FOOD AND BEVERAGE CONTRACT

This contract, Contract Number TS-001-14 (the "Contract") entered into April __ 2013 ("Effective Date") by and between Volume Services, Inc d/b/a Centerplate ("Contractor" or "Concessionaire") and Commonwealth of Virginia, Virginia Polytechnic Institute and State University ("Virginia Tech")

WITNESSETH:
that the Contractor and Virginia Tech, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

I. **SCOPE OF CONTRACT / PURPOSE:**

   The Contractor shall provide the Concession Services to Virginia Tech as set forth herein. The Venues for this Contract include: Lane Stadium (football), Cassell Coliseum (men's and women's basketball, volleyball, wrestling), English Field (baseball), Tech Softball Park (softball), Rector Field House (track), Burrows-Burleson Tennis Center (Tennis) and other on-campus Olympic sports venues as needed, hereinafter called Venues.

II. **CONTRACT PERIOD:**

   The term of this contract is for a period of seven (7) years effective with the 2013 football season, starting July 1, 2013, and terminating at the end of the 2019-2020 sports season, ending no later than June 30, 2020. There will be an option for three (3) additional two-year renewals, or as negotiated.

III. **OVERVIEW:**

   Contractor understands the ideals and commitment of both Virginia Tech and its intercollegiate athletics programs. Virginia Tech believes it has a unique relationship with its patrons and, as such, an extra degree of consideration will be required in the management of the property. The contractor will be a partner with Virginia Tech and work hand-in-hand with the Athletics Department in seeking to meet goals and expectations.

IV. **CONTRACT RIGHTS AND EXPECTATIONS:**

   A. Statement of Expectations

      Virginia Tech seeks a comprehensive corporate partnership arrangement to include the provision of concession services at Venues. Full concessions services will be required at all football games and both men's and women's basketball games. Partial concessions services will be required for all Olympic sports.

   B. Rights conveyed (except as otherwise excluded or modified)

      1. Exclusive rights to food and beverage concessions sales for all Virginia Tech Athletics Department sponsored or conducted events in Venues.

      2. Exclusive rights to soft drink "hawkling" in bleachers at Lane Stadium with the exception of the outdoor club seating area in the West Stands (993 seats).

   C. Exclusions

      Unless agreed to by Virginia Tech, the following activities and rights shall be excluded from any resulting agreement:
1. Lane Stadium Media, Suite and Club level catering, and Event staff catering.

2. No vending machine rights are granted to the Concessionaire.

3. Advertising rights to stadium cups and concessions containers are held by IMG, the multimedia rights partner of the Virginia Tech Athletics Department.

4. Cold beverage supply rights including soft drink, water, juice and juice drinks, Ready-To-Drink tea and isotonic to the extent provided for in a campus-wide contract.
   (Concessionaire does hold the rights to the sales of these products)

5. Concessions rights to events hosted at Virginia Tech Athletics facilities, but not conducted or sponsored by the Virginia Tech Athletics Department. (e.g. NCAA event, Pre or Postseason game sponsored by outside agency). Every effort will be made to utilize the Concessionaire under contract, however separate terms may need to be negotiated with the Third Party sponsor.

D. Additional Considerations

1. Pricing: As a matter of general policy, prices shall not be higher than those charged at other comparable University snack stand facilities for the same type and quality of product. Prices must be posted on displays permanently in the facility. Pricing will be reviewed annually to insure a high level of service to the University and fair return to the Contractor. Any and all increases in contractor pricing, or amendments to this agreement, must be approved by the Athletics Department.

2. Menu: The Contractor will work to develop an appetizing, reasonably priced selection of menu items. (see Attachment C for 2015 menu and prices)

3. Special Events or Promotions: The University reserves the right, on a limited basis, to allow another vendor supplemental food or beverage rights for a special event or promotions. Additionally, at selected Olympic Sports events, the Athletics Department would like to have a dollar menu in order to increase attendance.

