# HOLDING CORPORATIONS ACCOUNTABLE USING CITY CONTRACTS

## STRENGTHENING WORKER AND CONSUMER PROTECTIONS THROUGH CITY PROCUREMENT

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# Introduction: New York City's $40+ billion dollar procurement budget is an under-tapped opportunity to enhance consumer and worker protections.[1]

Procurement can be an impactful tool to advance policies that benefit New Yorkers. The City entered contracts with vendors exceeding $40 billion in FY25.[2] Mayoral agencies accounted for over 85 percent of those dollars.

Existing laws and policies establish the viability of using the City's procurement authority to advance its economic justice and affordability goals.[3] The City has already adopted a number of procurement rules that benefit workers, consumers, and small business owners: a living wage requirement for some workers,[4] prevailing wage requirements for others,[5] a labor peace agreement provision for human services contracts,[6] minority- and woman-owned business enterprise (MWBE) standards,[7] and noncompetitive small purchase (NSP) method rules,[8] to name a few. New York State also requires contractors to adopt various worker protection provisions verbatim in their contracts.[9]

We propose expanding the use of the City's procurement authority to further the Administration's policy aims. Specifically, we suggest two policy ideas that illustrate how the Mayor can use the City's own contracts to directly promote the Administration's worker and consumer protection priorities:

1. Banning contractors on public works contracts from using or enforcing mandatory arbitration agreements,[10] class action waivers, and noncompete clauses against their workers;[11] and
2. Requiring contractors to affirm compliance with the ban on training repayment agreement provisions (TRAPs[12]) in their agreements with workers on City projects, and to notify workers of their rights under the ban.

## The City can enhance and enforce worker and consumer rights by implementing two additional procurement policies.

Through the Mayor's Office of Contracting Services (MOCS)[13] and contracting agencies, the City can advance worker and consumer protections in two salient ways.

1. **The City can ban its contractors from using or enforcing mandatory arbitration agreements, class action waivers, and noncompete clauses against workers engaged on City projects.**

To promote transparency, accountability, competition, the local economy, and worker safety, the City can forbid contractors from imposing mandatory arbitration provisions, class action waivers, and noncompete clauses on their workers on City projects. The City can require that the same standard apply, as well, to all subcontractors on those projects.

Limiting forced arbitration greatly benefits workers and consumers. A recent study by the U.S. Department of Labor found that after the U.S. Supreme Court green-lit mandatory arbitration and class action waivers in employment contracts, enforcement of wage laws and recovery of lost wages dropped significantly.[14] A separate study by the National Employment Law Project found that women, Black, and Hispanic workers are significantly more likely to be subject to mandatory arbitration and class action waivers.[15] Many of the sectors that the U.S. Department of Labor reports as being the most prone to labor violations are highly represented in City procurement: construction, agriculture, amusement, food services, guard services, janitorial services, and landscaping, among others.[16]

That is why preventing forced arbitration matters. Because when there is no arbitration provision in an employment or consumer contract, important disputes are aired in court, in public, and the information unearthed can be shared. Case outcomes and decisions can be relied on by later courts. Widespread abuses by the same entity become public, and can be addressed across the board.

By contrast, when workers and consumers are forced into private arbitration, the information that is discovered generally cannot be shared and does not reach other people who may have been harmed by the same business practice. And the outcomes for workers and consumers, even in their individual cases, tend to be much worse. A study by two Cornell University professors, for example, found strikingly lower win rates and damages awarded in arbitrated employment disputes compared to litigated cases.[17] Another study, by

Harvard and Stanford Business School professors, found that industry-friendly arbitrators were 40 percent more likely to be selected than consumer-friendly arbitrators.[18] The study also found that repeat-player industry attorneys picked arbitrators based on their past favorable rulings, which the authors noted seemed to influence arbitrators to favor industry in their future decision making.

Where there is less forced arbitration, there is more justice. The City is better off when it contracts with companies that avoid litigation by treating their workers fairly and that comply with the law, rather than those that can bid below their competition because they systematically exploit workers and then block them from obtaining redress.

Noncompete clauses operate similarly. When workers are not allowed to move to a competitor, their employers have less incentive to offer them competitive wages, benefits, safety, and fair treatment.[19] Barring the use of noncompete clauses would allow workers to offer their work to the highest bidder.

