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B.C. MINISTRY OF FORESTS
DRAFT REGULATIONS
GOVERNING THE CONTRACTOR
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Draft Regulation Governing the Contractor Clause Requirement

A White Paper for Discussion Purposes
January 1979

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The administration of the Contractor Clause requirement in Tree Farm Licences and the possible application of the requirement to Forest Licences are important aspects of Bill 14, the new Forest Act. To obtain the views of industry, the Minister struck two committees to study these matters. Both committees included representatives of licensees and contractors, and one of them also had on it a representative of the International Woodworkers of America.

The reports of the two committees indicated disagreement between committee members as to the way the contractor requirement should be applied and administered. At issue were such items as terms of contracts, a contracting requirement for Forest Licences, the definition of a 'full' or 'stump-to-dump' contract, evaluating the contribution of phase contracting, and of hourly-rated contracts, penalties for non-compliance with the contracting requirement, and the need for an on-going committee to review requests for relief from contracting requirements.

Because of the areas of disagreement within the Committees, the Forest Service is faced with the task of drafting a regulation and associated policy without clear direction from those concerned. What follows represents, in the opinion of the Forest Service, the best balance between the various opinions which have been put forth.

The purpose of this paper is to obtain any additional views of concerned parties before the regulations and policy are made. Comments should be addressed to Mr. W.G. Bishop, Assistant Deputy Minister, Timber and Range Management, Ministry of Forests, and should be received in Victoria by February 23/79.

Contractor Clause in Tree Farm Licences

Section 28 of the new Forest Act makes it mandatory that a contractor clause be included in tree farm licences (see Appendix I).

The draft documents of the licence contains the following wording:

7.64 - " 10.00 CONTRACTORS

10.01 Each calendar year during the term of the Licence a volume of timber equal to at least

- (a) 50% of the volume of timber harvested by or for the Licensee from the licence area during the year, multiplied by
- (b) the result obtained by the division of
 - (i) the portion of the allowable annual cut specified in the management and working plan in effect during the calendar year that the Chief Forester determines is attributable to Schedule "B" land, by
 - (ii) the allowable annual cut specified in the management and working plan in effect during the calendar year,

shall be harvested by persons under contract with the Licensee unless the Licensor (the Minister) pursuant to the regulations, relieves the Licensee from this requirement in whole or in part.

10.02 Compliance with paragraph 10.01 shall be calculated according to the method prescribed in the regulations.

10.03 If in a calendar year the volume of timber harvested

by persons under contract with the Licensee is less than 95% of the volume required under paragraph 10.01, the Licensee will on demand pay to the Crown, as liquidated damages, an amount of money equal to

- (a) the volume below 95%, multiplied by
- (b) the average stumpage rate applicable to timber harvested from the licence area, billed during the calendar year, unless, and to the extent that, relief is given under paragraph 10.01.

10.04 If the total volume of timber harvested by persons under contract with the Licensee during a 5 year cut control period is equal to or greater than the total volume required under paragraph 10.01 during the period, the Licensor shall refund to the Licensee all money paid by the Licensee under paragraph 10.03 during the 5 year cut control period. "

Contractor Clause in Forest Licences

Section 12 of the Forest Act provides that a contractor requirement may be included in a Forest Licence (see Appendix II).

The draft document of the Forest Licence contains the following clause:

11.00 CONTRACTORS

11.01 The Licensor (Regional Manager) may require by notice that each calendar year during the term of this licence a volume of timber equal to at least 50% of the volume of timber harvested by or for the Licensee during the year, from lands described in the licence, shall be

harvested by persons under contract with the Licensee unless the Minister, pursuant to the regulations, relieves the Licensee from this requirement in part or in whole.

11.02 Compliance with paragraph 11.01 shall be calculated according to the method prescribed in the regulations.

11.03 If in a calendar year the volume of timber harvested by persons under contract with the Licensee is less than 95% of the volume required under paragraph 11.01, the Licensee will on demand pay to the Crown, as liquidated damages, an amount of money equal to

- (a) the volume below 95%, multiplied by
- (b) the average stumpage rate applicable to timber harvested under this licence, billed during the calendar year,

unless, and to the extent that, relief is given under paragraph 11.01.

11.04 If the total volume of timber harvested by persons under contract with the Licensee during a 5 year cut control period is equal to or greater than the total volume required under paragraph 11.01 during the period, all money paid by the Licensee under paragraph 11.03 during the period shall be refunded. "

The Licensor, in the case of a Forest License, is the Regional Manager. He will require harvest by contractors where

1. It has been the practice of the Licensee to contract out at least 50% of the cost of logging on the Forest Licence, or the tenures which were consolidated into the Forest Licence, and

2. the Licensee under the Forest Licence reduces his contract program to below 50% of the total cost of logging, and
3. suitable contractors established in the Forest Region are available, or
4. a new Forest Licence is issued which in the opinion of the Regional Manager would lend itself to contracting.

The 50% Requirement in Forest Licences

The 50% requirement is arbitrary, but it has a precedent in that it is the percentage applied to Tree Farm Licences in the new Forest Act. In the case of Forest Licences, it can be argued that 'quotas' were earned, and in many cases purchased, even from the very contractors who now seek protection of their position from a regulation. If we accept this argument, then there is no justification for a contract requirement in these new tenures. On the other hand, 'quota' holders were given additional or 'third band' cutting rights (which may be included in whole or in part in Forest Licences) with all but complete protection at the time of sale. On the basis of these increases, which non-'quota' holders could not acquire, a contract requirement is justified. The most important reason for the requirement, however, is that Forest Licences will remove much of the allowable annual cut from competition, and from that point of view, these new tenures are similar to Tree Farm Licences.