4. Product Brands: Bidder must confirm in writing that the product lines for beverages and snack foods served at the Concession areas can be changed during the contract period should the University award exclusive beverage rights to one company for the Virginia Tech campus; or, when called for as part of a multimedia advertising agreement.

5. Furniture, Fixtures and Equipment (FF&E): The Concessionaire is expected to provide all necessary FF&E. Concessionaire will be responsible for all maintenance and upkeep of FF&E. Concessionaire will be responsible for cosmetic appearance of food stands.

6. Alcoholic Beverages: No alcoholic beverages shall be kept or sold upon the premises of the University without approval in accordance with University policy. At the present time no alcohol sales should be considered.

7. Signage: Concessionaire may not post or permit signs to be posted to directly derive advertising revenue or promote non-profit agencies. Signage intended to facilitate at-event sales is permissible. All signage, design and location must be pre-approved by the Athletics Department. The Athletics Department will have rights to post product brand signage in concessions stands as part of a multimedia advertising sale. Notwithstanding the above, Contractor may post signage at a concession stand indicating a portion of the sales benefits the volunteer group running that stand, upon approval of Athletics.

8. Ownership/License to Use: The ownership of all concession stands used by the Contractor pursuant to the terms of this agreement shall vest in the University. At the termination or expiration of this agreement the Contractor may remove any or all of its
personal property and equipment. The University shall not allow use of the concession areas without the permission of the Contractor.

9. The Concessionaire will be encouraged to work with IMG to exploit the sale of advertising and other media inventory from its suppliers and vendors.

10. Concessionaire will provide commissions payment and sales reports as set forth below:
   a. First Period: July 1 through November 30 (or last home football game) Payment due by January 15
   b. Second Period: December 1 through April 30 Payment due by June 1
   c. Third period: May 1 through June 30 Payment due by August 1
   d. At the end of the third period, Concessionaire will furnish a complete end-of-year accounting summary to the Associate Athletics Director of External Affairs.

11. Concessionaire will procure and provide insurance and all licenses/permits necessary for operations.

12. Virginia Tech currently uses credit/debit card technology. Virginia Tech is aware of the tremendous value that this technology provides in the support of concession sales. Virginia Tech will require the Supplier to accept credit/debit cards as well as utilize the Hokie Passport Card System, and also be responsible for paying all discount fees associated with the Hokie Passport Card System.

13. Miscellaneous terms and conditions of this Contract are attached and incorporated hereto as Attachment A.

E. Commissions, Payment, and Renovation Improvements

1. For the financial arrangements between the parties, see Attachment B, attached and incorporated hereto to this Contract.

2. Checks shall be made payable to Virginia Tech Athletic Department and shall be forwarded to the Associate Athletic Director for External Affairs, unless otherwise directed in writing.

F. Concession Areas Identified

The Virginia Tech Athletics Department will provide the following locations for food concessions:

1. Lane Stadium
   a. Twenty-one (21) permanent concessions stands with concrete floors and block walls, electrical service, fixed counter tops, hand sink, cold and hot water and floor drain line.
   b. Thirty-two (32) Portable stand locations.
2. Cassell Coliseum Concourse
   a. 16 Permanent recessed concession stands with concrete floors and block walls, fixed counters, hand sink and electrical service, some with floor drains.

3. English Field
   a. Modern permanent concessions stands with concrete floors and block walls, fixed counters, hand sink and electrical service, some with floor drains.
   b. One Portable stand location.

G. Quality of Service

It is the requirement of Virginia Tech that the concessions service food be of the highest quality attainable. All concessions areas are to be kept clean, orderly, and sanitary at all times and in strict accordance with all applicable laws, ordinances, rules, regulations, and environmental health and safety requirements.

1. All food must be served in individual styrofoam, paper or plastic containers as approved and designated by Virginia Tech Athletics Department. The selling price of the food items must be mutually agreed on by both parties.

2. All food sold or kept for sale, shall be first quality, wholesome, and pure. No imitation, adulterated or misbranded article shall be sold or kept for sale, and all merchandise kept on hand shall be sorted and handled with due regard for sanitation. Leftover merchandise shall not be sold at any time.

