

§ 201.73

with good commercial practice to determine whether such documents comply with the requirements of paragraphs (b) (1) through (7) of this section in the following particulars, and no other.

(1) *Shipment.* The documents submitted as evidence of the shipment of commodities under §201.52(a)(4) shall be dated within the shipping period, if any, specified in the letter of commitment. The bill of lading shall contain the carrier's statement of charges whether or not freight is financed by USAID.

(2) *Source of commodities.* The documents submitted in connection with the claim for reimbursement on commodities may not indicate that the source of the commodities is inconsistent with the USAID geographic code designation contained in the letter of commitment.

(3) *Destination.* The documents submitted shall indicate that the destination of the commodities, by shipment, transshipment, or reshipment, is the cooperating country named in the letter of commitment.

(4) *Description.* The documents shall describe and identify the commodities or services in a manner which, according to good commercial practice, is not inconsistent with the description contained in the letter of credit or payment instructions issued under a letter of commitment. The bank shall not be required to determine whether the supplier's invoice meets the detailed requirements of §201.52(a)(2)(i).

(5) *Discounts and purchasing agents' commissions.* If the documents disclose that the invoice price includes either discounts or commissions payable to purchasing agents, the bank shall not make payment of such discounts and commissions. In the absence of such information, however, the bank shall not be required to make independent inquiry as to whether the invoice price includes such items.

(6) *Certifications.* Each supplier's invoice presented for payment shall contain such other certifications as may be required in the letter of commitment. The bank shall accept only certifications which, to the best of its knowledge and belief, have been signed by hand.

(7) *Other requirements.* The documents submitted shall contain such other information as required by the letter of commitment, except that the bank shall have responsibility in this regard only to the extent specifically indicated in the letter of commitment.

(c) *Acceptance of certificates.* A bank shall not accept for submission to USAID the original of the Supplier's Certificate, or the Commodity Approval Application, unless, to the best knowledge and belief of the bank, each such original has been signed by hand by the supplier and the Commodity Approval Application has been countersigned by USAID.

§ 201.73 Limitations on the responsibilities of banks.

The following general limitations on the responsibilities of banks issuing, advising, or confirming letters of credit and making payments under letters of credit or otherwise shall apply.

(a) *Sufficiency and completeness of documents.* Any document, including the Supplier's Certificate and the Commodity Approval Application, submitted by a bank to USAID in support of a claim for reimbursement, shall be sufficient if it purports to be the sort required to be delivered and if it has been accepted by the bank in the ordinary course of business in good faith. Except as may be required in the discharge of its responsibilities under §201.72 (b) and (c), the bank's right of reimbursement shall not be affected by the fact that any document required to be submitted by it is incomplete or may indicate noncompliance with any provision of this part.

(b) *Reimbursement right notwithstanding certain deficiencies.* A bank's right to reimbursement from USAID for payments which the bank has made will not be affected by the fact that the Commodity Approval Application or the Invoice-and-Contract Abstract on the reverse of the Supplier's Certificate may be incomplete, or may indicate noncompliance with any provision of this part 201, the letter of commitment, or any other implementing document, or may be inconsistent with other documents required for reimbursement.

(c) *Nonresponsibility of bank for truth or accuracy of statements or certifications.* The bank shall not be responsible for the truth or accuracy of any information or statement contained in any Supplier's Certificate or any other document certification to be submitted by it to USAID, notwithstanding any knowledge or information in the actual or constructive possession of the bank to the contrary. The bank shall not be obligated to look beyond the documents, including any certifications endorsed thereon, to be submitted by it or to make any independent investigation as to the truth or accuracy of any information or statement contained therein.

(d) *Protection of bank making payment.* Acceptance by the bank of any document in the ordinary course of business in good faith as being a genuine and valid document and sufficient in the premises, and the delivery thereof to USAID, shall constitute full compliance by the bank with any provision of this part, the letter of commitment requiring delivery of a document of the sort that the document actually so delivered purports to be. The bank shall be entitled to receive and retain reimbursement of the amount of all payments made by it against documents so accepted, notwithstanding that such payments may be made in connection with a purchase in excess of the price calculated in accordance with the applicable provisions of subpart G.

(e) *Payment to third persons.* The bank's right of reimbursement shall not be affected by the fact that payment is made to the approved applicant or at the request of the approved applicant or such beneficiary to a person other than the supplier under the contract to which such payment relates, if the bank has complied with all other requirements of the letter of commitment and has satisfied itself in good faith that the person to whom it makes payment has, in turn, made payment to the supplier.

(f) *Bank procedures with regard to certain suppliers.* In the event a bank receives written advice from USAID concerning special conditions which are applicable to transactions of particular suppliers, such bank will use reasonable care to maintain procedures de-

signed to ensure that accommodations thereafter furnished by it with respect to such suppliers by means of the issuance, confirmation, advising or transfer of letters of credit, or the making of payments not under letters of credit shall reflect such special conditions. While banks are expected to comply with the foregoing obligation, a bank which has used reasonable care to establish and maintain such procedures will not be responsible for any inadvertent furnishing of any such accommodation not containing applicable special conditions or the making of payment thereunder. For the purpose of ascertaining whether the supplier is a person or organization subject to an USAID advice concerning special conditions applicable to its transactions under this paragraph, a bank, in making payment under a letter of credit or otherwise, may consider as supplier the person or organization issuing the invoice.

(g) *Provision of implementing documents.* A bank shall not be responsible for compliance with any provision of an implementing document other than a letter of commitment.

§ 201.74 Additional documents for USAID.

In addition to the documents required for reimbursement, a bank shall retain in its files for a period of at least 3 years and shall make available to USAID promptly upon request a copy of any of the following documents which may pertain to an USAID-financed transaction:

(a) Each letter of credit issued, confirmed, or advised by it, together with any extension or modification thereof;

(b) Payment instructions received from the approved applicant;

(c) Each application and agreement relating to such letter of credit or instructions for payment, together with any extension or modification thereof;

(d) A detailed advice of the interest, commissions, expenses, or other items charged by it in connection with each such letter of credit or payment instructions.

§ 201.75 Termination or modification.

If USAID directs that the delivery of commodities be terminated, orders