

BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of 11 FIRSTFIELD ROAD	)	
LIMITED PARTNERSHIP	)	
	)	Docket No. MSBCA 1232
Under 11 Firstfield Road	)	
Limited Partnership Lease	)	

June 28, 1985

Contract Interpretation - Ambiguity - The lease terms were ambiguous regarding calculation of the State's rent credit for the cost of furnishing specified standard fit up items since the work to renovate the leased building in accordance with the State's design was similar to work described by the requirements for standard fit up items. Under these circumstances, extrinsic factors such as the lease terms and the circumstances surrounding its execution are examined to determine the parties intent regarding standard fit up item costs as distinguished from the costs to renovate the premises for use as a court facility.

Contract Interpretation - Under the terms of the lease read as a whole and the circumstances under which it was negotiated, the parties intended that the State absorb the costs to renovate the building in accordance with the State's design for the State's specialized use as a court facility. However, Appellant was responsible in the form of a rent credit for costs to provide specified standard fit up items.

Contract Interpretation - When read as a whole, the lease established a ceiling of \$150,000 as the amount the State could receive as a rent credit for costs to provide specified standard fit up items.

Contract Interpretation - Where the lease provided that the State was responsible for the costs to renovate the building in accordance with its design but was entitled to reimbursement through a rent credit for specified costs to provide standard fit up items, the parties established a method of payment for rectifying existing building deficiencies separate from the costs to remodel the building according to the State's design. To the extent that items existing in the building at the time the lease was entered into met the State's standard fit up item requirements they are allocated in Appellant's favor in determining the State's rent credit.

Contract Interpretation - While the State is entitled to a rent credit for the costs incurred to meet the State's standard fit up item requirements, the State's interpretation that this was the mechanism by which the parties intended to shift the costs to renovate the building to Appellant is inconsistent with the plain terms of the lease that the State was to absorb the cost of renovation work completed in accordance with the State's design.

Contract Interpretation - In order to allow Appellant to obtain tax and financing benefits, the lease provided at Appellant's request that the State would be reimbursed by a rent credit for costs incurred to provide standard fit up items. However, this provision did not mean that Appellant agreed to pay most of the costs of the renovation work with the credit arrangement for standard fit up items the mechanism by which these renovation costs were to be shifted back to Appellant.

Contract Interpretation - The lease provided that Appellant at State expense would make modifications necessary to make the building comply with all local and State building codes and zoning requirements but also provided that the State is entitled to reimbursement as a rent credit for certain standard fit up items, including renovations required to comply with codes. Giving effect to both provisions and reading them in harmony, the Board held that the State was entitled to a rent credit for costs incurred to rectify code violations existing at the time the lease was entered into. However, the State was responsible for those general construction costs and fees, including costs such as charges to dispose of construction debris, to renovate the building in accordance with the State's design.

Contract Interpretation - The State is not entitled to a rent credit for those costs attributable to renovation work to convert the building for use as a court facility, although such work may have involved items described as standard fit up items. For example, the cost to relocate a door does not entitle the State to a rent credit although the cost to provide a door to meet a standard fit up item does.

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OPINION BY MR. KETCHEN

This appeal is taken from a final decision issued by the Department of General Services (DGS) procurement officer<sup>1</sup> denying Appellant's claim for a reduction in the amount the State is to be reimbursed as a rent credit for costs to meet standard fit up requirements for the premises leased by the State at 11 Firstfield Road, Gaithersburg, Md.

Findings of Fact

1. Appellant is the owner of a two-story building located at 11 Firstfield Road, Gaithersburg, Maryland.

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<sup>1</sup>While the premises were leased for use by the District Court and the Juvenile Services Administration, DGS was the procuring agency.

2. On September 1, 1983, Appellant's building had been recently vacated by a tenant that had used the building for offices and it was essentially operational, although the air conditioning, heating system and floors were in need of repair and the offices needed painting.

3. New space was needed for the Maryland District Court and the Juvenile Services Administration since their existing lease had expired and they were required to vacate that facility by December 31, 1983.

4. On October 13, 1983 the Maryland Board of Public Works approved a lease, dated September 30, 1983, with Appellant for 30,844 square feet of office and court facility space located at 11 Firstfield Road, Gaithersburg, Maryland.

5. The lease provided for the payment of rent as follows:

1.4.1 The rent and expense payments for services due by lessee to lessor are One Million Two Hundred Twenty-Six Thousand Forty-Nine Dollars (\$1,226,049.) over the term of the lease payable in equal monthly installments of Forty-Five Thousand Four Hundred Nine Dollars and Twenty-Two Cents (\$45,409.22). The first monthly installment shall be due nine months after the lease commencement date.

6. On October 31, 1983, the parties negotiated an addendum to the lease providing for renovations to the leased premises as follows:

24.1 Lessor shall, at Lessee's expense, make such modifications to the demised premises and the building of which the demised premises are a part as are required to make the facility comply with all local and state building codes and zoning requirements. In the event there are no local building codes, the Lessor shall comply with the national building codes as set out in the Department of General Services General Lease Specifications and Requirements.