3. All merchandise provided for sale shall be subject to inspection and approval or rejection by Virginia Tech Athletics Department and duly authorized representatives of appropriate governmental agencies.

4. Vendors circulating through seating areas shall have leak-proof baskets and containers for carrying merchandise. Vendors are to prevent scattering of food containers, wrappers, napkins, and other items.

5. The Virginia Tech Athletics Department shall have the right to reject the type of service and the quality of food and drink products and requires that undesirable elements of service, food and drink be discontinued or remedied. Failure of the Concessionaire to take appropriate action after notification, in writing or verbal, from Virginia Tech Athletics Department may result in the cancellation of the contract.

6. The Concessionaire shall constantly endeavor to improve the operation with a view toward developing gross receipts potential and service to the patrons at athletic events.

H. Operating Conditions

1. Location of all concession areas whether temporary or permanent and location of storage space required by the Concessionaire shall be designated by Virginia Tech Athletics Department. The Concessionaire shall acquire no rights to such locations once assigned and Virginia Tech Athletics Department reserves the right to require the Concessionaire to move temporary stands and equipment when the needs of other events require the use of such.

2. The University will, at its own expense, provide limited normal utilities required for concession operations. Anything herein to the contrary notwithstanding, Virginia Tech Athletics Department shall not be liable or responsible for any failure to furnish the services
set forth above occasioned by strike, other work stoppage, federal, state, or local government action, breakdown or failure of apparatus, equipment or machinery employed in supplying the said services, any temporary stoppage for the repair, improvement or enlargement thereof or any act or condition beyond its reasonable control.

3. The concessionaire shall furnish, at its own expense, all labor for the moving and setting up and dismantling of temporary refreshment stands in such locations as may be agreed upon between the Concessionaire and Virginia Tech Athletics Department. Concessionaire will provide labor for selling products throughout the Venues.

4. The Concessionaire shall be entitled to enter upon and remain in said Venues only during specified university events and for a reasonable time prior to and subsequent to events, and only for the purpose of exercising during events the rights and privileges herein mentioned. Notwithstanding the foregoing, the Concessionaire shall be permitted to maintain an office in the football stadium throughout the calendar year.

5. Nothing herein contained shall be held to limit or qualify the right of the University to a free and unobstructed use, occupation and control of its facilities and ingress and egress for itself, Concessionaire, and the public. Representatives of the University and/or Virginia Tech Athletics Department shall have the right to enter upon and have access to all spaces occupied by the Concessionaire during the time events are in and not in operation, and all times when concession employees are present and not present.

6. Vending machines shall not be used except with the prior written approval of Virginia Tech Athletics Department. If the concessionaire desires to use vending machines, he shall submit his proposals concerning items to be sold, suggested prices and recommended locations for the consideration and approval of Virginia Tech Athletics Department.

7. The Concessionaire shall have concessions open and in operation at a reasonable time before, during and after all events as determined by Virginia Tech Athletics Department. The concession shall not be in operation when there are no University events except as may be approved by Virginia Tech Athletics Department.

8. Virginia Tech Athletics Department reserves the right to direct the concessionaire to partially or completely suspend sales during those events with which full concession operations may be incompatible in the opinion of Virginia Tech Athletics Department.

9. The University and/or Virginia Tech Athletics Department shall not be responsible for any goods, merchandise or equipment stored at the various University athletic sites nor will it be responsible for damage resulting from fire, explosion, falling plaster, steam, gas, electricity or power failure, water or rain which may leak from any part of the building or from any other place resulting from dampness, theft, vandalism, flood, earthquake, act of God or any other cause whatsoever.

I. Cleaning and Maintenance

1. The Contractor shall be responsible for removal of all garbage, rubbish and debris from inside concession stands, storerooms, and other areas under the control or use of Contractor and deposit same in containers or areas designated for such purpose by Virginia Tech.

