36.609-1 Design within funding limitations.

(a) The Government *may* require the architect-engineer contractor to design the project so that *construction* costs will not exceed a contractually specified dollar limit (funding limitation). If the price of *construction* proposed in response to a Government *solicitation* exceeds the *construction* funding limitation in the architect-engineer contract, the firm *shall* be solely responsible for redesigning the project within the funding limitation. These additional services *shall* be performed at no increase in the price of this contract. However, if the cost of proposed *construction* is affected by events beyond the firm's reasonable control (*e.g.,* if there is an increase in material costs which could not have been anticipated, or an undue delay by the Government in issuing a *construction solicitation*), the firm *shall* not be obligated to redesign at no cost to the Government. If a firm's design fails to meet the contractual limitation on *construction* cost and the Government determines that the firm *should* not redesign the project, a written statement of the reasons for that determination *shall* be placed in the contract file.

(b) The amount of the *construction* funding limitation (to be inserted in paragraph (c) of the clause at 52.236-22) is to be established during negotiations between the contractor and the Government. This estimated *construction* contract price *shall* take into account any statutory or other limitations and exclude any allowances for Government supervision and overhead and any amounts set aside by the Government for contingencies. In negotiating the amount, the *contracting officer should* make available to the contractor the information upon which the Government has based its initial *construction* estimate and any subsequently acquired information that *may* affect the *construction* costs.

(c) The *contracting officer shall* insert the clause at 52.236-22, Design Within Funding Limitations, in fixed-price architect-engineer contracts except when-

(1) The *head of the contracting activity* or a designee determines *in writing* that cost limitations are secondary to performance considerations and additional project funding can be expected, if necessary;

(2) The design is for a standard structure and is not intended for a specific location; or

(3) There is little or no design effort involved.

Parent topic: 36.609 Contract clauses.