



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DENIED: May 12, 2023

CBCA 7153

ROCKSIDE-77 PROPERTIES LLC,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Kenneth J. Fisher and Dennis A. Nevar of Kenneth J. Fisher Co., L.P.A., Cleveland, OH, counsel for Appellant.

Kristi Singleton, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **RUSSELL**, **GOODMAN**, and **KULLBERG**.

**GOODMAN**, Board Judge.

Appellant, Rockside-77 Properties LLC (Rockside), has appealed a decision of a contracting officer of respondent, the General Services Administration (GSA), pursuant to the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101–7109 (2018). The appeal is decided on the written record pursuant to Board Rule 19 (48 CFR 6101.19 (2021)).<sup>1</sup> We deny the appeal.

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<sup>1</sup> The parties have filed briefs, reply briefs, and joint stipulations. These stipulations have been edited to remove proper names and to abbreviate some terms. In some instances, additional information from the documents cited has been added for completeness and clarity. References to exhibits are to the appeal file.

## Background

### GSA's Solicitation, and Rockside's Offers in Response

Before the parties entered into the lease at issue in this appeal, Rockside was leasing commercial office space to GSA for GSA's tenant agency at 5005 Rockside Road, Independence, Ohio, the same property which is the subject of the lease at issue in this appeal (the property). During that prior lease, the cost of electricity consumed by the tenant agency was not included in the rental rate. GSA paid Rockside directly for the cost of electricity in addition to the payment for the rental rate. Exhibit 6 at 1.

GSA issued a solicitation for offer (SFO), GS-O5B-18114, dated February 8, 2008, for office space in Cleveland, Ohio. Exhibit 2 at 5, et seq. In April 2008, Rockside submitted an initial offer in response to the SFO to lease space to GSA in the property. Exhibit 1 at 9. The initial offer consisted, in part, of GSA Form 1364A (Form 1364A), which is titled "Proposal to Lease Space," and GSA Form 1217,<sup>2</sup> "Lessor's Annual Cost Statement" (Form 1217). *Id.* at 2-4. Both forms were signed by Rockside's Vice President of Development.

In Form 1364A, Section II.a of the initial offer, the annual proposed rent was characterized as "ANNUAL RENTAL, Full Service Lease" and stated as the total annual amount \$510,354. That total annual amount included total annual operating costs of \$116,343 (from Form 1364A, Section II.b, and Form 1217, line 27). The total annual operating costs on Form 1217 included the category "OTHER" at line 26, in the amount of \$13,393.

Section III.19 of Form 1364A<sup>3</sup> contained a handwritten statement:

Landlord acknowledges that it has read through and initialed each page of the SFO, however Landlord is not committing to each and every issue outlined in the SFO. Landlord has reviewed the SFO in an effort to keep negotiations moving forward and is offering the building in its current condition.

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<sup>2</sup> Form 1217 includes two columns for each category of operating costs, one column for the entire building and the other column for the leased space in the building. Operating costs discussed in this decision are in the column for the leased space.

<sup>3</sup> In response to the Board's order dated April 17, 2023, the parties submitted into the record a complete copy of Form 1364A, as the second page was initially omitted.

Joint Response to Board's April 17, 2023 Order (Apr. 20, 2023) at 5.

In June and July 2008, Rockside submitted two additional offers, noted in the abstract of offers as second and third offers. Exhibit 1 at 9-11. The record does not contain Forms 1364A and 1217 for these offers or any indication of who signed these offers. For the third offer, the abstract of offers contains a note in the category RSF [Rentable Square Foot] that states: "[I]ncludes \$2.61 in parking and electricity costs which increase 3% [per] annum." *Id.* at 9.

In August 2009, Rockside submitted a fourth offer, characterized in the abstract of offers as a "best and final offer." Exhibit 1 at 9. The best and final offer consisted in part of Form 1364A, signed by the listing agent (who was not the person who signed the form in the initial offer), and Form 1217, signed by a person who states he is an agent of the owner, and not the person who signed Form 1364A in the best and final offer, or the person who signed the form in the initial offer. Exhibit 1 at 19-20; Exhibit 24 at 1-2.<sup>4</sup>

In the best and final offer, on Form 1364A, Section II.a, the annual proposed rent was characterized as "ANNUAL RENTAL, Full Service Lease" and stated as \$545,700.73, which included in Form 1364A, Section II.b, and Form 1217, line 27, total annual operating costs of \$144,696. The total annual operating costs on Form 1217 included the category "OTHER" at line 26, in the amount of \$41,476.

