

Agency for International Development

§ 201.72

(b) *Airfreight rates.* USAID will not finance airfreight which exceeds the following:

(1) The rate under any air charter approved by USAID covering the transaction;

(2) The lowest rate charged by the carrier for similar shipments on the same flight; or

(3) The rate prevailing in the industry for similar shipments. A similar shipment is one which is similar with respect to type of commodity, commodity rate classification, quantity, flag category, choice of airport, and other pertinent factors.

[55 FR 34232, Aug. 22, 1990, as amended at 64 FR 17535, Apr. 12, 1999]

§ 201.68 Maximum prices for commodity-related services.

(a) The price for an USAID-financed commodity-related service, other than ocean or air transportation, shall not exceed the lower of:

(1) The prevailing price, if any, for the same or similar services; or

(2) The price paid to the supplier under similar circumstances by other customers.

(b) The eligible price of services covered by an NVOCC bill of lading is limited to the sum of the costs of individual delivery services eligible under § 201.13 of this part, and only to the extent that the cost of each such service is eligible for USAID-financing under § 201.67 or § 201.68(a) of this part.

§ 201.69 Cooperating country taxes and fees.

USAID will not finance any taxes or fees imposed under the laws in effect in the cooperating country, including customs duties, consular and legalization fees, and other levies.

Subpart H—Rights and Responsibilities of Banks

§ 201.70 Purpose.

This subpart sets forth the rights and responsibilities of banks with regard to reimbursement under a letter of commitment opened pursuant to an USAID request. Banks will not be held responsible for the requirements of subparts B, C, D, E (excluding § 201.44(a)(1)), and

subpart G except insofar as provisions of these subparts are included in this subpart H or in a letter of commitment issued by USAID to a bank.

§ 201.71 Terms of letters of credit.

Any letter of credit issued, confirmed or advised under an USAID letter of commitment and any agreement relating to such letter of credit or to instructions for payment issued by an approved applicant shall not be inconsistent with or contrary to the terms of the letter of commitment. Any such letter of credit or agreement may be modified or extended at any time in such a manner and to such extent as is acceptable to the approved applicant and the bank: *Provided*, That such modification or extension may not be inconsistent with or contrary to the terms of the letter of commitment. In the case of any inconsistency or conflict between the terms and conditions of the letter of commitment and the instructions of the approved applicant, the terms and conditions of the letter of commitment shall control.

§ 201.72 Making payments.

(a) *Collection of documents.* The bank shall be responsible for obtaining the documents specified in subpart F and in the letter of commitment when making payment under a letter of credit pursuant to instructions of an approved applicant.

(b) *Examination of documents other than Supplier's Certificate.* The bank shall examine the documents (other than the Supplier's Certificate and the Commodity Approval Application) to be submitted to USAID in accordance 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.

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(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 Ap-

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proval 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