24.2 It is agreed that the parties to this lease do not contemplate that the stated use of the demised premises will require the installation of a full sprinkler system. In the event a sprinkler system is required as a result of the State's unique use of the premises Lessor shall not be required to perform under this contract unless Lessor and Lessee mutually agree on who shall pay for the cost of installation of the sprinkler system.

24.3 Lessor shall, at Lessee's expense, make such modifications to the demised premises and the building of which the demised premises are a part, as are required to make the demised premises, the common areas leading to the demised premises, and the common facilities which may be used by the Lessee's employees or invitees accessible to the handicapped and aged. Such modifications shall comply with the Maryland Building Code for the Handicapped and Aged (MBCHA) as published by the Department of Economic and Community Development.

24.4 The Lessor shall, at Lessee's expense, prepare the demised premises in accordance with Exhibits to be prepared by the Lessor and approved by the Department of General Services. Said Exhibits to be attached hereto and made a part hereof.

24.5 The Lessee shall be entitled to reimbursement for certain fit up items which are the State's standard fit up requirements and the Lessee shall be entitled to a credit for these items:

- a. 1 Lineal foot of finished partitioning per 15 square feet of leased space (Sound transmission class of 35).
- b. 1 Lineal foot of sound conditioned partitioning (Sound transmission class of 50) for each 10 lineal feet of required partitioning.
- c. 2 Doors for ingress and egress from each leased area on each floor.
- d. 1 Interior door for each 25 lineal feet of partitioning required.
- e. 1 duplex electric outlet per 100 square feet of leased space.
- f. 1 telephone outlet per 150 square feet of leased space.
- g. 1 220 volt electric outlet per floor.
- h. Finished ceilings.
- i. 50% of the cost of finished flooring.
- j. A complete HVAC System.
- k. Sufficient lighting to produce 50 foot candle power at desk level.
- l. Renovations required to comply with codes, except the MBCHA.

24.6 It being the intention of the parties that the Lessee shall rent the space "as is", The District Court shall, upon completion and acceptance of the renovations provided for above, pay the total cost of said renovations, but the Lessor shall act as agent, without additional charge to assure that said renovations shall be completed. Since the cost of those renovations listed in paragraph 24.5 above is included (as an item of expense) in the rent and expenses provided for in paragraph 1.4.1, the District Court shall be entitled to a credit against the rent and expense payments, when due, for the actual cost of renovations attributable to the items listed in paragraph 24.5.

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24.8 In the event termination of the agreement in accordance with paragraph 1.4.4 becomes necessary, the Lessee agrees to repay to the Lessor, the principal balance of the unamortized portion of the cost of the improvements listed in paragraph 24.5 existing at the time occupancy is terminated during the initial term. For this purpose, the cost of the improvements shall be amortized on a monthly payment schedule over a three year term at an interest rate of fifteen percent (15%) per annum. The Lessor shall, within 90 days of the commencement date of this lease, submit to the Department of General Services a certified statement of the actual costs incurred. In no event shall the cost of improvements exceed approximately \$150,000.00. In addition, the Lessee shall pay Lessor an amount equal to \$34,056.92 times the number of months the premises are occupied by the Lessee

minus the sum of any rent payments and construction payments attributable to paragraph 24.5 made by Lessee up to the date of termination. (Underscoring added).

7. The State agreed to pay the total cost of all renovations including those described in Paragraphs 24.1, 24.3, 24.4 and 24.5. However, the State was to be reimbursed by Appellant the cost of the standard fit up items specified in paragraph 24.5 a through 24.5 l by a credit against the rent when due. Appellant requested this rent credit arrangement so that it would be afforded certain tax advantages and would not have to pay finance charges on money it would have had to borrow to do the renovations.

8. Appellant executed the lease on October 31, 1983. The State subsequently executed the lease and sent a copy to Appellant by letter dated November 14, 1983.

9. The exhibits prepared in accordance with paragraph 24.4 of the lease addendum representing the construction, demolition and renovation required for the leased premises, were approved by the State on November 22, 1983. They consist of a two page set of demolition drawings (D-1 and D-2), dated November 4, 1983, and a three page set of construction drawings (A-1, A-2, and A-3), dated November 21, 1983, all prepared by the architectural firm of Zinser and Dunn Associates, employed by the Appellant but paid for by the State.

10. The lease also provided that the State would renovate the leased premises at the expiration of the lease in accordance with the following:

6.1 . . . recognizing the specialized improvements for the Lessee, Lessor at its sole discretion, may require Lessee to remove all equipment, alterations, additions or improvements of a nontypical office building standard including but not limited to jail cells, court room platforms, benches, specialized plumbing. If any equipment or machinery is installed under this clause and is not typical office equipment, lessee shall be obligated to pay all additional operating costs involved with said equipment." (Underscoring added).