The benefits would be greatest for the workers currently most negatively affected by noncompete clauses. The Federal Trade Commission's rulemaking on noncompete clauses found evidence that these clauses increase racial and gender wage gaps by disproportionately reducing the wages of women, Black, and brown workers;[20] researchers estimated that banning the clauses could make tangible progress toward closing racial and gender wage gaps.[21]

New York case law applies a skeptical eye to noncompete clauses but they are not prohibited under city, state, or federal statute or rule.[22] Prohibiting these provisions in City contracts could substantially advance workers' rights.

A caveat about the arbitration and class action waiver aspects of the proposal: The Federal Arbitration Act (FAA) preempts the City from *regulating* the use of forced arbitration provisions and class action waivers within the City's borders writ large, and may also prevent the City from prohibiting its contractors from using these terms in their contracts that do not involve the City. But the City can ban these terms for workers on City-funded projects.[23] The difference lies in the "market participant" doctrine developed in the context of the "dormant commerce clause" of the U.S. Constitution.[24] The dormant commerce clause prevents state and local governments from engaging in certain types of discrimination against or burdening interstate commerce. When a city or state acts as a "market participant"—buying and selling goods and services—it has more leeway to further its policy goals than it does when imposing a general regulation on all businesses.[25] Similarly, in the context of FAA preemption, the City has more latitude to restrict the use of arbitration and noncompete provisions when it is spending its own funds than when it is making a broad policy that regulates all businesses

that operate within the City.[26] That same greater discretion probably allows the City to impose similar conditions on subcontractors and sub-subcontractors working on City projects.

2. **The City can help to enforce the New York State statute banning the use of most training repayment agreement provisions (TRAPs) by requiring contractors and subcontractors to notify employees of this protection.**

As another exercise of its procurement authority to benefit workers, the City can require an affirmative statement from bidders that they will not enforce or include TRAPs in their worker agreements, and can require all contractors to notify their workers on City projects of their rights under the state law. This change could be significant in increasing compliance with a new and important law.

As the policy statement of the New York State "Trapped at Work Act" bill put it:

> [P]rovisions in employment contracts that effectively leave workers indebted to their former employers for the costs of training upon departure have the deleterious effect of stifling professional mobility, creating significant barriers to achieving long-term financial security, and ultimately chilling the state's broader economy. Such arrangements trap vulnerable workers in hostile or undercompensated environments, thereby undermining the integrity of the labor market and the economic well-being of all New Yorkers.[27]

Requiring a specific "no TRAPs" affirmation in a bid and making a disclosure available to workers operationalizes the promise each bidder already makes to comply with CIty and State laws. The City already engages in this practice. For example, the City's standard contract language currently requires contractors to provide employees with information about whistleblower protections and procedures.[28] Practically, the TRAPs removal requirement—enforced through the procurement power—would increase the likelihood that companies ensure they have removed such provisions from their contracts.

# Conclusion

The City has significant authority to improve the conditions of workers and consumers by using its procurement power to advance economic justice policies. Two steps the City could take immediately are (1) to stop contractors from using forced arbitration agreements, class action waivers, and noncompete clauses, and (2) to require that contractors remove TRAPs from their contracts and notify workers of the new state statute prohibiting these provisions. These measures would illustrate the potential of the City's procurement authority and advance protections for the City's most vulnerable residents.

# Endnotes

1 The views expressed in this proposal are solely those of the authors. Affiliation is only listed for identification purposes.

2 Report, *Annual Summary Contracts Report for the City of New York Fiscal Year 2025*, N.Y.C. Comptroller (Oct. 2025), https://comptroller.nyc.gov/reports/annual-summary-contracts-report-for-the-city-of-new-york-2025/.

3 For example, the CIty already uses procurement to advance equity goals, labor standards, climate goals, and corporate accountability. *See generally* Rules of the City of New York, Title 9, Procurement Policy Board Rules (2026).

4 N.Y.C. Admin. Code § 6-109.

5 *Id*.

6 *Rider to City Service Contracts Pursuant to City of New York Admin. Code § 6145 Labor Peace Agreements for Human Services Contracts*, New York City, https://www.nyc.gov/assets/dycd/downloads/pdf/Combined_LPA_Rider_attachments.pdf (last accessed May 16, 2026).

7 N.Y.C. Admin. Code § 6-129.

8 N.Y.C.R.R. § 3-08.

9 *Appendix A, Standard Clauses for New York State Contracts*, New York State (June 2023), https://ogs.ny.gov/system/files/documents/2023/06/appendix-a-june-2023.pdf (last accessed May 17, 2026). Some of the required standard clauses include: wage and hour compliance, participation in workers' compensation, and compliance with NY's Human Rights Law (anti-discrimination).

