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NEWS RELEASE

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Treasure Valley Contractor Sentenced for Conspiracy, Wire Fraud and Tax Fraud

Court Orders Forfeiture of Over \$3 Million in Fraud Proceeds

BOISE – Elaine Martin, 67, of Meridian, Idaho, the former president and majority stockholder of MarCon, Inc., was sentenced today by U.S. District Judge B. Lynn Winmill to 84 months in prison followed by three years of supervised release for conspiracy, wire fraud and mail fraud, U.S. Attorney Wendy J. Olson and Assistant Attorney General for the Tax Division Kathryn Keneally announced. Martin was also sentenced to 24 months in prison for tax fraud and obstruction of justice followed by three years of supervised release. The sentences will run concurrent.

Judge Winmill ordered Martin to pay restitution of \$98,825.20 to the Internal Revenue Service and \$32,575.28 to the Idaho DBE Program. She was also ordered to pay costs of prosecution in the amount of \$22,859.60.

The United States and the defendant entered into an agreement this week in which they stipulated that the correct forfeiture amount is \$3,084,038.05. Martin paid the full amount via wire transfer to a U.S. Treasury account before sentencing.

Martin was convicted by a federal jury on September 19, 2013, of 22 criminal counts, including four counts of filing false individual and corporate tax returns, two counts of

conspiracy to defraud the United States, five counts of wire fraud, five counts of mail fraud, one count of false statement, three counts of interstate transportation of property taken by fraud, one count of conspiracy to obstruct justice and one count of obstruction of justice.

“Elaine Martin’s conviction, sentence and forfeiture of more than \$3 million clearly demonstrates that fraud and misrepresentations to government programs is the wrong way to run a business,” said Olson. “This office, indeed the entire Department of Justice, along with its law enforcement partners are committed to rooting out greed and dishonesty in government contracting. I commend the thorough efforts of the dedicated attorneys and agents involved in this case.”

Martin’s co-defendant, Darrell Swigert, 68, of Boise, a minority shareholder in MarCon, was found guilty of two counts of obstruction of justice and one count of conspiracy to obstruct justice. He is scheduled to be sentenced on March 19, 2014.

During the 26-day trial, the jury heard evidence that as early as 1997, Martin concealed a portion of MarCon’s business income by diverting customer payments for the sales of used materials into a separate bank account. Martin did not tell MarCon’s external accountant about the bank account or the unreported sales, and in fact organized the company’s business affairs to help conceal these sales from the external accountant, such as by personally overseeing the sales and invoicing of used materials, deleting call logs for these sales, and tracking the sales using a separate set of books. The jury also heard that Martin boasted about her failure to pay taxes on this income, referring to the separate bank account with the unreported income as a “slush fund.” When the IRS initiated a civil audit, Martin lied to the IRS revenue agent and told him that all business income was reported on MarCon’s tax returns. The evidence at trial, however, showed that neither MarCon nor Martin reported the income they received from the used material sales on their tax returns from 1997 through at least 2006.

The jury also heard evidence during trial that as early as 2000, Martin submitted false and fraudulent applications to have her construction company, MarCon, admitted and/or remain in two different federally funded programs, the U.S. Small Business Administration (SBA) 8(a) Program, and the Department of Transportation Disadvantaged Business Enterprise (DBE) Program. Both programs are designed to help economically and socially disadvantaged businesses compete in the marketplace. To be admitted into the program, the owner/shareholder that qualifies as socially disadvantaged must also demonstrate economic disadvantage, in part by having a personal net worth below a certain statutory cap.

According to evidence presented at trial, Martin took steps to artificially lower her personal net worth, such as by failing to report all of her income from MarCon, causing MarCon to pay for personal expenses such as renovations and landscaping for her home, and acquiring, holding and transferring assets into the names of nominees in order to appear to be economically disadvantaged. This allowed Martin’s construction firm, MarCon, to qualify for the DBE and SBA 8(a) programs. Martin also caused false and fraudulent tax returns to be filed for herself and MarCon, Inc., which did not report all of the income received by Martin or the company. The false returns were submitted in support of MarCon’s applications to the SBA 8(a) Program and DBE Programs for Idaho and Utah, along with false personal financial statements. The government presented evidence that Martin omitted, deleted, altered and mis-categorized entries in MarCon’s financial books and records. Martin also concealed her role or relationship in other business entities that dealt with MarCon, Inc.

The jury heard evidence that MarCon received more than \$2.5 million in government contracts based on the company's fraudulently obtained SBA 8(a) status, and that MarCon received more than \$15 million in government contracts based on the company's fraudulently obtained DBE status in the states of Idaho and Utah.

The government presented evidence that in order to impede an IRS audit of MarCon and criminal investigation into Martin, Martin and Swigert conspired to obstruct justice by fabricating documents and making false statements that sought to conceal the true nature, source, and extent of property belonging to Martin.

"Today's sentence should be a warning to those who seek to gain preference for federal contracting opportunities through deceit and lies," said Inspector General Peggy E. Gustafson of the Small Business Administration. "Those who take part in such activity will pay the price for their crimes. I want to thank the U.S. Attorney's Office and our law enforcement partners for their commitment to seek justice on behalf of the American taxpayer."

"Tax evasion is not a victimless crime," said Stephen Boyd, IRS Criminal Investigation Special Agent in Charge for the State of Idaho. "Individuals who corruptly violate the law to further their business interests and intentionally evade paying their fair share of taxes undermine public confidence in our tax system and unfairly disadvantage businesses that play by the rules. As Martin and Swigert have discovered, operating outside the law and failing to pay taxes have severe consequences."

"As evidenced by today's sentencing, severe penalties await those that would seek to defraud DOT's DBE Program," said William Swallow, regional Special Agent-in-Charge of the DOT's Office of Inspector General. "DBE fraud harms the integrity of the program and adversely impacts law-abiding, small business contractors trying to compete on a level playing field. Working with the Secretary of Transportation and other DOT leaders, and our law enforcement and prosecutorial colleagues, we will continue to protect the taxpayers' investment in our nation's infrastructure from fraud, waste, abuse and violations of law."

The case was investigated by Internal Revenue Service-Criminal Investigation, Federal Bureau of Investigation, the Office of Inspector General for the U.S. Small Business Administration, and the Office of Inspector General for the U.S. Department of Transportation.

Today's announcement is part of an effort by President Obama's Financial Fraud Enforcement Task Force (FFETF), created in November 2009, to combat financial fraud crimes by waging aggressive, coordinated and proactive investigations and prosecutions. With more than 20 federal agencies, 94 U.S. attorneys' offices and state and local partners, the task force is the broadest coalition of law enforcement, investigatory and regulatory agencies ever assembled to combat fraud. Since its formation, the task force has made great strides in facilitating increased investigation and prosecution of financial crimes; enhancing coordination and cooperation among federal, state and local authorities; addressing discrimination in the lending and financial markets; and conducting outreach to the public, victims, financial institutions and other organizations. Over the past three fiscal years, the Justice Department has filed more than 10,000 financial fraud cases against nearly 15,000 defendants including more than 2,700 mortgage fraud defendants. For more information on the task force, visit www.stopfraud.gov.

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