



Los Angeles World Airports

Item Number
17

REPORT TO THE BOARD OF AIRPORT COMMISSIONERS

[Signature]
Approved by: Dave Jones, Director, Terminals Business Management

[Signature]
Reviewed by: Debbie L. Bowers, Deputy Executive Director

[Signature] RT
City Attorney

[Signature]
Gina Marie Lindsey - Executive Director

Meeting Date:

1/15/2015

CAO Review:

Completed
 Pending
 N/A

Reviewed for	Date	Approval Status	By
Capital Budget	11/21/2014	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	DS
Operating Budget	12/16/2014	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	RW
CEQA	11/24/2014	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	VW
Procurement	11/24/2014	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Cond	MT

SUBJECT: Amendment to Concession Agreement with DFS Group L.P. at Los Angeles International Airport

Approve the First Amendment to the Concession Agreement with DFS Group L.P. at Los Angeles International Airport to extend the term by one year.

RECOMMENDATIONS:

Management RECOMMENDS that the Board of Airport Commissioners:

1. ADOPT the Staff Report.
2. DETERMINE that this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Article III, Class 1 (18)(c) of the Los Angeles City CEQA Guidelines.
3. APPROVE the First Amendment to Concession Agreement LAA-8647 with DFS Group L.P.
4. AUTHORIZE the Executive Director to execute the First Amendment to Concession Agreement LAA-8647 with DFS Group L.P. upon approval as to form by the City Attorney and approval of the City Council.

DISCUSSION:

1. Purpose

Address impact on DFS Group L.P (DFS) of delivery delays in the Tom Bradley International Terminal (TBIT), and to compensate for construction cost increases arising from Los Angeles World Airports (LAWA) and its construction contractors in TBIT.

2. Prior Related Actions

- August 6, 2012 - Board Resolution No. 24863 (LAA-8647)
The Board of Airport Commissioners (Board) approved award of a ten-year, plus three one-year options, Duty Free Merchandise Concession Agreement to DFS to develop and operate duty free locations at Los Angeles International Airport (LAX) (Agreement).

3. Current Action

In order to meet scheduled opening of gates in TBIT, DFS was required to build out the duty free concession space concurrent with LAWA's base building contractor. This overlap of construction activities delayed delivery of space to DFS and caused significant increases in construction cost in an amount claimed by DFS to be approximately \$3.08 million or 17.5% above originally approved investment plans. There were multiple reasons for the schedule delays and DFS costs increases. After considerable investigation and evaluation, staff has since determined that excesses of approximately \$1.02 million or 5.8% above original investment plans is a reasonable assessment of impacts for which DFS was not responsible.

The Agreement was part of a competitive process and included a definitive not-to-exceed termination date, namely September 18, 2023, which is not extendable without an amendment. The Agreement contemplated providing the successful proposer no less than 120 months to operate concession facilities and depreciate capital investments.

Due to the delay delivering space to DFS, unless amended to extend the term, the Agreement will not fairly deliver to DFS what LAWA envisioned. In addition, staff found the best means to remedy the construction cost increases and erase any claims from DFS was to offer a term extension rather than to have a monetary settlement. As a result, staff recommends that LAWA amend the DFS Agreement to extend the term by a total of one year.

Approval of this First Amendment locks in a minimum of \$33 million of additional guaranteed revenue over the one-year period. Approval settles any financial disputes due to construction cost overruns potentially caused by LAWA's base building contractors.

Action Requested

Staff requests the Board approve the First Amendment to the Agreement and authorize the Executive Director to execute the Agreement after approval as to form by the City Attorney and upon approval of the Los Angeles City Council.

Fiscal Impact

Approving the First Amendment will generate a minimum of \$33 million in additional revenue to LAWA over the one-year extension term.

4. Alternatives Considered

- ***Take No Action or Monetary Payment to Settle all Claims***

Not amending the Agreement to add term will result in protracted negotiations to settle delay and construction costs claims requiring LAWA to make a cash payment to DFS and lose an additional \$33 million of guaranteed revenue.

APPROPRIATIONS:

Approval of this action will not require an appropriation of funds from LAWA's Capital or Operating Budgets

STANDARD PROVISIONS:

1. The issuance of permits, leases, agreements, gate and space assignments, and renewals, amendments or extensions thereof, or other entitlements granting use of existing airport facilities or its operations is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Article III, Class 1 (18)(c) of the Los Angeles City CEQA Guidelines.
2. This Agreement will be approved as to form by the City Attorney.
3. Actions taken on this item by the Board of Airport Commissioners will become final pursuant to the provisions of the Los Angeles City Charter Section 606.
4. DFS Group L.P. is required by contract to comply with the provisions of the Living Wage/Service Contractor Worker Retention Ordinances.
5. Procurement Services Division has reviewed this action (File #7038) and established a goal of 20% Airport Concessions Disadvantaged Business Enterprise (ACDBE) participation. DFS Group L.P. committed to 25% ACDBE and has achieved 25% participation to date.
6. DFS Group L.P. is required by contract to comply with the provisions of the Affirmative Action Program.
7. DFS Group L.P. has been assigned Business Tax Registration Certificate number 0000572747-0002-7.
8. DFS Group L.P. is required by contract to comply with the provisions of the Child Support Obligations Ordinance.
9. DFS Group L.P. has approved insurance documents, in the terms and amounts required, on file with the Los Angeles World Airports.

10. This action is not subject to the provisions of Charter Section 1022 (Use of Independent Contractors).
11. DFS Group L.P. has submitted the Contractor Responsibility Program Pledge of Compliance and will comply with the provisions of the Contractor Responsibility Program.
12. DFS Group L.P. has been determined by Public Works, Office of Contract Compliance to be in compliance with the provisions of the Equal Benefits Ordinance.
13. DFS Group L.P. will be required to comply with the provisions of the First Source Hiring Program for all non-trade Airport jobs.
14. DFS Group L.P. has submitted the Bidder Contributions CEC Form 55 and will comply with its provisions.