to find the best practice to reduce the overall disparity that has occurred due to intentional discrimination attempts to undermine the goals for participation for all disadvantaged ethnic groups, particularly African-Americans and Hispanic-Americans.	12/21/2016 10:56 AM
3	In order to address the marketplace discrimination issues that were mentioned at the meeting - like education, access to capital, etc. Try to assist to remedy the UDBE issue by addressing those issues so the UDBEs can compete in the marketplace with non-UDBEs and non-DBEs. There is no guarantee these companies will get better when the work has to be given to them without competing. This would be better for all parties in the long run, including the taxpayers.	12/20/2016 10:59 AM
4	I believe those with documented medical health issues (heart, diabetes,) should be able to qualify for DBE. This would allow more DBE representation, and eliminate games that must be played to satisfy DBE goals.	12/19/2016 8:19 AM
5	Options 1 and 2 reduce and/or increase credit toward DBE goals based on gender and/or ethnicity and the utilization disparity for each of those groups. ODOT needs to provide the under/over-utilization percentage of each UDBE and non-UDBE group so prime contractors know how participation will be counted for each DBE firm. In the example used in the public meeting, a non-UDBE group had a utilization percentage of 200+ and participation from this group was reduced to 50%. If the actual utilization percentage of this group is 400%, their credit could be reduced to 25%. Likewise, if a group is only 10% utilized their credit could be increased by 1000%. ODOT should consider a maximum and minimum utilization factor to prevent large swings in counting DBE participation. Contractors have to meet the DBE goal on each specific project. ODOT has not shared how they determine the DBE goal percentage for each project and it appears to be very general and not project specific. If ODOT changes to any of the three options presented, the method used for setting the project goals will need to be very project specific since various DBE firms will be counted differently. ODOT's goal setting methodology should consider the availability of DBEs that are ready, willing, and able to perform the specific NAICS codes for that project, AND apply the relevant factor for each specific UDBE and non-UDBE considered. ODOT should take these availability and the utilization factors into account and make the goal setting methodology for each project public, so contractors know what was anticipated when the goal was established.	12/19/2016 8:13 AM
6	It seems that Option 2 could actually hurt UDBE firms the way the numbers break down. Similar to the example if a 50% utilized UDBE is added to a contract and the prime gets double credit for it, so credit for \$50k when they only give out \$25k, so the UDBE is the one suffering because they get half the work they could otherwise get. In Option 1 that same UDBE would get the \$50k and prime gets credit for \$50k, so it is more even for them. Option 3 is too much of a headache for ODOT to keep track of all the demographics and is not a good use of our tax dollars.	12/16/2016 4:37 PM
7	In general, I think most prime contractors understand that ODOT has to find ways to meet Federal requirements regarding DBE utilization. But every time there is a rule change to further help DBE firms (like the ones proposed here), it always seems to add pressure and increase difficulty to the prime contractor. Projects may continue to be "competitively bid" in name, but they won't be in practice. Projects will be awarded to whoever was able to throw something together at the last minute that met the requirements, not the lowest and best bid as it is intended. Continuing down this road is only going to lead to an increased number of bids being pulled or thrown out, more conflict between contractors and ODOT, and higher costs to the tax payer.	12/15/2016 5:01 PM
8	ODOT said it would make public all of the DBE firms identified in their Disparity Study. We have yet to receive any such list to aid us in contacting DBE firms we may not know about. ODOT has stated that project goals on construction contracts were not going to be increased until such time that additional DBE construction firms become available to the market. We have not seen a significant increase to the current pool of DBEs, but the project goals appear to be rising. ODOT has stated in our meetings with OCA that they would consider publishing their DBE utilization calculations used to set the project DBE goals for bidding. We have requested these calculations prior to the bid on multiple projects where the contractors felt the goal was too high. We have yet to receive any of these calculations. The contracting community has been assured by ODOT that they are studying DBE availability by region, market conditions, etc.. Why the reluctance to provide these plans to the contractors so that we may attempt follow the same blueprint to achieve or even exceed the goal?	12/15/2016 4:47 PM

ODOT Waiver Request Public Comments

9	As a former DBE firm... We pay our funds to get the certification but don't get bid awards.. And in most cases... we get the invite and only have a few days to go over the plans. This.. in (Their) case says that They put forth a "Good Faith Effort" ..although we don't get the same consideration as our counterparts. This is why I feel so strongly about option nمبر 3. Thanks... BP&R llc	12/15/2016 11:39 AM
10	In order to provide more opportunities for DBE firms, I would recommend that ODOT expand the SBE/DBE set-aside program.	12/15/2016 11:11 AM
11	This is not a goal that should be implemented without through review of the current DBE contractors and the work that they do. Firms should not be required to use a contractor that does not make the project better in all manners. The goal should first be to certify contractors in the under utilized groups in trades that will benefit ODOT, then it will be an attainable goal.	12/15/2016 8:00 AM
12	I am a WBE supply company that recently got certified as a DBE in July of 2016. I have actively been promoting ourselves and have gotten no opportunities to quote any new business as a DBE. We are very competitive and established and cannot understand why.	12/14/2016 4:47 PM
13	The large cities - Toledo, Cleveland/Akron, Columbus, Cincinnati/Dayton and the respective SMSA's - have a whole set of opportunities and dynamics that are not available in smaller and rural communities. One size doesn't fit all regarding public works bidding. The diversity study viewed the state as a whole and did not incorporate challenges and issues of contracting community outside large metro areas.	12/14/2016 3:09 PM
14	I would like to see this skewed to encourage use of more technically advanced DBEs. It is discouraging to see trucking and landscaping as the default choice.	12/14/2016 3:08 PM
15	It would be beneficial if professional service DBE would be given more of an opportunity to assist on all DBE projects. This would help towards percentage and credit goals without strangling the efforts of Prime Contractors to find DBE construction services when not able because of financial bonding issues, insurance issues etc.	12/14/2016 3:02 PM