Section III.19 of Form 1364A contained the following statement:

Also, in line 26 of Form 1217, this figure includes the annual cost for in-suite electric for the government's leased area. All Tenants of the building typically pay in-suite electric directly to the utility provider. However, in the government's case, this cost will be included in the lease rental rate.

Exhibit 1 at 21.

Comparing the amounts for the categories of operating costs entered on Form 1217 for the initial offer and best and final offer, the only difference in the amounts was on line 26, "OTHER," which, as stated above, was increased in the best and final offer to include the cost of electricity that was to be included in the rental rate, rather than the tenant paying for electricity directly to the utility provider. The difference in lines 26 between the two proposals was \$28,353 (\$41,746 - \$13,393). The total proposed annual operating costs were

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<sup>4</sup> In response to the Board's order dated April 6, 2023, the parties identified Exhibit 24, GSA Form 1217, as the version submitted by Rockside in its best and final offer.

therefore increased by this amount—\$144,696 - \$116,343 = \$28,353. The best and final offer states that this category includes GSA's electricity, thereby including the annual cost of electricity in the annual operating expenses and therefore in the annual rent.<sup>5</sup> It cannot be determined from the record what portion of the difference of \$28,353 between the operating costs in the first and the best and final offers is for the addition of electricity as the record does not include the second and third offers. However, it is clear that the cost of electricity was added to the operating costs, and also to the annual rent, as indicated in the note in the abstract of offers with regard to the third offer and the inclusion of the statement quoted above in Section III.19 of Form 1364A in the best and final offer.

### The Resulting Lease

GSA accepted Rockside's best and final offer on October 27, 2009. Exhibit 2 at 2. On or about February 22, 2010, Rockside and GSA entered into a ten-year lease for real property (the lease) relative to a portion of the property consisting of approximately 18,902 square feet (the premises) for the tenant agency, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), wherein monthly base rent is paid in arrears. Exhibit 2; Joint Stipulation (JS)1.

Pursuant to section 7 of the lease, the following documents were made a part thereof:

- a) Paragraphs 12 through 24 on pages 3 and 4 [Exhibit 2];
- b) [SFO] No. GS-05B-18114 dated 02/04/08, pages 1 through 47 [as subsequently amended by Amendment No. 1 to the [SFO] dated July 29, 2009. Exhibit 2];
- c) Special Requirements of the ATF, including exhibits consisting of 51 pages [Exhibit 15];
- d) GSA Form 3517B (REV. 11/05) consisting of 33 pages [General Clauses, Exhibit 16];
- e) GSA Form 3518 (REV. 7/04) consisting of 7 pages [Representations and Certifications, Exhibit 17];

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<sup>5</sup> The proposed rent was increased by more than the increase in operating expenses because of changes in two other components of the rental rate—the amortization of tenant improvements and shell rental.

- f) Floor Plan, including the leased space [Exhibit 18].

The lease was signed and initialed on each page by the president of Rockside and a GSA contracting officer.

Section 9 of the lease states that GSA accepted Rockside's best and final offer on October 27, 2009, and states that "[t]his lease reflects the terms and conditions of the accepted Best and Final Offer." Exhibit 2 at 2. Section 3 of the lease identifies the annual rent as \$545,700.73, the same annual rent amount offered in the best and final offer. *Id.* at 1. Section 13 of the lease states that operating costs included in the annual rent will be adjusted annually and includes the identical amount of operating costs offered in the best and final offer, which included the cost of electricity:

Operating cost adjustment. The rent is subject to annual operating cost adjustments in accordance with Section 3.7 of [the SFO] within this lease. It is understood and agreed that for operating cost adjustment purposes, the first year's operating cost will be \$144,696.00.

*Id.* at 3.

Section 3.7 of the SFO, referenced in section 13 of the lease above, specifically states that the cost of electricity is included in the operating costs:

#### OPERATING COSTS (SEP 2000)

A. Beginning with the second year of the lease and each year thereafter, the Government shall pay adjusted rent for changes in costs for cleaning services, supplies, materials, maintenance, trash removal, landscaping, water, sewer charges, heating, *electricity*, and certain administrative expenses attributable to occupancy. *Applicable costs listed on GSA Form 1217, Lessor's Annual Cost Statement, when negotiated and agreed upon, will be used to determine the base rate for operating costs adjustment.*

Exhibit 2 at 22 (emphasis added).

