of the generation site, or an unconditional right, granted by the property owner, to acquire such control . . . ." Section 2.4.1 further specifies what is required for "Proof of Site Control," stating in relevant part: "The Bidder must demonstrate that it has control of the generation site, or an unconditional right, granted by the property owner, to acquire such control. . . . In order to be considered to have site control for generation, the Bidder must provide copies of executed documents between the Bidder and [the] property owner showing one of the following: (a) that the Bidder owns the site or has a lease or easement with respect to the site on which the [facility] will be located . . . or (b) that the Bidder has an unconditional option agreement to purchase or lease the site . . . ."

The plaintiff and the company each submitted bids in response to the request. The company proposed a 2.8 megawatt fuel cell facility on land owned by the city of Derby (city) and located at 49 Coon Hollow Road (property). Its bid included the affidavit of Richard Dziekan, the mayor of the city, in which he attested that the company had "control of the generation site, or an unconditional right . . . to acquire such control."[1] That bid also included a copy of an option to lease agreement between the city and FuelCell regarding the property (option agreement), as well as an assignment of that option from FuelCell to the company (assignment).[2] The company's bid ultimately was selected for a project in United Illuminating territory.

The plaintiff thereafter commenced the present action against the defendants. The operative complaint is dated December 21, 2020, and contains three counts.[3] In count one, the plaintiff sought a declaratory ruling that the option agreement "does not provide the defendants

[1] A copy of the company's bid was submitted as an exhibit to Wolak's affidavit in support of the defendants' motion to dismiss.

[2] The company is a subsidiary of FuelCell.

[3] This action was commenced by service of process on November 2, 2020.

NOTE: These pages (213 Conn. App. 291 and 292) are in replacement of the same numbered pages that appear in the Connecticut Law Journal of 14 June 2022.

with any legally enforceable rights" due to the city's alleged failure to comply with the requirements of the city charter and General Statutes § 7-163e. In count two, the plaintiff alleged that the defendants had submitted "a false bid certification" in violation of CUTPA as a result of the city's alleged failure to comply with the requirements of the city charter and § 7-163e "prior to executing" the option agreement. In count three, the plaintiff alleged that the submission of a false bid certification by the defendants constituted tortious interference with prospective contractual relations.

On December 10, 2020, the defendants filed a motion to dismiss the action, alleging, inter alia, that the plaintiff lacked standing. That motion was accompanied by Wolak's affidavit and copies of the request, the company's bid, the option agreement, and the assignment. On December 21, 2020, the plaintiff filed an objection to the motion to dismiss, but did not submit counteraffidavits or any other evidence.

On February 18, 2021, the court ordered "all briefing, documentation and affidavits" related to the motion to dismiss to be filed by March 19, 2021. In accordance with that order, both parties filed supplemental briefs on March 19, 2021. At that time, the plaintiff offered the affidavit of its attorney, Thomas Melone, who averred that the plaintiff had provided notice of the action to the city. The defendants also submitted additional documentation.[4] In its "further objection" to the motion to

[4] The defendants appended six documents to their March 19, 2021 filing. Exhibit A is a copy of the January 22, 2021 notice from PURA informing the parties that it had denied the plaintiff's challenges to the bid submitted by the company because they "do not rise to the level of a programmatic deficiency . . . ." Exhibits B and C are notices from PURA regarding its "Review of Statewide Shared Clean Energy Facility Program Requirements," while Exhibit D is the "Shared Clean Energy Facility ('SCEF') Tariff Terms Agreement Subscriber Organization" dated January 22, 2021. Exhibit E is a twenty-two page document titled "The United Illuminating Company Shared Clean Energy Facility Rider Subscriber Organization Terms and Conditions," and Exhibit F is a research report from the Office of Legislative Research dated October 1, 2018, on energy procurements.

dismiss, the plaintiff stated in relevant part: "The foundation of the plaintiff's challenge rests on the nonbinding option [agreement] executed between [the defendants] and the [city]. . . . The [city] failed to engage in any competitive process for its disposition of a real property interest, violating its city charter and [§] 7-163e."

By memorandum of decision dated April 30, 2021, the court granted the motion to dismiss. The court first concluded that the plaintiff's request for a declaratory ruling was not ripe for adjudication, as "PURA [had] not yet approved the [company's] bid . . . ." For the same reason, the court concluded that the plaintiff's tortious interference with prospective contractual relations claim was "premature" and "unripe." The court then concluded that the plaintiff lacked standing to bring its CUTPA claim against the defendants, as its alleged injuries "are remote and indirect." Accordingly, the court rendered a judgment of dismissal, and this appeal followed.

On appeal, the plaintiff claims that the court improperly concluded that it lacked standing to maintain the CUTPA action alleged in count two of its complaint.[5] We do not agree.

"The issue of standing implicates a court's subject matter jurisdiction and is subject to plenary review." *Channing Real Estate, LLC* v. *Gates*, 326 Conn. 123, 137, 161 A.3d 1227 (2017). "To establish standing to raise an issue for adjudication, a complainant must make a colorable claim of direct injury." *Connecticut Associ-*

[5] In this appeal, the plaintiff does not contest the propriety of the court's determination that the request for a declaratory ruling and the tortious interference with prospective contractual relations claim set forth in counts one and three were not ripe for adjudication.