The Draft Regulation

The attached draft regulation in Appendix II has been reviewed and approved for content by the Ministry of the Attorney-General, but it has still to be phrased in legal language. Some comments on the draft will be helpful to the understanding of it:

1) Contracts

A contract must have a minimum term of one year to be recognized under the contractor requirement. Hourly rated contracts will be acceptable.

2) Person under Contract

A person under contract is defined in such a way that he must be given a written contract if he asks for one.

3) Phases of a Logging Operation and Full Contracts

Because of the wide diversity in logging methods throughout the Province, the Regional Manager will determine the phases applicable to each operation, and the phases of each operation which should be included in a full contract. As methods change, he will make the necessary revisions to his determinations.

4) Phase Contracts

Phases within the range of activity determined to constitute a full contract will be subject to the contractor clause. Activities excluded from recognition as phases of logging under existing policy are also excluded in the regulation, (e.g. catering, cruising, reforestation, etc. that are not directly a part of timber harvesting).

5) Application

It is not legally permissible to include clauses in the regulation requiring that contractor programs be included in Management and Working Plans, and reported on in the Annual Reports. These details will be covered in the Licence documents.

6) Meeting the Contractor Requirement

The contractor requirement can be satisfied as at present through offering a balanced share of phases (i.e. 50% or more of the Crown contributed volume in each phase), by offering 'full' contracts, or a combination of both. There will be no guarantees of percentages for either type of contract.

Volume harvested under full contracts will contribute fully to the satisfaction of the contractor requirement. Any portion of the contractor requirement, which is to be met by phase contracts, must be satisfied by each required phase. An excess on one phase cannot be transferred to cover a deficiency on another phase, except as determined by the Minister.

The method of calculating the contribution of road construction and maintenance will reflect actual expenditures. That is the requirement will be to contract out a minimum of 50% of the cost of road building and maintenance, modified to reflect the Crown's contribution to the allowable annual cut, if these activities are determined to be part of a full contract.

7) Administration

The Minister, under the Ministry of Forests Act, may appoint an advisory committee to review such things as contractor performance. A formal appeal board would require legislative authority. It is not legally permissible for the regulation to suggest that the Minister must appoint a review committee.

APPENDIX I

Proposed Regulation Governing Logging Contracting Conditions

Interpretation

In this Division:

"contract"

means a full contract or a phase contract which has a minimum term of one year, made between a licensee and a person under contract.

"person under contract"

means a person, other than an affiliate of the licensee within the meaning of the Companies Act, who is the holder of a contract with a licensee. Contracts may be oral or written, according to the preference of the person under contract.

"phase" (of a logging operation)

means any naturally identifiable part of a logging operation, as determined by the Regional Manager, such as falling and bucking, yarding, loading, hauling, unloading, booming, logging road construction and logging road maintenance, skidding and decking, or any other part of a logging operation necessary to the harvesting of the timber.

"full contract"

means a contract which spans those phases of a timber harvesting operation which the Regional Manager determines constitute a full contract.

"phase contract"

means a contract which includes one or more of the phases identified by the Regional Manager which are necessary to carry out a full contract.

Activities, such as catering, cruising, engineering, management, reforestation, equipment rentals and/or maintenance that are not directly a part of timber harvesting, shall be deemed to be not components of a phase contract.

Application

This division applies where a Tree Farm Licence or a Forest Licence or a working plan approved under such an agreement, provides that a portion of the timber harvested under the agreement shall be harvested by persons under contract with its holder.

Full Contracting

Where the holder of an agreement enters into a full contract or contracts, the volume harvested will contribute fully to the satisfaction of the contractor requirement.

Phase Contracts

- (a) Where the holder of an agreement enters into phase contracts for woods operations, the volume offered in each phase shall not be less than the share of the harvest required to be offered in the agreement, less any share which has been satisfied through full contracts.
- (b) Phase contracting to be credited for logging road construction and logging road maintenance shall be directly related to the actual expenditures. The proportion offered for contract shall not be less than the share of the harvest required to be offered in the agreement, less any share which has been satisfied through full contracts.
- (c) When a greater volume of contracting is performed than is required in a particular phase, the excess shall not be transferred to cover a deficiency in another phase, except as determined by the Minister, on advice from the Regional Manager or an advisory committee appointed by the Minister.

Relief

The Minister may, on advice from the Regional Manager or an advisory committee appointed by the Minister, or on such conditions as he deems appropriate, grant relief in whole or in part, in respect of the contracting requirement in an agreement where he is satisfied that for good and sufficient reasons it was not feasible to carry out the contractor requirements.

APPENDIX II

Forest Act - Section 28 - Content of a tree farm licence

Contractor requirement in Tree Farm Licences

- (28. A tree farm licence entered into under this Act shall ...)
- (i) require that each year during its term a volume of timber equal to
 - (i) 50% of the volume of timber harvested by or for its holder from the tree-farm licence area during the year, multiplied by
 - (ii) the result obtained by the division of
 - (A) the portion of the allowable annual cut then approved for the tree-farm licence that the chief forester determines is attributable to Crown land referred to in paragraph (b)(i) and sections 31(1) and (2) and 32(1), by,
 - (B) the allowable annual cut then approved for the tree-farm licence
- shall be harvested by persons under contract with its holder,
- (j) allow its holder to contract for the harvesting of more than the volume calculated under paragraph (i),
 - (k) provide that the minister may, pursuant to the regulations, relieve the holder, in whole or in part, from the requirement under paragraph (i),

Forest Act - Section 12 - Content of a forest licence

Provision for Contractor Requirement in Forest Licences

(12. A forest licence . . .)

- (h) may make provision for timber to be harvested by persons under contract with its holder, and