In response to the Board's order dated April 6, 2023, the parties identified Exhibit 24—the version of GSA Form 1217 that Rockside submitted with its best and final offer—the Form 1217 that was negotiated and agreed upon and referred to in section 3.7 above.

Section 6.B of the lease contained the following provisions referring to the costs of utilities to be included in the annual rent:

The Lessor shall furnish to the Government, as part of the rental consideration, . . . [a]ll services, *utilities*, building, parking areas, and grounds maintenance and other operations as set forth elsewhere in this lease.

Exhibit 2 at 2 (emphasis added).

Section 1.8.E.1.b of the SFO, incorporated into the lease, states that operating costs are included in the annual rent:

Rate structure . . . shall include . . . [t]he annual cost (per usable and rentable square foot) for the cost of services and utilities. *This equals line 27 of GSA Form 1217 of GSA Form 1217, Lessor's Annual Cost Statement, divided by the building size (shown at the top of both GSA Form 1364[A], Proposal to Lease Space, and form 1217) for usable and rentable square feet respectively.*

Exhibit 2 at 12 (emphasis added).

In response to the Board's order dated April 6, 2023, the parties identified Exhibit 24—the version of GSA Form 1217 that Rockside submitted with its best and final offer—as the Form 1217 referred to in section 1.8.E.1.b above.

Section 7 of the SFO, incorporated into the lease, reiterated the inclusion of utilities in the rental rate:

#### 7.1 SERVICES, UTILITIES, MAINTENANCE: GENERAL

Services, *utilities*, and maintenance shall be provided by the Lessor as part of the rental consideration.

....

#### 7.4 UTILITIES

*The Lessor shall ensure that utilities necessary for operation are provided and that all associated costs are included as part of the established rental rate.*

Exhibit 2 at 41 (emphasis added).

With regard to potential future amendments to the lease, section 22 of the lease reads:

Terms and conditions of this lease: All terms and conditions of this Lease as expressly contained herein represent the total obligations of the Lessor and the Government. Any agreements, written or oral between the Lessor and Government prior to the execution of this Lease are not applicable or binding. *This agreement may be amended only by written instrument executed by the Lessor and Government.*

Exhibit 2 at 4 (emphasis added).

#### Supplemental Lease Agreement Nos. 1 Through 4

On or about May 19, 2011, the parties entered into a supplemental lease agreement (SLA) No. 1, which confirmed that: (a) the commencement date of the lease was March 1, 2011; and (b) operating expenses were subject to consumer price index (CPI) escalations. Exhibit 3 at 1-2; JS3. On or about May 20, 2011, the parties entered into SLA No. 2. Exhibit 3 at 4; JS4. On or about June 30, 2011, the parties entered into SLA No. 3, which confirmed that operating expenses were subject to CPI escalations.<sup>6</sup> Exhibit 3 at 4; JS5. On or about June 30, 2011, the parties entered into SLA No. 4. Exhibit 3 at 5; JS6. The SLAs were signed by the president of Rockside and the same GSA contracting officer who had signed the lease.

#### GSA Form 300

Approximately seven-and-a-half months after lease commencement, on or about October 19, 2011, a new GSA contracting officer issued a GSA Form 300, "Order for Supplies and Services" (Form 300), which ordered \$71,568 of electricity consumption for 120 months at \$596.40 a month for the time period from January 1, 2012, through December 31, 2022. This form was signed by a different GSA contracting officer than the one who had signed the lease and the first four SLAs. A copy of the signed document was sent to a GSA contract specialist and to a GSA property manager. The Form 300 was not signed by a representative from Rockside. Exhibit 19.

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<sup>6</sup> SLA Nos. 1 through 3 referenced the fully serviced rental rate, which was amended in each. There is no mention there that the change in rental rate was the result of reducing the operating costs, which were confirmed to be subject to CPI escalation.

It is not apparent from the record who from Rockside received and reviewed the Form 300. After the Form 300 was issued, Rockside began invoicing GSA for electricity. GSA paid these invoices for approximately ten years.

#### The Dispute About Responsibility for Electricity Payments

On or about March 1, 2021, Rockside and GSA entered into Lease Amendment No. 5, wherein the term of the lease was extended for a period of two years, from March 1, 2021, through February 28, 2023 (the extension term). Exhibit 20; JS8.