11. The renovation work described in Paragraphs 24.1, 24.2, 24.3, 24.4, and 24.5, was completed at a cost of \$386,829.39 and paid for by the State. Both parties agree that the total cost of the renovation work was reasonable. Although a sprinkler system was installed in a small storage area in accordance with a code requirement, the parties did not agree as to which of them would be responsible for this expense pursuant to the requirements of Paragraph 24.2 of the lease addendum.

12. The standard fit up items for which the State was to receive a rent credit under Paragraph 24.5 translate into the following specific requirements:

24.5a - 2,056 lineal feet of finished partitioning (sound transmission class of 35).

24.5b - 205 lineal feet of the 2,056 lineal feet of finished partitioning specified in 24.5a is sound transmission class of 50.

24.5c - 4 doors for ingress and egress (2 doors on each floor of the building).

24.5d - 82 interior doors.

24.5e - 308 duplex outlets.

24.5f - 205 telephone outlets.

24.5g - Two (2) 220 volt electric outlets (1 per floor).

13. Following the renovation work, the building contained the following:

- a. 2,114 lineal feet of existing partitioning remained and was not disturbed during the renovation work, although it was finished.
- b. 126 interior doors - 45 interior doors existed and remained at the original location after renovation.
- c. 360 duplex outlets - 190 duplex outlets existed and remained at the original location after renovation.
- d. 160 telephone outlets - the record does not indicate how many telephone outlets existed prior to renovation.
- e. Two 220 volt electric outlets were installed.

14. The renovation work was substantially complete and the building was accepted for occupancy on January 13, 1984 which became the lease commencement date with the first monthly installment of rent due on October 13, 1984 nine months later. (Lease, Paragraph 1.4.1). However, the rent commencement date was subject to further extension by the amount of rent credit attributable to Paragraph 24.5 of the Lease. (Lease, Paragraph 24.6).

15. In April 1984, Appellant notified DGS that the State was entitled to a rent credit of \$67,669.01 representing the portion of the renovation cost incurred to meet the standard fit up requirements set forth in Paragraph 24.5 of the lease. However, DGS insisted that the State was entitled to a credit in the amount of \$225,080.75.

16. Based on Appellant's offered lease credit of approximately a month and a half's rent the first monthly installment of rent was due in December 1984 (\$67,669 divided by \$45,409.22). However, based on the rent credit claimed by the State the first monthly installment was not due until five months after October 13, 1984 (\$225,080.75 divided by \$45,409.22).

17. On February 27, 1985 Appellant requested a final procurement officer's decision<sup>2</sup> regarding its offer of a rent credit to the State in the amount of \$67,669.01.

18. The DGS procurement officer issued his final decision on March 6, 1985 holding that the State was entitled to a rent credit in the amount of \$225,080.75.

19. On March 11, 1985 Appellant filed a timely notice of appeal with this Board.

### Decision<sup>3</sup>

The issue to be resolved is the allocation of the renovation costs in accordance with the provisions of Paragraph 24.1 through 24.6 of the lease. Although the lease provided that Appellant would renovate the leased premises at the State's expense in accordance with the design approved by the State, the State was to be reimbursed through the lease rent credit arrangement for certain standard fit up requirements. (Lease, Paragraphs 24.5 & 24.6). The dispute arises because the lease does not expressly state whether items existing in the building at the time the lease was entered into may be counted towards the standard fit up requirements listed in Paragraph 24.5.

Appellant maintains that it owes the State a rent credit only for the actual costs of providing the incremental amounts of items necessary to meet the standard fit up requirements over and above the items already existing in the building. For example, Appellant argues that since 45 doors existed in the building at the time the lease was entered into, it is responsible only for the actual costs expended to paint the 45 existing doors and to provide 37 new doors to meet the standard fit up requirement for 82 doors. Appellant contends that it is not responsible for costs to relocate existing doors to conform to the State's renovation design, or for costs associated with providing additional doors above the 82 door minimum requirement.

DGS, on the other hand, maintains that fit up items existing in the building before renovation commenced are not to be counted in determining the State's rent credit. For example, DGS argues that it is entitled to a rent credit for the actual costs attributable to providing up to 82 doors without counting the 45 existing doors towards its allotment.

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<sup>2</sup>While the lease did not contain a disputes clause, Appellant's claim properly was considered as a dispute under the lease since a dispute clause was mandatory and thus may be read into the lease. COMAR 21.07.01.06. Compare Downing Development Corp. v. Brazelton, 253 Md. 390, 398, 252 A.2d 849 (1969); Kasmer Electrical Contracting, Inc., MSBCA 1065 (January 12, 1983), p. 10.

<sup>3</sup>The parties elected to submit the case for decision on the record pursuant to COMAR 21.10.06.11.

