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DOJ Defends Army Swag Bid Rigging Case Against Dismissal

By **Matthew Perlman**

Law360 (July 8, 2022, 5:03 PM EDT) -- The U.S. Department of Justice has urged a Florida federal court not to toss antitrust charges against a man accused of rigging bids for customized promotional products sold to the U.S. Army, saying his dismissal bid misconstrues the law.

The DOJ filed a response Thursday to a motion from Lawrence O'Brien that seeks to dismiss the antitrust charge **lodged by a grand jury** in April against him and two other men. The motion contends the indictment includes only "broad, generalized allegations" about the conspiracy and no specifics about O'Brien's knowledge of the scheme or his intent to join it.

But the DOJ said in its response the indictment includes the "essential elements" of the conspiracy and describes the means by which it was accomplished. Prosecutors noted that they allege that O'Brien and others conspired to rig bids for promotional products sold to the U.S. Army over a five-year period by exchanging the bids they submitted and pre-arranging the winners.

"These factual allegations are more than sufficient to inform O'Brien of the bid rigging conspiracy he is alleged to have joined and go far beyond the required level of detail," the response said.

The DOJ also argued that there's no requirement under the Sherman Act to show that O'Brien specifically intended to restrain competition, as his motion suggests. Instead, the response said, it is enough that he knowingly joined a conspiracy to engage in conduct that violates the antitrust law, such as bid rigging.

The response also said O'Brien attempts to argue that the indictment is insufficient because it does not identify specific actions he took to further the conspiracy. But the DOJ said the Sherman Act has no "overt act" requirement either.

"The Section 1 crime is the agreement," the response said, referring to Section 1 of the Sherman Act. "Thus, in per se cases like this one, the question for the jury is simply whether the per se unlawful agreement, that is, the unreasonable agreement in restraint of trade, occurred."

And as a factual matter, the DOJ added, O'Brien's assertion is incorrect because the indictment alleges a variety of actions taken pursuant to the agreement, including preparing and submitting quotes and providing products at non-competitive prices.

A Florida grand jury indicted O'Brien in April, along with Bruce LaRoche and Thomas Dailey, on charges of conspiring to eliminate competition among their companies by coordinating bids for promotional products supplied to the Army. The DOJ said O'Brien owns and operates several companies operating in the space, including MP USA Marketing Group, while LaRoche owns several companies that provide similar products, including Allegiance Tactical LLC. The indictment said Dailey owns and operates Mission Quest Advertising LLC, another supplier of the products.

According to the indictment, the Army has purchased millions of dollars in customized promotional products including backpacks, water bottles, hats and knives, many of which feature logos and insignias of military units. The indictment said the Army considers these purchases to be important to its recruitment and retention of service members.

In addition to the antitrust charges, O'Brien and LaRoche are also facing charges for allegedly

defrauding the government by setting up shell companies to submit sham bids in order to make the procurement process seem competitive.

O'Brien's motion requests as an alternative to dismissing the antitrust charge that the court strike portions of the indictment that reference his ownership of multiple companies, arguing that this "misleadingly suggests" he was conspiring with his own companies and employees. But the DOJ said O'Brien's ownership of multiple companies is core to the scheme since he allegedly used the companies to submit multiple bids to create the illusion of competition.

O'Brien's companies are also at the center of the second charge against him, for defrauding the government, the DOJ said, which is based on the alleged submission of fake bids.

"These allegations are plainly relevant," the response said. "O'Brien and his co-conspirators committed these crimes in part by using these companies to create fake bids."

Moreover, the DOJ said, the indictment does not allege a conspiracy among O'Brien's companies but between his companies and those of the other defendants and co-conspirators.

A representative for the DOJ declined to comment Friday. Representatives for O'Brien did not immediately respond to a request for comment.

The DOJ is represented by Jonathan S. Kanter, Richard A. Powers, Doha G. Mekki, Marvin N. Price Jr., Ryan Danks, Kevin B. Hart, Zachary D. Trotter, Mona Haar, Adam Ptashkin and Christian Neumeister of the DOJ's Antitrust Division.

O'Brien is represented by David F. Axelrod, Hunter G. Norton and Mark D. Wagoner Jr. of Shumaker Loop & Kendrick LLP. LaRoche is represented by Kevin Jon Napper of the Law Offices of Kevin J. Napper PA. Dailey is represented by Erik R. Matheny of Shutts & Bowen LLP.

The case is USA v. O'Brien et al., case number 8:22-cr-00130, in the U.S. District Court for the Middle District of Florida.

--Editing by Alex Hubbard.