2. The Contractor shall maintain the concession stands, condiment tables, and other areas immediately adjacent to concession areas, as designated by the parties as concession areas, in a clean and satisfactory condition.

3. The Concessionaire must employ the necessary personnel before, during, and after the hours of any events to comply with this provision. The Concessionaire shall provide sufficient waste receptacles inside each location and make certain that they are kept clean and promptly serviced when necessary.
4. The Concessionaire shall not permit any waste, injury, or damage upon or to the Venues or playing fields or the equipment and appurtenances. At the expiration of the concession contract, the concessionaire shall leave the Venues and other facilities and their equipment and appurtenances in at least the same condition as that in which they were at the commencement of the contract less normal wear and tear.

J. Concession Employees

1. The Concessionaire shall be entitled to a reasonable number of employees, who shall be permitted free admission to University sites, provided that the number of such employees shall be approved by the University. Concession employees shall be admitted in accordance with regulations established by the University.

2. The University and/or Virginia Tech Athletics Department reserves the right to deny entry to the University sites and to eject such employees employed by the Concessionaire in the exercise of the concession contract at Virginia Tech's discretion.

3. Concession employees shall at all times be neatly and cleanly uniformed, at the expense of the Concessionaire. Uniforms for employees shall be of standard style. The Concessionaire shall be required to present designs and specifications for distinctive and colorful uniforms for stand operators and vendors within sixty (60) days following the execution of the contract. The approval of the University and/or Virginia Tech Athletics Department shall be required before uniforms are ordered.

4. All concession employees (or just vendor-hawkers, if mutually agreed to) shall be identified by numbers prominently displayed on their persons, either sewn on or at least two inches high. Accurate records must be kept by the Concessionaire at all times so as to assure proper identification of employees at any time required by the University or any other proper agency. Concession employees shall at all times reflect personal cleanliness. Unkempt and unclean employees shall not be accepted.

5. The Concessionaire shall employ a manager who will exercise supervision of the Concessionaire's operation and vendors, satisfactory to the University and/or Virginia Tech Athletics Department and who, or whose known alternate, will be present at the University sites at all times during the operations of the concessions. If at any time the University, or its representative, finds that the concession manager or his alternate is unsatisfactory, the concessionaire shall within a reasonable time (not to exceed thirty (30) days) replace him/her with one who is satisfactory to the University.

6. Concession employees shall at all times be polite and courteous in their dealings with University patrons. Concession employees shall not unreasonably disturb or offend spectators or interfere with the program or event in progress. The University shall be the sole judge in the determination of such matters.

V-XIII. Intentionally Omitted

IX. INVOICES:

Invoices for goods or services provided under this Contract shall be submitted to:

Virginia Polytechnic Institute and State University
Accounts Payable
North End Center, Suite 3300, Virginia Tech
300 Turner Street NW
Blacksburg, VA 24061

X-XI. Intentionally Omitted
XII. CONTRACT ADMINISTRATION:

A. Tim East, Associate Director of Athletics, External Affairs, Athletic Department, at Virginia Tech or his designee, shall be identified as the Contract Administrator and shall use all powers under the contract to enforce its faithful performance.

B. The Contract Administrator, or his designee, shall determine the amount, quantity, acceptability, fitness of all aspects of the services and shall decide all other questions in connection with the services. The Contract Administrator, or his/her designee, shall not have authority to approve changes in the services which alter the concept or which call for an extension of time for this contract. Any modifications made must be authorized by the Virginia Tech Purchasing Department through a written amendment to the contract.

XIII. ENTIRE AGREEMENT:

This agreement, together with the attachments, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any previous or contemporaneous oral or written agreement between the parties regarding such subject matter.

In WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

Contractor
By: 
Name and Title: Nao Monahan

Virginia Tech
By: 
Name and Title: Charles W. Steger
President
ATTACHMENT A
TERMS AND CONDITIONS

General Terms and Conditions


Special Terms and Conditions are incorporated hereto.

