The Superior Court judge ruled that the lease was not the "functional equivalent" of a construction contract because Brasi kept ownership of the land and building, bore the cost of construction and assumed the costs of ownership of the finished building. Accordingly, she granted Brasi's request and confirmed the validity of the RFP process. The Attorney General appealed, and the SJC agreed to hear the case on direct appellate review.

As a starting point to its analysis, the SJC observed that Chapter 149 of the General Laws applies to construction "of any building by a public agency," and is not limited to buildings that the agency will own. It stated that the use of the "lease" label for a contract to "create buildings for long-term use by public agencies defeats the purposes of the competitive bidding statute." The question, then, was how to measure whether an agreement termed a lease is actually a contract for construction that is subject to the public construction bidding laws. Finding that a "totality of the circumstances" test, applied on a case-by-case basis, was best, the court then enumerated several factors that would be "helpful, but not dispositive" in making a determination. These included:

- the extent of control retained by the agency during development and construction;
- the length of the proposed lease, including any proposed extensions (a longer term tilting the scale to the construction project side);
- whether public funds will be used;
- whether lease payments essentially cover the costs of construction;
- whether there is an option to purchase at the end of the lease for a nominal sum or whether the building is to be automatically transferred to the agency at the end of the lease;
- whether the agency initially owned the land and transferred it to the private party, or whether the agency had the building constructed for lease; and
- whether the building is a specialized facility that would make it unsuitable for another commercial use without significant renovation.

Applying all these factors, the court concluded that the university's arrangement with Brasi was subject to the public construction bidding requirements of G.L. c. 149.

The SJC found it significant that there were substantial substantive provisions included in the parties' lease that had not been part of the RFP. It stated that the RFP itself had several elements that would allow the transaction to be termed a lease that would not be subject to the construction bidding statute. Among these were the request for use of property to be owned and maintained by others; return of possession to the owner at the end of the lease; a total possible lease duration of 15 years; the absence of a requirement for a new building; and lack of significant university control of the design specifications. The court also observed that the building proposed by Brasi, one for which a "dormitory" use permit had been issued by the city, would have an economically viable use after conclusion of the lease. However, the factors tending to justify classification of the RFP process as a lease transaction were overcome by subsequent modifications to the lease agreement.

While the RFP proposed a five year term with an option for two extensions of five years, the ultimate agreement was for a lease of a maximum of 30 years (a five-year term, with automatic