We have concluded that the lease terms raise considerable doubt concerning how the rent credit is to be determined since the work to be paid for by the State under Paragraphs 24.1, 24.3 and 24.4 is similar to the work described by Paragraph 24.5 for which the State is to receive a rent credit. In this regard, there is no benchmark provided for determining when each standard fit up requirement is met. An ambiguity, therefore, exists in the language describing how the standard fit up items are to be measured under Paragraph 24.5 since it is susceptible to more than one reasonable meaning. The items already existing in the building are to be counted toward the standard fit up requirements or the actual costs of all renovation items listed in Paragraph 24.5 up to the quantities listed are to be used in determining the rent credit without regard to similar items already existing in the building.

The ambiguity may be further illustrated as follows. The lease provides that the State is entitled to reimbursement in the form of a rent credit for 2056 lineal feet of finished partitioning. At the time the lease was executed, the building contained partitioning. The State's renovation design required a considerable amount of existing partitioning to be demolished and replaced with new partitioning at a different location. However, 2,114 lineal feet of partitioning was not disturbed, although it was painted. Appellant asserts that painting the existing, undisturbed partitioning meets the standard fit up item requiring 2056 lineal feet of finished partitioning. DGS, however, maintains that the State is entitled to a credit for the actual cost of demolishing the old partitioning and providing new partitioning up to a quantity of 2,056 lineal feet.

Where the language of a contract is ambiguous or susceptible to different interpretations, the fact finder in interpreting the contract language must try to ascertain the intention of the parties at the time the contract was entered into. Compare Aetna Cas. & Sur. v. Ins. Com'r., 293 Md. 409, 445 A.2d 14 (1982). In this regard, he may consider evidence of such extrinsic factors as the negotiations of the parties, the circumstances surrounding execution of the contract, the terms of the contract, the parties' construction of the contract, and the parties' conduct. Della Ratta, Inc. v. American Better Community Developers, Inc., 38 Md. App. 119, 380 A.2d 627 (1977); Truck Ins. Exch. v. Marks Rentals, 288 Md. 428, 433, 418 A.2d 1187, 1190 (1980); Canaras v. Lift Truck Services, 272 Md. 337, 322 A.2d 866 (1973); compare Cadem v. Nanna, 243 Md. 536, 544, 221 A.2d 703, 708 (1965); Garfinkel v. Schwartzman, 253 Md. 710, 254 A.2d 667 (1969).

Before reaching the specific issue involving interpretation of Paragraph 24.5 we will first examine the terms of the lease and the circumstances under which it was entered to determine the parties intent regarding their respective responsibility for the cost of renovation. In this regard, the lease provisions will be given their plain meaning when read as a whole with effect given to each clause where possible. Granite Constr. Co., MSBCA 1011 (July 29, 1981). Compare Fruin-Colnon Corp. and Horn Constr. Co., Inc., MDOT 1001 (December 6, 1979); Kasten Const. Co., Inc. v. Rod Enterprises, Inc., 268 Md. 318, 301 A.2d 12 (1973).

On September 1, 1983, Appellant's building was vacant. The previous tenant had used the building for ordinary business offices and, therefore, it was essentially operational when vacated, although its air conditioning system, heating system, and floors were in need of repair, and the offices needed painting. Since the building had a standard office design, modifications were

required to convert the interior of the building to accommodate the District Court's specialized needs for courtrooms, cell facilities, judges chambers and facilities for use by attorneys and their clients. Subsequent to the Board of Public Works approval of the lease and the lump sum of \$1,226,049 for rent, on October 13, 1983, Appellant and the State negotiated an addendum to the lease to provide for substantial renovation work to convert the premises to meet the specialized needs of the State and to provide the standard fit up requirements for Appellant's building which needed repair and finishing work.

Under the terms of the lease, the State clearly was responsible for the cost of renovations described by Paragraphs 24.1, 24.3, and 24.4 consistent with the manifest purpose of the lease to have an office facility converted for the specialized use of the District Court. The fact that the parties intended that the State absorb directly the costs attributable to the court conversion renovations also is supported by the express terms of the lease providing for the State to remove the specialized renovations at the end of the lease term at Appellant's discretion. (Findings of Fact No. 10).

Appellant and the State also agreed that the established rent of \$1,226,049 for the term of the lease included an unspecified amount for the standard fit up requirements as an expense pursuant to Paragraphs 24.5 and 24.6 of the lease. (Findings of Fact No. 6). Since the State was to pay the total cost of all renovations initially, the parties thus agreed that the State would be entitled to a rent credit for the actual renovation cost attributable to the standard fit up items. (Lease, Paragraphs 24.5 & 24.6). Otherwise, the State would be paying twice for the standard fit up items actually provided during the renovation — once through payment of the direct cost for these items at the time the expense was incurred and again in the subsequent payment of rent which included an amount to cover the actual cost of the standard fit up items provided.

Neither the terms of the lease nor the surrounding circumstances provide an estimate of the cost of the renovation work for the standard fit up items for which the State was to receive a rent credit. However, Paragraph 24.8, which apportions the costs attributable to Paragraph 24.5 in the event of termination of the lease, provides that the cost of renovations for which the State is liable pursuant to Paragraph 24.5 may not exceed \$150,000.00. We find, therefore, that Paragraph 24.8, when read with the other provisions of Paragraph 24 of the lease, expresses the parties' agreement that \$150,000.00 was the maximum amount to be included in the lump sum rent for standard fit up items, and is the maximum amount the State is permitted to backcharge against rent for the renovations required by Paragraph 24.5.