NOTE: These pages (213 Conn. App. 293 and 294) are in replacement of the same numbered pages that appear in the Connecticut Law Journal of 14 June 2022.

ated Builders & Contractors v. *Hartford*, 251 Conn. 169, 178, 740 A.2d 813 (1999). "The requirement of directness between the injuries claimed by the plaintiff and the conduct of the defendant also is expressed, in our standing jurisprudence, by the focus on whether the plaintiff is the proper party to assert the claim at issue. . . . [I]f the injuries claimed by the plaintiff are remote, indirect or derivative with respect to the defendant's conduct, the plaintiff is not the proper party to assert them and lacks standing to do so. [When], for example, the harms asserted to have been suffered directly by a plaintiff are in reality derivative of injuries to a third party, the injuries are not direct but are indirect, and the plaintiff has no standing to assert them." (Citations omitted.) *Ganim* v. *Smith & Wesson Corp.*, 258 Conn. 313, 347–48, 780 A.2d 98 (2001). As our Supreme Court has explained, "notwithstanding the broad language and remedial purpose of CUTPA, we have applied traditional common-law principles of remoteness . . . to determine whether a party has standing to bring an action under CUTPA." (Footnote omitted.) *Vacco* v. *Microsoft Corp.*, 260 Conn. 59, 88, 793 A.2d 1048 (2002).

Connecticut courts "employ a three part policy analysis . . . [in applying] the general principle that plaintiffs with indirect injuries lack standing to sue. . . . First, the more indirect an injury is, the more difficult it becomes to determine the amount of [the] plaintiff's damages attributable to the wrongdoing as opposed to other, independent factors. Second, recognizing claims by the indirectly injured would require courts to adopt complicated rules apportioning damages among plaintiffs removed at different levels of injury from the violative acts, in order to avoid the risk of multiple recoveries. Third, struggling with the first two problems is unnecessary [when] there are directly injured parties

who can remedy the harm without these attendant problems." (Internal quotation marks omitted.) *Connecticut Podiatric Medical Assn.* v. *Health Net of Connecticut, Inc.*, 302 Conn. 464, 469–70, 28 A.3d 958 (2011).

It is undisputed that the company, as part of its bid, submitted both the affidavit of Mayor Dziekan, in which he attested that the company had "control of the generation site, or an unconditional right . . . to acquire such control," and a copy of the option agreement between the city and FuelCell, which option was assigned to the company. Those materials demonstrate that the company's bid comported with the requirement, set forth in §§ 2.4.1 and 4.4 of the request, that a bidder submit proof "that it has control of the generation site, or an unconditional right, granted by the property owner, to acquire such control."

The plaintiff's quarrel is not with the adequacy of the company's bid, but rather its legitimacy. In its complaint, the plaintiff alleged that the city's failure to comply with the "bid process" requirements of § 22 of the city charter and § 7-163e rendered the option agreement "unlawful," "without legal effect," and "void and illusory." The plaintiff further alleged that, as a result of the city's failure to comply with those requirements, "the [option agreement] does not provide the defendants with the unconditional right required by the [request] requirements." For that reason, the plaintiff alleged that the defendants had submitted "a false bid certification" in violation of CUTPA, which allegedly caused the plaintiff to suffer "an ascertainable loss of money because [it] will lose the revenue from the [shared clean energy facility program] that it would have received but for [the] defendants' submission of a false bid certification."

NOTE: These pages (213 Conn. App. 295 and 296) are in replacement of the same numbered pages that appear in the Connecticut Law Journal of 14 June 2022.

In its memorandum of decision, the trial court noted that, if the option agreement was unlawful and without legal effect as the plaintiff alleged, and the defendants did not have control of the site, the defendants "will be unable to fulfil their obligations under the contract. Presumably, the project would then be the subject of another [request for production], in which the plaintiff most strenuously asserts it will prevail. The direct recipient of any injury resulting from false certification would be [United Illuminating], the beneficiary of the project. [United Illuminating] would presumably have at least one cause of action against the defendants. Additionally, the real party with purported unclean hands is [the city], which is claimed to have ignored its own city charter in order to furnish the option to lease to the defendants. The plaintiff has not brought an action against [the city], nor does it appear that the plaintiff has standing to maintain such an action. The plaintiff's claims are remote and indirect. If there is a potential victim of the defendants' alleged duplicity, it is [United Illuminating], not the plaintiff. The plaintiff lacks standing to bring the CUTPA claim."

We concur with that reasoning. If the defendants knowingly submitted a false bid, as the plaintiff alleges, the utility company that was a party to the contract for the shared clean energy facility would be a directly injured party and would be best suited to seek a remedy for the harm. Moreover, although the plaintiff claims that it was "100 percent certai[n]" to receive the shared clean energy facility contract in question if the defendants lacked the necessary site control, that contention is undermined by the plain language of the request. On its first page, the request states: "EVERSOURCE AND [THE UNITED ILLUMINATING COMPANY] RESERVE