On March 3, 2021, yet another GSA contracting officer—one other than the ones who had signed the lease, the SLAs, and the GSA Form 300—informed Rockside that the electric utility payments made to Rockside commencing March 1, 2011, had been paid in error and that the cost of utilities was included in the base rent. Exhibit 4; JS9. He subsequently explained that, although the prior GSA lease with Rockside had not included the cost of electricity as part of the rent, the current lease did. Exhibit 6 at 1. That meant, he further explained, that the GSA Form 300 was issued erroneously and that Rockside should not have been invoicing, and GSA should not have been paying, invoices for electricity over the course of the prior ten years. *Id.*

On April 15, 2021, that same GSA contracting officer issued a formal demand letter requiring that Rockside reimburse GSA \$91,176.84 for electric utility payments made from March 1, 2011, through January 31, 2021 (the reimbursement demand). Exhibit 6; JS10. The letter advised that the amount was considered a contract debt pursuant to Federal Acquisition Regulation (FAR) 32.601(b)(8) (48 CFR 32.601(b)(8) (2021)), which governs duplicate or erroneous payments, and that any amounts not paid within thirty days from the date of the demand letter would bear interest from the date of the demand until repayment, at the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. § 7109 (2018). Exhibit 6.

In correspondence dated April 23, 2021, Rockside's counsel disputed the reimbursement demand as being inconsistent with: (a) the terms of the lease and SLAs wherein electric utility consumption was not included within the base rental rate for the premises; (b) Form 300, which expressly authorized payment to Rockside for electrical utility consumption at the premises; and (c) the fact that monthly electric utility payments had been made by GSA for over ten years without dispute or objection of any kind or description whatsoever. Exhibit 8; JS11. In that correspondence, Rockside's counsel wrote, "[W]e consider your continued persistence in this matter to be malicious prosecution." Exhibit 8 at 2.



On April 26, 2021, the president of Rockside sent an email message to the contracting officer who had issued the demand letter dated April 15, 2021, stating in part, “[W]e’ll leave it up to [Rockside’s counsel] to determine if you are instead violating pertinent regulation by continuing your witch hunt in the face of all known facts.” Exhibit 9 at 1.

In correspondence dated May 12, 2021, GSA maintained its reimbursement demand in the amount of \$91,176.84 and informed Rockside that GSA would begin withholding a monthly amount of \$7,598.07 from base rental payments due under the lease for a period of twelve months if Rockside did not propose an alternate payment schedule. Exhibit 10; JS12.

In correspondence dated May 18, 2021, Rockside’s counsel: (a) continued to dispute the reimbursement demand; (b) requested specific documentation supporting GSA’s unsubstantiated claims; and (c) referenced the applicable six-year CDA statute of limitations, as set forth in 41 U.S.C. § 605(a). Exhibit 11; JS13. In that correspondence, Rockside’s counsel wrote, “[Y]our letter makes certain unsubstantiated and false claims which can only be interpreted as spurious and malicious prosecution.” Exhibit 11 at 1.

On June 16, 2021, the GSA contracting officer issued a final decision,<sup>7</sup> wherein: (a) the reimbursement demand was reduced to \$57,807 relative to the time period of July 2015 through May 2021 in partial recognition of the applicable six-year CDA statute of limitations; (b) GSA informed Rockside that it would begin withholding a monthly amount of \$9,634.50 from base rental payments due under the lease for a period of six months unless Rockside preferred a different repayment plan; and (c) GSA informed Rockside that the money in dispute was subject to the interest rate established by the Secretary of the Treasury, as provided in 41 U.S.C. § 7109. Exhibit 14; JS14.

On June 22, 2021, Rockside filed a notice of appeal of the contracting officer’s decision pursuant to the CDA.

As of December 1, 2021, GSA has withheld the total amount of \$57,807 (the total withholding) from rental amounts due under the original term of the lease, calculated at \$9,634.50 for a period of six months. JS15.

During the first eighteen months of the extension term, which commenced on March 1, 2021, Rockside incurred—what it alleges to be—unreimbursed costs totaling \$17,350.29 for electricity consumed at the premises. Exhibit 25; JS16.

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<sup>7</sup> The contracting officer’s final decision was signed by the same contracting officer who issued the demand letter.

On or about August 2, 2021, Rockside and GSA entered into a new lease relative to a separate premises located at the property, wherein utility charges are specifically included within the base rent per section 6.02 thereof. Exhibit 23; JS17.