Based on our interpretation that the lease provided a ceiling on the amount the State could receive as a rent credit, we must resolve the issue concerning the amount of the rent credit to be allowed within the \$150,000.00 ceiling. In doing so, we still must determine whether items already existing in the building may be allocated toward the standard fit up requirements.

As we found above, the terms of the lease and the circumstances under which it was negotiated indicate that initially the State was to be responsible for all renovation costs required to convert the building for its specialized use as a court facility. Additionally, as we have said, the building in its "as is" condition needed certain repair work for which the State agreed

to include \$150,000.00 in the total rent payment. Under these circumstances, we find that the parties intended that Paragraphs 24.5 and 24.6 establish a method of payment for rectifying deficiencies in the building separate from the cost required to remodel the building's interior according to the State's approved design. Paragraph 24.5 thus was intended to establish the minimum fit up items that the building was required to have at the time the lease was entered into. Accordingly, we find that to the extent the building did not meet these minimum requirements, i.e., standard fit up items, it was Appellant's responsibility to provide them. Stated another way, to the extent that items existing in the building met the State's fit up requirements they are to be counted in favor of Appellant in determining the State's rent credit for the cost to bring the building up to the standard specified by Paragraph 24.5.

In reaching this conclusion, we have considered DGS's argument that the parties intended that Appellant pay for a substantial portion of the renovations delineated by Paragraphs 24.1, 24.3, and 24.4 and that Paragraph 24.5 was the mechanism by which the parties intended to shift these costs, initially paid by the State, back to Appellant. We reject this argument, however. There is no evidence in the record to support DGS's interpretation and it clearly is inconsistent with the plain terms of the lease that the State was to absorb the costs for the renovation work completed in accordance with its design.

The State, however, points out that Appellant requested the rent credit arrangement in order to reap financing and tax benefits by not having to finance the renovation costs initially. The State thus argues that this supports its view that Paragraph 24.5 of the lease should be interpreted to reflect the parties' intent that Appellant was to be responsible for most of the cost of the renovation work. We again disagree.

While Appellant requested the rent credit arrangement set forth in the lease, this fact alone does not necessarily weigh in favor of DGS's interpretation that Appellant agreed to fund most of the cost of the renovation work. Since the State initially paid for the total renovation cost, Appellant received the benefits through any tax advantages or savings in financing costs of not having to pay initially for the overall renovation whether the State's view or Appellant's view of the amount of rent credit subsequently due the State is adopted.

DGS next maintains that Paragraph 24.5 1 allowing a credit for renovations required to comply with codes was intended to allow the State to recover the conversion renovation costs incurred under Paragraph 24.1 to make the facility comply with all local and State building codes and zoning requirements. Thus DGS contends that if local government requirements required permit fees to implement the State's design under Paragraph 24.4, these fees are "renovations required to comply with codes" and it should be reimbursed pursuant to Paragraph 24.5 1. We do not find DGS's argument reasonable.

In this regard, we find that 24.5 1 provided that existing code violations at the time the lease was entered into were to be rectified and the State given a credit. However, renovations completed to convert what was then a business office use into a specialized use as a court facility necessarily were required to be done under the strictures of applicable codes,

which had a cost effect. These costs, such as charges to dispose of construction debris, were the State's responsibility pursuant to its agreement to pay for renovations to the building in accordance with its design. Such costs were not costs for "renovations required to comply with codes" for which the State was entitled to a credit under Paragraph 24.5 1. This interpretation is consistent with our finding above that the State was responsible for renovations to the building to meet its specialized needs while Appellant was responsible for rectifying deficiencies in the building existing at the time the lease was entered into. This interpretation also harmonizes and gives effect both to provisions of Paragraph 24.5 1, allowing the State a credit for curing code deficiencies existing at the time lease was entered into, with the provisions of Paragraphs 24.1 & 24.4 requiring the State to pay for the cost of renovations in accordance with its design. Granite Constr. Co., supra.

In summary, we find that the State was entitled to reimbursement as a rent credit for the standard fit up requirements listed in Paragraph 24.5 only to the extent the building was deficient with respect to these items at the time the building was leased in an "as is" condition. Thus, in calculating the State's credit, the items existing in the building at the time the lease was entered into are to be allocated toward the standard fit up items listed in Paragraph 24.5 of the lease.

We turn next to the determination of the State's rent credit pursuant to Paragraph 24.5. Although there is no dispute that the total renovation cost of \$386,829.39 was incurred and was a reasonable total cost for the renovation work completed, we still must allocate the discrete costs between Appellant and the State depending on whether a cost falls under a standard fit up item listed in Paragraph 24.5 entitling the State to a credit, or it is a renovation cost the State is responsible for pursuant to Paragraphs 24.1, 24.3 and 24.4.