2. AUDIT: The Contractor hereby agrees to retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. Virginia Tech, its authorized agents, and/or the State auditors shall have full access and the right to examine any of said materials during said period.

3. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that Virginia Tech shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

4. CANCELLATION OF CONTRACT: Virginia Tech reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

5. Intentionally omitted.

6. INDEPENDENT CONTRACTOR: The Contractor shall not be an employee of Virginia Tech, but shall be an independent contractor. Nothing in this agreement shall be construed as authority for the Contractor to make commitments which shall bind Virginia Tech, or to otherwise act on behalf of Virginia Tech, except as Virginia Tech may expressly authorize in writing.

7. INSURANCE: By signing and submitting a proposal under this solicitation, the Offeror certifies that if awarded the contract, it will have the following insurance coverages at the time the work commences. Additionally, it will maintain these during the entire term of the contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. During the period of the contract, Virginia Tech reserves the right to require the Contractor to furnish certificates of insurance for the coverage required.

INSURANCE COVERAGES AND LIMITS REQUIRED:
A. Worker's Compensation - Statutory requirements and benefits.
B. Employers Liability- $100,000.00
C. General Liability - $500,000.00 combined single limit. Virginia Tech and the Commonwealth of Virginia shall be named as an additional insured with respect to goods/services being procured. This coverage is to include Premises/Operations Liability, Products and Completed Operations Coverage, Independent Contractor's Liability, Owner's and Contractor's Protective Liability and Personal Injury Liability.
D. Automobile Liability - $500,000.00
E. Builders Risk — For all renovation and new construction projects under $100,000 Virginia Tech will provide All Risk — Builders Risk Insurance. For all renovation contracts, and new construction from $100,000 up to $500,000 the contractor will be required to provide All Risk — Builders Risk Insurance in the amount of the contract and name Virginia Tech as additional insured. All insurance verifications of insurance will be through a valid insurance certificate.

The Contractor agrees to be responsible for, indemnify, defend and hold harmless Virginia Tech, its officers, agents and employees, and the Commonwealth of Virginia, from the payment of all sums of
money by reason of any claim against them arising out of Contractor's negligence or willful misconduct resulting in bodily or mental injury or property damage that may happen to occur in connection with and during the performance of the contract, including but not limited to claims under the Worker's Compensation Act.

The Contractor agrees that it will, at all times, after the completion of the work, be responsible for, indemnify, defend and hold harmless Virginia Tech, its officers, agents and employees, and the Commonwealth of Virginia, from all liabilities resulting from bodily or mental injury or property damage directly or indirectly arising out of the performance or nonperformance of the contract, if due to Contractor's negligence or willful misconduct.

8. **NOTICES:** Any notices to be given by either party to the other pursuant to any contract resulting from this solicitation shall be in writing, hand delivered or mailed to the address of the respective party at the following address:

   If to Contractor:
   Centerplate
   2187 Atlantic Street
   Stamford, CT 06902
   Attn: Legal Department

   If to Virginia Tech:
   Virginia Polytechnic Institute and State University
   Attn: Kimberly Dulaney
   Procurement Department (0333)
   Suite 2100, Virginia Tech
   300 Turner Street NW
   Blacksburg, VA 24061

   and

   Virginia Polytechnic Institute and State University
   Attn: Tim East
   Athletics Department (0502)
   Jamerson Athletic Center
   Blacksburg, VA 24061

9. **SAFETY:** The Contractor bears sole responsibility for the safety of its employees. The Contractor shall take all steps necessary to establish, administer, and enforce safety rules that meet the regulatory requirements of the Virginia Department of Labor and Industry (VDLI) and the Occupational Safety and Health Administration (OSHA). The contractor shall take steps as necessary to protect the safety and health of university employees, students, and visitors during the performance of their work. In addition, the contractor must also provide the university with a written safety program that it intends to follow in pursuing work under this contract. By entering into a contract with Virginia Tech, the contractor and its subcontractors agree to abide by the requirements described in Safety Requirements for Contractors and Subcontractors located on Virginia Tech's Environmental, Health and Safety Services (EHSS) web site at this URL [http://www.ehss.vt.edu/programs/contractor_safety.php](http://www.ehss.vt.edu/programs/contractor_safety.php). A copy of the publication may also be obtained by contacting EHSS at 540/231-5985. No work under this contract will be permitted until the university is assured that the contractor has an adequate safety program in effect.