### Discussion

Rockside has appealed a government claim for recoupment of alleged erroneous overpayments by GSA for electricity consumption by its tenant agency occupying premises pursuant to a lease with Rockside. GSA asserts that the negotiated annual rental rate of the lease included the cost of utilities, specifically electricity, but that it mistakenly paid Rockside directly for electricity, in addition to the rent, for ten years. Recognizing that recoupment of some payments is barred by the CDA statute of limitations, GSA seeks to recover alleged overpayments which it believes are not barred—from July 2015 through August 2022—totaling \$57,807. GSA has recovered this total by withholding a portion of the rent payments due in June 2021 through November 2021.

Rockside asserts that the provisions of the lease and the SLAs make clear that the cost of electricity was not included in the annual rental rate, and many provisions in the lease, such as for the provision of electrical panels, indicate that Rockside was only required to equip the building so that electricity could be delivered to the building.

Rockside has appealed the contracting officer's decision, seeking return of the withheld alleged overpayments in the amount of \$57,807. Rockside also asserts that, in addition to the withheld amount, it is entitled to payment of additional electrical charges incurred until the end of the lease term, which GSA has not paid. During the first eighteen months of the extension term of the lease, these bills totaled \$17,350.29.

Rockside's best and final offer was accepted by GSA. Forms 1364A (Sections II.a, II.b, and III.19) and 1217 (lines 26-27) of Rockside's best and final offer to the SFO clearly and unambiguously include the cost of electricity in the annual operating costs, and the operating costs are included in the annual rent. Section 9 of the lease states that the lease "reflects the terms and conditions of the accepted best and final offer."

Reading the lease as a whole, the plain language of multiple sections of the lease unambiguously includes the payment for the cost of utilities, which includes the cost of electricity, in the operating costs. The operating costs are included in the annual rent (sections 1.8.E.1.b, 7.1, and 7.4). The amount of annual rent, \$545,700 (section 3), and operating costs, \$144,696 (section 13), are the same as these amounts in Forms 1364A and 1217 of the best and final offer. Other lease provisions unambiguously state that utilities (section 6.B), and specifically electricity (section 3.7), are included in the operating costs and the operating costs are included in the annual rent. The version of Form 1217 included in the

final offer, which includes the cost of electricity in the operating costs, has been identified by the parties as the one referenced in lease sections 13 and 3.7 as the version “negotiated and agreed upon [to] be used to determine the base rate for operating costs adjustments.” The SLAs affirm that the operating costs are subject to CPI escalation over the lease term. However, there is no language in the SLAs that removes the cost of electricity from the operating costs and the annual rent.

GSA seeks recovery of the erroneous payments for electricity pursuant to 48 CFR 32.601(b)(8) as “duplicate and erroneous payments.” Generally, when the Government makes an erroneous payment, it is obligated to seek recovery. The party seeking recovery of the erroneous payment bears the initial burden of proof. *TST Tallahassee, LLC v. Department of Veterans Affairs*, CBCA 1576, 11-1 BCA ¶ 34,672, at 170,805; *Nash Janitorial Service, Inc.*, GSBCA 7338, 88-2 BCA ¶ 20,809, at 108,187. “[T]he Government has inherent authority to recover sums illegally or erroneously paid, and that it cannot be estopped from doing so by the mistakes of its officers or agents.” *Wright Runstad Properties Limited Partnership v. United States*, 40 Fed. Cl. 820, 827 (1998). Here, the clear and unambiguous provisions of the lease meet GSA’s initial burden to prove that the payments were erroneous, as the cost of electricity is included in the operating costs and therefore in the annual rent.

Rockside has not rebutted GSA’s proof that the payments were erroneous.<sup>8</sup> Rockside cites various sections of the lease that it alleges support its position that the lease only required the landlord to improve the property, with electrical panels and other equipment, so that electricity could be received from the service provider. These sections of the lease do not negate or contradict the sections that include the cost of electricity in the operating costs and the rental rate.<sup>9</sup>

Rockside also attempts to rebut GSA’s assertion of erroneous payments by relying on the Form 300, issued by GSA approximately seven-and-a-half months after lease commencement, which directed Rockside to bill for, and GSA to pay, \$596.40 per month for

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<sup>8</sup> Rockside’s president without support responded to GSA’s demand for recoupment with allegations of “witch hunt” while its counsel characterized the demand as “unsubstantiated,” a “false claim,” “spurious,” and “malicious prosecution.” In light of the unambiguous language of the lease, “hyperbole [of that nature] is no substitute for evidence,” *Rhee v. SHVMS, LLC*, No. 21-cv-4283, 2023 WL 3319532, at \*13 (S.D.N.Y. May 8, 2023), and provides no basis for a judgment in Rockside’s favor.