We have computed the State's credit based on the entire record including the vouchers included with Exhibits 3 and 4 to the parties stipulation of facts. To reiterate, the State is entitled to a credit for the actual costs attributable to rectifying deficiencies to meet its standard fit up requirements. Items existing in the building at the time the lease was entered into, to the extent they can be calculated, are counted towards Appellant's requirement to provide standard fit up items. In this regard, the State is not entitled to credit for renovation work completed pursuant to its design even though such work may have involved items described as standard fit up items by Paragraph 24.5. Thus we have not allowed the State a credit for a cost where the vouchers show that work involving an item listed in Paragraph 24.5 as a standard fit up item was work done to comply with the State's design. For example, the cost to relocate an item, such as a door, to comply with the the State's design is not a cost to meet a deficiency for which the State is entitled to a credit, although the cost of furnishing the door to meet the fit up requirement for doors would entitle the State to a credit.

#### Partitioning (Lease, Paragraph 24.5 a & b)

The lease required 2,056 lineal feet of finished partitioning as a standard fit up requirement. This partitioning was to include 205 lineal feet of sound conditioned partitioning.

In addition to the 2,056 lineal feet of partitioning already existing in the building, which was not disturbed, partitioning was demolished in specified locations and new partitioning added in other locations pursuant to Paragraph 24.4. The State is not entitled to a credit for the cost of demolishing partitioning and adding new partitioning in accordance with the approved design since Appellant met the standard fit up requirement for finished partitioning when it completed painting of the required amount of existing partitioning. Nor is the State entitled to a credit for the cost of partitioning required to replace spaces left by doors relocated to conform to the State's design.

The State's credit in the amount of \$8,869.76 for the standard fit up requirement of 2,056 lineal feet of finished partitioning and 205 lineal feet of sound conditioned partitioning is computed as follows:

Painting and finishing existing partitioning (\$4,581.36) and for STC 50 partitioning (\$2,341.78) (Rule 4 File, Tab 4; Stipulation of Facts ("Stipulation"), Exhs. 3 & 4, Voucher 1-5-84)	\$6,923.14	
5/8 inch Fire Channel (Stipulation, Voucher 1-5-84; Rule 4 File, Tab 3)	1,140.28	
Profit paid to contractors (10%)	<u>806.34</u>	\$8,869.76

Ingress and Egress Doors and Interior Doors (Lease, Paragraphs 24.5c and 24.5d)

The building had 45 doors at the time the lease was entered. The standard fit up requirement provided for 82 doors. The State is entitled to a credit for the cost of finishing the 45 doors present in the building at the time of lease and the cost of providing, as well as finishing, 37 additional doors. The State is not entitled to a credit for costs attributable to relocating doors in accordance with the State's design nor for the costs attributable to providing 44 doors (126 existing after renovation less 82 required) above the standard fit up requirement. The State's credit is \$2,593.25 computed as follows:

Painting - 82 doors X \$28.75 per door (Rule 4 File, Tabs 3 & 4; Stipulation, Exhs. 3 & 4, Voucher 2-8-84) <sup>4</sup>	\$2,357.50	
Profit paid to contractors	<u>235.75</u>	\$2,593.25

<sup>4</sup>See Materials, p. 23, infra.

The State is not entitled to a credit for locks or other modifications to existing doors. These modifications were extras to be paid for by the State pursuant to Paragraph 24.4 since they were not specified as a standard fit up requirement in the lease.

Electrical Outlets (Lease, Paragraph 24.5e)

The lease provided for one duplex electric outlet per 150 square feet of leased space. The State is entitled to a credit in the amount of \$13,226.14 computed as follows:

242 duplex electrical outlets x \$43.08 Stipulation, Exh. 3; Rule 4 File, Tab 3)	\$10,425.36	
CRT Circuits (Stipulation, Exh. 4, Voucher 1-5-84) <sup>5</sup>	1,598.40	
Profit paid to contractors (10%)	<u>1,202.38</u>	\$13,226.14

Telephone Outlets (Lease, Paragraph 24.5f)

Paragraph 24.5 f of the lease entitles the State to a rent credit for the actual costs of installing one telephone outlet per 150 square feet of leased space, or 205 telephone outlets. (Findings of Fact No. 12). Following renovation, there were 160 telephone outlets. Since the telephone outlets did not exceed the 205 telephone outlets for which the State was entitled to a rent credit as a standard fit up requirement, we find the State is entitled to a credit for installation of telephone outlets computed as follows:

Telephone Outlets: 160 outlets at \$12.65 (Rule 4 File, Tab 3; Stipulation, Exh. 4)	\$2,024.00	
Profit paid to contractors (10%)	<u>202.40</u>	\$2,226.40

220 Volt Electric Outlet Per Floor (Lease, Paragraph 24.5g)

The State is entitled to a credit for one 220 volt electric outlet per floor. The State's credit is computed as follows:

The credit for one 220 volt electric outlet per floor is \$290.75 (Stipulation, Exh. 3; Rule 4 File, Tab 3)	\$290.75
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<sup>5</sup>A credit was not allowed for telephone poles and wiremold (i.e., \$9,244.00 credit claimed by State). These items were required as a result of the State's design.