10. **SEVERAL LIABILITY:** Virginia Tech will be severally liable to the extent of its purchases made
against any contract resulting from this solicitation. Applicable entities described herein will be severally liable to the extent of their purchases made against any contract resulting from this solicitation.

11. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of Virginia Tech. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish Virginia Tech the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by his subcontractor(s) and shall assure compliance with all requirements of the contract.

12. **WORK SITE DAMAGES:** Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the Owner's satisfaction at the Contractor's expense.
ATTACHMENT B
FINANCIAL CONSIDERATION

Capital Investment
Contractor shall invest up to $600,000 ("Investment"), toward the following:

- Foodservice capital projects of up to $500,000; and
- Cash Grant of $100,000, payable to Virginia Tech or their designee, within ninety (90) days after the execution of this agreement.

Investment shall be amortized / depreciated over a seven-year period from installation or deployment whichever is later. If the Contract expires or is terminated for any reason whatsoever, with or without cause (unless Contractor abandons the Facility without cause), prior to Contractor’s complete amortization of the Investment, the unamortized portion of the Investment will be reimbursed to Contractor by Virginia Tech or successor concessionaire.

Commissions—Percentage of Gross Receipts

<table>
<thead>
<tr>
<th>Category</th>
<th>From:</th>
<th>To:</th>
<th>Rent %</th>
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<tbody>
<tr>
<td>Calculated on the increment and all tiers are adjusted by CPI</td>
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<tr>
<td>Lane Stadium</td>
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<td>All Other Athletic Venues</td>
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<tr>
<td>Third party subcontractors [1]</td>
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<td>50.0%</td>
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[1] Commission will be based on the revenue amount Contractor retains from the third party subcontractor’s sales, less direct expenses net of any applicable sales and use tax.

[2] Contractor proposes the same percentage commissions for branded foods as the rates as outlined above, provided the commissions due to the University are decreased dollar for dollar for the royalties associated with the branded food concepts.

Guarantee Minimum Payment
Contractor shall provide an annual guaranteed commission ("Guarantee Minimum Payment"), of $575,000 increasing annually by $25,000 throughout the term of the Contract, provided there are at least six (6) varsity football games each year, and full seasons of men's and women's varsity basketball games each year. In addition, for every season that exceeds six (6) varsity football games, the Guarantee Minimum Payment will increase by $50,000 per game for that season only.
Reserve Fund — Percentage of Gross Receipts
In order to maximize the fan experience at the Venues, Contractor shall provide ongoing improvements of food and beverage capital projects; scope and nature of the projects to be mutually agreed upon by both parties. Contractor shall make the following contribution commencing with the fourth year of the Contract:

• Capital Repair and Replacement Reserve
  As a % of Gross Receipts 1.0%

• Contractor will, at its sole expense, specify, purchase, deliver, receive, unload, uncrate, set in place, and remove debris for the equipment outlined above (Investment). All drawings, permits, utilities, rough-in connections, final connections, water proofing, sealing, clean up, final clean removal of hazardous material, and any and all work required to bring food services spaces up to 2012 building/health/fire/mechanical code standards shall be provided by Virginia Tech or others.

• The above financial arrangements are based on Virginia Tech’s proposed price increases dated 12/18/12, beginning in 2013.

• “Gross Receipts” means total revenues collected by Contractor pursuant to this Agreement less sales or other taxes, service charges and gratuities paid directly to the employees, credit card charges, employee meals and reduced or at cost items. Gross Receipts will include the amount received and retained by Contractor from third party subcontractors and not the gross receipts generated by the subcontractors.