DEPARTMENT OF THE ATTORNEY GENERAL

News Release

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STATE AND DFS REACH SETTLEMENT

HONOLULU - Attorney General Mark Bennett announced that the State and DFS Group L.P. have successfully negotiated the terms of a withdrawal and settlement agreement regarding the statewide in-bond (duty free) concession at state airports.

The withdrawal agreement calls for the current concession held by DFS to be withdrawn and for the State to seek bids for a new in-bond concession which is expected to run from October 1, 2003, through May 2006, the end of the current term. DFS is required to submit a bid for the new in-bond concession agreement.

Under the withdrawal agreement, DFS is required to make additional payments to the State for years 2002 and 2003, with DFS to pay all rent due under the present in-bond lease for 2002. DFS will also need to pay the arrearages accrued from January through June 2003, based on a minimum annual guarantee of $40 million, by means of an interest?bearing promissory note, which is guaranteed by DFS' owners. DFS is also required to continue operations and pay rent to the State at the $40 million rate until the new in-bond concession agreement is in place.

DFS is also obligated to ensure that the current performance bond securing its obligations under the present in-bond lease is continued to cover DFS' obligations under this withdrawal agreement. The State will not be providing rent relief on DFS' retail (non?duty free) contracts at the Honolulu International Airport and Kona International Airport at Keahole, and DFS is required to promptly pay all arrearages on those concessions, with interest.

The State agreed to dismiss its fraudulent transfer action against DFS and DFS' parent. Under the withdrawal agreement, however, the State may reinstate the lawsuit in its present form at least until May 31, 2006, if DFS defaults under the withdrawal agreement (or the new in-bond concession agreement if DFS wins the award).

The Board of Land and Natural Resources recently approved the Department of Transportation's request to issue a new in-bond concession agreement. As approved by the Land Board, the minimum terms for the proposed new concession will require the winning bidder to pay a minimum annual guarantee of $40 million, plus percentage rent if sales reach certain levels. It is possible there will be a one-time 15% reduction during the new agreement term if sales do not improve over current levels. Any qualified bidder will be free to bid on the new agreement. The present in-bond lease that is being terminated early required DFS to pay a $60 million minimum annual guarantee.

The DOT presented a request to the Land Board last November, before the Lingle Administration took office, to issue a new in-bond concession agreement requiring a $28 million minimum annual guarantee, with multiple possible 15% reductions. The DOT withdrew the request before it was acted upon.

Regardless who wins the new bid, the new concession agreement will produce substantially more revenue than the State would have received from the in-bond concession under the recent airport concession relief bill passed by the Legislature and vetoed by Governor Lingle in May 2003. Based upon a review of DFS' financial information, the State estimates that the additional revenue will be approximately $10 million in the first year of the new concession agreement. The additional revenue for the first eight months of 2003 is also expected to be significantly higher.

The State has also reviewed proposed DFS rent relief from San Francisco and Los Angeles, both of which eliminated any minimum rent obligation for DFS, and appear to provide substantially more in relief than will Hawaii under the withdrawal agreement.

Withdrawing and re-bidding is a drastic step, but, after close study of DFS' operations and financial condition, the State concluded that it was the best course of action to take and in the best interest of the State. The State believes that such relief is appropriate, taking into account many factors, including the substantial adverse changes in the travel retail market worldwide, the significant reductions in international passenger arrivals as a result of 9/11, the conflicts in Afghanistan and Iraq, and the discovery of SARS in the Far East.

The State was also cognizant of the fact that taking actions which could have led to a DFS bankruptcy proceeding could have resulted in a substantial reduction in the State's revenue, among other negative collateral consequences.

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