Profit paid to contractors (10%)	<u>29.08</u>	<b>\$319.83</b>
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Finished Ceilings (Lease, Paragraph 24.5h)

The lease provides that the State is entitled to a credit for the cost of all finished ceilings. The State's credit is computed as follows:

Repair Accoustical Ceiling (Stipulation, Exhs. 3 & 4, Voucher, 2-8-84)	\$5,679.65	
Painting (Stipulation, Exhs. 3 & 4, Voucher 2-8-84)	400.00	
Drywall Ceilings, (Stipulation, Exh. 4, Voucher 1-5-84)	8,763.00	
Profit paid to contractors (10%)	<u>1,484.27</u>	<b>\$16,326.92</b>

Finished Flooring 50% (Lease, Paragraph 24.5i)

The lease provides that the State is entitled to reimbursement as a rent credit for 50% of the cost of finished flooring. The State's credit is computed as follows:

\$15,874.20 (Rule 4, Tab 3; Stipulation, Exh. 4, Voucher 1-24-84)	\$15,874.20	
Profit paid to contractors (10%)	<u>1,587.42</u>	<b>\$17,461.62</b>

HVAC System (Lease, Paragraph 24.5j)

Appellant agreed to provide a complete and fully functioning heating, ventilation, and air conditioning system (HVAC) as a standard fit up requirement. The State is entitled to a credit for repair and adjustment to the existing air-conditioning system and for providing additions to the HVAC system. The State's credit is computed as follows:

Stipulation, Exh. 4, Voucher 1-5-84	\$555.00
Stipulation, Exh. 4, Voucher 2-8-84	175.00
Stipulation, Exh.4, Voucher 2-8-84, State stipulates to 50% credit	1,500.00
Stipulation, Exh. 4, Voucher 2-10-84	529.16

Stipulation, Exh. 4, Voucher 2-14-84	4,119.68	
Stipulation, Exh. 4, Voucher 2-16-84	<u>3,187.50</u>	
	\$10,066.34	
Profit paid to contractors (10%)	<u>1,006.63</u>	\$11,072.97

Lighting - 50 Foot Candle Power (Lease, Paragraph 24.5k)

The lease requires sufficient lighting to produce 50 foot candle power at desk level. The State's credit is computed as follows:

Switches:	56 at \$23.00 each (Stipulation, Exh. 4, Voucher 2-8-84)	\$1,288.00	
Lighting:	266 at \$39.20 each (Stipulation, Exh. 4, Voucher 2-8-84)	10,427.20	
Lighting:	21 at \$86.25 each (Stipulation, Exh. 4, Voucher 2-8-84)	1,811.25	
Lighting:	(Stipulation, Exh. 4, Voucher 3-9-84, Invoice No. 466; Rule 4 File, Tab 3)	283.50	
Lighting:	(Stipulation, Exh. 4, Voucher 3-9-84, Invoice No. 465; Rule 4 File, Tab 3) (Lighting also required under Paragraph 24.5l)	\$2,667.08	
Lighting:	(Stipulation, Exh. 4, Voucher (1-5-84))	<u>230.00</u>	
		\$16,707.03	
Profit paid to contractors (10%)		<u>1,670.70</u>	\$18,377.73

Code Required Renovations, Except Maryland Building Code for the Handicapped and Aged (MBCHA) (Lease, Paragraph 24.5)

The State is entitled to a credit for renovations required to comply with codes, except the MBCHA.<sup>6</sup> The State's credit is computed as follows:

Wire Mesh Stairways (Stipulation, Exh. 4, Voucher 1-5-84)	\$1,500.00	
Exit Battery Packs (Stipulation, Exh. 4, Voucher 2-8-84)	2,923.00	
Fire Alarm System (Stipulation Exh. 4, 2-8-84)	5,766.00	
Flow Switch and Magnetic Door Holder (Stipulation Exh. 4, Voucher 2-8-84)	287.50	
Railing, Window Front (Stipulation, Exh. 4, Voucher 3-9-84)	365.00	
Sprinkler System (Lease Paragraphs 24.2 and 24.5; Stipulation, Exh. 4, Voucher 1-5-84)	1,097.23	
Door Closer (Stipulation, Exh. 4, Voucher 3-9-84)	61.43	
	<u>\$12,000.16</u>	
Profit paid to contractors (10%)	<u>1,200.02</u>	\$13,200.18

Miscellaneous Credits

The following represent costs that were charged to the State, although these costs are Appellant's responsibility because the terms of the lease do not provide that the State is responsible for such costs, the State ordinarily does not pay such costs, or because the lease did not provide that these costs were to be allocated to the State under Paragraphs 24.1, 24.3, or 24.4.