<sup>9</sup> The text of these sections of the lease are not included in this decision as they are not relevant to the resolution.

ten years for electricity, even though the cost of electricity was included in the annual rent. Rockside argues that the Form 300 was binding, that it proves that the cost of electricity was not included in the rent, and that GSA paid for electricity without objection for ten years. GSA asserts that because electricity had been paid separately during the term of its previous lease of the property, the Form 300 was issued by mistake.

While there is insufficient evidence in the record to determine why the Form 300 was issued, we need not do so as its terms were obviously contrary to the clear and unambiguous terms of the lease. As the Form 300 was not signed by Rockside, and therefore not signed by both parties, pursuant to Section 22 of the lease, it cannot be considered an amendment to the lease. Furthermore, as the cost of electricity was included in the operating costs and therefore in the annual rent, there was no benefit to GSA and therefore no consideration for GSA to issue the Form 300 and make additional payments for electricity. *See Collecto, Inc. dba EOS CCA v. Department of Education*, CBCA 6001, 22-1 BCA ¶ 37,997, at 184,523 (2020) (“The term ‘benefit’ means the receipt as the exchange for a promise some performance or forbearance which the promisor was not previously entitled to receive.”). Payments for the cost of electricity made in response to the Form 300 were erroneous overpayments.

GSA’s continued payment for ten years cannot be construed as acquiescence or as a basis to interpret a lease in a manner contrary to its unambiguous terms. In a case in which GSA erroneously paid property tax, this Board stated in *JBG/Federal Center, L.L.C. v. General Services Administration*, CBCA 5506, 18-1 BCA ¶ 37,019:

Pre-dispute conduct can be considered, however, only if a provision is ambiguous. *P.J. Dick Inc. v. General Services Administration*, GSBCA 12151, 96-1 BCA ¶ 27,955 [1995], at 139,641; *Equitable Life Assurance Society of the United States*, GSBCA 8909, 90-3 BCA ¶ 23,130, at 116,130. Here, the provision is not ambiguous. Therefore, while the reasons for GSA’s payment of the full amount of the property tax for eight years remain unexplained, that conduct cannot be relied upon to interpret this provision in a manner contrary to its plain language.

*Id.* at 180,276-77.

As GSA’s payments pursuant to the Form 300 for the cost of electricity were clearly erroneous, GSA is entitled to recoup payments not barred by the statute of limitations. Recognizing that recoupment of some of the earlier payments are barred by the applicable statute of limitations, GSA has withheld only those sums that were not arguably

time-barred.<sup>10</sup> Rockside is not entitled to repayment of the amounts withheld, nor is it entitled to the additional amounts it seeks for the actual electrical consumption during the extension term of the lease, for which GSA has not paid.

Decision

The appeal is **DENIED**. GSA has recouped the amount of the erroneous overpayments in the amount of \$57,807 by withholding that amount from rental payments due. Rockside is liable for interest on the amount recouped, from the date of the April 15, 2021, demand letter until such time as GSA withheld the funds, calculated pursuant to the interest rate established by the Secretary of the Treasury. *See* 41 U.S.C. § 7109; 48 CFR 32.604(b)(4)(ii). Rockside is not entitled to the additional amounts claimed for the remaining electricity costs incurred during the extension term.

*Allan H. Goodman*

ALLAN H. GOODMAN  
Board Judge

We concur:

*Beverly M. Russell*

BEVERLY M. RUSSELL  
Board Judge

*H. Chuck Kullberg*

H. CHUCK KULLBERG  
Board Judge

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<sup>10</sup> The erroneous payments for which GSA has withheld payment are claims that survive under the “continuing claims doctrine,” which “applies when a claim is ‘inherently susceptible to being broken down into a series of independent and distinct events or wrongs,’” such as the individual monthly payments made here within the limitation period. *JBG/Federal Center*, 18-1 BCA at 180,277 (quoting *Brown Park Estates-Fairfield Development Co. v. United States*, 127 F.3d 1449, 1456 (Fed. Cir. 1997)).