

For Immediate Release  
February 9, 2012

**OWNER OF ALBUQUERQUE CONSTRUCTION COMPANY**  
**CHARGED WITH DEFRAUDING UNITED STATES**

ALBUQUERQUE – Yesterday a federal grand jury returned a nine-count indictment charging the owner of an Albuquerque-area construction company with defrauding a federal program that sets aside federal contracts for businesses owned by service-disabled veterans, and making false statements to federal law enforcement officials.

**Max R. Tafoya**, 62, of Albuquerque, is alleged to have obtained almost \$11 million in federal contracts by falsely claiming that his company, **M.R. Tafoya Construction, Incorporated** (Tafoya Construction), was qualified to participate in the U.S. Department of Veterans Affairs' (VA) Service-Disabled Veteran Owned Small Business (SDVOSB) Program. Tafoya's son-in-law, **Tyler Cole**, 39, of Los Ranchos de Albuquerque, allegedly participated in the fraudulent scheme.

Count 1 of the indictment charges Tafoya and Cole with conspiring to defraud the United States by obtaining SDVOSB contracts from the VA for which Tafoya Construction was not qualified. Counts 2 through 5 charge Tafoya and Cole with obtaining four contracts, each valued at more than \$1 million, by falsely claiming that Tafoya Construction was a SDVOSB. Counts 6 through 9 allege that Tafoya made false statements to support his fraudulent claim that Tafoya Construction was a SDVOSB.

If convicted of the conspiracy charge, Tafoya and Cole each face a maximum penalty of five years of imprisonment and a \$250,000 fine. The maximum penalty for a conviction on each of the four fraud charges is ten years of imprisonment and a \$1 million fine. The maximum penalty for a conviction on each of the four false statement charges is five years of imprisonment

and a \$250,000 fine.

The SDVOSB Program was established pursuant to the Veterans Entrepreneurship and Small Business Development Act of 1999, to achieve a government-wide goal to increase the number of government contracts awarded to small businesses owned and operated by service-disabled veterans. The Veterans Benefits, Health Care, and Information Technology Act of 2006 gave SDVOSBs the highest priority in contracting preferences for VA contracts awarded to small businesses. A small business must be both owned and controlled by one or more service-disabled veterans to qualify as an SDVOSB. Generally, a small business is owned and controlled by a service-disabled veteran when the veteran directly owns at least 51% of the business, holds the highest officer position in the business, and manages and administers the business's day-to-day operations.

The indictment alleges that, from 2009 to 2010, Tafoya Construction was awarded five contracts, valued at an aggregate of \$10,984,189, that required it to hold SDVOSB status. According to the indictment, during that period, 100% of Tafoya Construction stock was owned by Tafoya, a veteran who does not have any service-connected disability. In order to obtain these lucrative contracts for Tafoya Construction, Tafoya allegedly paid his step-brother Andrew Castillo, a service-disabled veteran who works and resides in Florida, a \$600 weekly fee to allow Tafoya Construction to use Castillo's name and service-disabled status in its bids for SDVOSB contracts. Cole allegedly completed certifications stating that Tafoya Construction was an SDVOSB and submitted them to the VA in order to obtain SDVOSB contracts for Tafoya Construction. The indictment alleges that Tafoya and Cole used various deceptive devices to create the appearance that Castillo was the majority owner and controller of Tafoya Construction,

when in fact he did not own or operate the company.

According to the indictment, on February 1, 2011, Tafoya made the following allegedly false statements to support the fraudulent claim that Tafoya Construction was a SDVOSB: (i) that Castillo paid \$100,000 to purchase 51% of Tafoya Construction; (ii) that Castillo worked in Tafoya Construction's Albuquerque office; (iii) that Castillo was working at a VA construction site in Santa Fe that day; and (iv) that Castillo personally signed the VA contracts and bonding paperwork on the SDVOSB contracts awarded to Tafoya Construction.

Citing a Veterans Affairs Office of Inspector General Audit Report that identified vulnerabilities to possible widespread fraud and abuse in the SDVOSB Program, U.S. Attorney Kenneth J. Gonzales said, "These contracts are supposed to go to small businesses that are actually owned by service-disabled veterans, and not to imposters who break the rules and scheme to beat the system. We must hold unscrupulous contractors accountable for abusing a program that seeks to fulfill our moral obligation to provide disabled veterans with benefits designed to ease the losses and disadvantages they have incurred as a consequence of disabilities they sustained while serving our country. This prosecution is part of the effort to protect service-disabled veterans who own small businesses by tightening controls to prevent fraud and abuse."

James J. O'Neill, Assistant Inspector General for Investigations, U.S. Department of Veterans Affairs, who testified at a Congressional Hearing about the SDVOSB program on February 7, 2012, said "We aggressively investigate individuals and companies who attempt to fraudulently obtain VA contracts at the expense of service-disabled entrepreneurs whose sacrifices for our Nation have earned them the right to participate in this set-aside program. Those who fraudulently represent their eligibility to participate in this program should know that we are committed to exposing their criminal behavior and seeking justice in Federal Court, as

well as to debarring them from being awarded government contracts.”

The case was investigated by the U.S. Department of Veterans Affairs, Office of Inspector General, and is being prosecuted by Assistant U.S. Attorney C. Paige Messec.

Charges in indictments are only accusations, and criminal defendants are presumed innocent unless proven guilty.

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