Demolition Permit, No. 17020, City of Gaithersburg (Stipulation, Exh. 4, Voucher 1-24-84)	\$15.00
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<sup>6</sup>The State is not entitled to credit for cost items such as disposal and dump costs (Stipulation, Exh. 4, Voucher 2-8-84), since these type costs are costs to implement the State's design. See pp. 13-14 supra.

Building & Occupancy Permit, No. 17275, City of Gaithersburg (Stipulation, Exh. 4, Voucher 1-24-84)	1,850.00
Window Cleaning (Stipulation, Voucher 2-10-84, Invoice No. 445; Rule 4 File, Tab 3; Lease, Paragraph 8.2.3) <sup>7</sup>	360.00
Miscellaneous Repairs (Rule 4 File, Tab 3)	1,090.00
Telephone and Service (Stipulation, Exh. 4, Letter 11-21-84). (Lease does not address telephone service).	157.98
WSSC Water Permit (Stipulation, Exh. 4, Voucher 3-9-84)	5,344.00
Caulking and Outside Waterproofing (Stipulation, Exh. 4, Voucher 3-9-84) Lease, Paragraph 5.3) <sup>8</sup>	240.00
Painting Building Railings and Block (Stipulation, Exh. 4, Voucher 4-24-84) Lease, Paragraph 5.3)	365.00
Phone Call (Stipulation, Exh 4, Voucher 4-24-84))	2.34
Replace Broken Glass (Stipulation, Exh. 4, Voucher 4-24-84))	205.47
Repainting 126 Doors (Stipulation, Exh. 4, Voucher 5-9-84)	364.00
Miscellaneous cleanup and repair (Stipulation, Exh. 4, Voucher (3-9-84)).	<u>386.00</u>
	<b>\$10,379.79</b>

<sup>7</sup> Paragraph 8.2.3 of the lease provides that Appellant shall provide and pay for janitorial services.

<sup>8</sup> Paragraph 5.3 of the lease provides that repairs to the exterior of the building are to be paid for by Appellant.

Profit paid to contractors (10%)	\$1,037.98	\$11,417.77
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Labor Credit

The rent credit for labor is computed as follows:

\$16,634.75 - Stipulation, Exh. 4, Voucher 1-5-84. The record does not provide a basis for allocating this cost either to the State pursuant to Lease Paragraphs 24.1, 24.3, or 24.4 or to Appellant pursuant to Paragraph 24.5. However, the State stipulates that it is entitled to a credit pursuant to 24.5 only in the amount of \$8,317.37. Stipulation, Exh. 4, 1-5-85

The State credit is:	\$8,317.37
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\$10,132.25 - Stipulation, Exh. 4, Voucher 2-8-84. There is no record evidence establishing a basis for allocating this cost either to the State pursuant to Lease Paragraphs 24.1, 24.3, or 24.4 or to Appellant pursuant to Paragraph 24.5. This labor expense is allocated to the State as a credit, since Appellant has the burden of proof.

The State credit is:	<u>\$10,132.25</u>
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Total Labor	\$18,449.62
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Profit paid to contractors (10%)	<u>1,844.96</u>
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\$20,294.58

Materials Credit

The rent credit for materials is computed as follows:

Swing door Cost: \$5097.33 for 82 doors (Stipulation, Exh. 4, Voucher 1-5-84; Letter 11-21-84

Cost per door:  
 $\$5097.33 / 82 \text{ doors} = \$62.16 \text{ per door}$

Forty-five doors existed in the building; Appellant was responsible for the cost of providing 37 additional doors to meet the standard fit up requirement for 82 doors.

Allowed credit:

37 doors x \$62.16 per door: \$2,299.92

The Board has not allowed the State a credit for demolition material and dump fees in the amount of \$2,108.44 since these costs are allocable to the State under its responsibility for renovations based on its design; see Paragraph 24.1 & 24.4 of the lease.

Demolition Costs - \$3,904.80;  
the State credit claimed is \$3,523.16  
(Stipulation, Exh. 4, Voucher 2-8-84;  
Letter June 11, 1984).

The State is not allowed a credit for these demolition costs since the costs described pertain to costs allocable to the State for renovations completed pursuant to Lease Paragraphs 24.1, 24.3 & 24.4 based on the State's design.

Materials - \$3,942.79 claimed as a State credit. (See Stipulation, Exh. 4, Voucher 2-8-84).

Although the description of the cost of materials in the amount of \$3,942.79 appears to include items for which Appellant may be entitled to a credit, there is no reasonable basis for not segregating and allocating this cost between the State and Appellant. Therefore, this amount is allocated to the State, since Appellant has the burden of proof.

\$3,942.79

Total Materials

\$6,242.71

Profit paid to contractors (10%)

624.27

\$6,866.98

Total State credits allowed

\$142,254.13

The State is entitled to \$142,254.13 as a credit against the rent and expense payments under the terms of the lease.

For the foregoing reasons, therefore, the appeal is sustained in part and denied in part.