10 Mandatory or forced arbitration agreements and class action waivers force the signatories to agree to resolve all disputes between them in private arbitration proceedings that are not subject to appeal or judicial review, waive the right to trial by jury, and preclude class actions.

11 That is, any subcontractors working on the City project. The City can also require its contractors' agreements with subcontractors to reflect the prohibition with respect to any sub-subcontractors.

12 Training Repayment Agreement Provisions (TRAPs) are contract terms that require workers to pay the employer back if they resign before a certain amount of time, ostensibly to compensate the employer for training the worker. In practice, TRAPs deter workers from seeking better wages and working conditions. *See* Report, *Trapped at Work: How Big Business Uses Student Debt to Restrict Worker Mobility*, Student Borrower Protection Center (July 2022), https://protectborrowers.org/wp-content/uploads/2022/07/Trapped-at-Work_Final.pdf.

13 Further review of this proposal by experienced City procurement attorneys is highly recommended. In addition, MOCS and contracting agencies implementation capacity will be key to successful implementation.

14 Fact Sheet, *Workers Lose Billions in Unpaid Wages Every Year*, National Employment Law Project 4 (July 2023), https://www.nelp.org/app/uploads/2023/07/Workers-Lose-Billions-Unpaid-Wages-Every-Year.pdf.

15 *Id*.

16 *Low Wage, High Violation Industries (FY2025)*, U.S. Department of Labor, Wage and Hour Division, https://www.dol.gov/agencies/whd/data/charts/low-wage-high-violation-industries (last accessed May 17, 2026).

17 Alexander J.S. Colvin & Kelly Pike, Working Paper, *The Impact of Case and Arbitrator Characteristics on Employment Arbitration Outcomes* 17 (June 2012) (presented at the annual meeting of the National Academy of Arbitrators, Minneapolis, Minn.), https://ecommons.cornell.edu/bitstream/handle/1813/73046/Colvin64_The_impact_of_Case_and_Arbitrator_Characteristics.pdf?sequence=1.

18 Edmund L. Andrews, *Why the Binding Arbitration Game is Rigged Against Customers*, Insights by Stanford Graduate School of Business (Mar. 8, 2019), https://www.gsb.stanford.edu/insights/why-binding-arbitration-game-rigged-against-customers.

19 *See* Matthew S. Johnson et al., Working Paper No. 31929, *The Labor Market Effects of Legal*

*Restrictions on Worker Mobility*, Natl. Bureau of Econ. Research (rev. Dec. 2024), https://www.nber.org/system/files/working_papers/w31929/w31929.pdf.

20 *See* Federal Trade Commission, *Non-Compete Clause Rule*, 88 Federal Register 3482 (Jan. 19, 2023) (gathering studies), https://www.federalregister.gov/documents/2023/01/19/2023-00414/non-compete-clause-rule.

21 *Id.*

22 *See BDO Seidman v. Hirshberg*, 93 N.Y.2d 382 (1999) (limiting the use of noncompete agreements); *Non-Compete Rule*, Federal Trade Commission (Sept. 2025) (noting "the Noncompete Rule is not in effect and it is not enforceable"), https://www.ftc.gov/legal-library/browse/rules/noncompete-rule.

23 *See, e.g.*, Notes, *The Market Participation Doctrine & Forced Arbitration*, 137 Harv. L. Rev. 1359 (2024), https://harvardlawreview.org/print/vol-137/the-market-participant-doctrine-and-forced-arbitration/ (citing David Seligman, *The Model State Consumer & Employee Justice Enforcement Act*, Nat'l Consumer L. Ctr. 31, 33–38 (Nov. 2015), https://www.nclc.org/wp-content/uploads/2022/09/model-state-arb-act-2015.pdf.

24 U.S. Const., Art. I, Sec. 8, cl. 3.

25 Dan T. Coenen, *Untangling the Market-Participant Exemption to the Dormant Commerce Clause*, 88 Mich. L. Rev. 395, 398 (1989), https://repository.law.umich.edu/mlr/vol88/iss3/2/.

26 More generally, the attraction of using the City's procurement authority (rather than its regulatory authority) to effect policy is the reduction of litigation risk under either federal law (*e.g.*, the privileges and immunities clause of the 14th Amendment or the National Labor Relations Act, in addition to the FAA and the dormant commerce clause) or state law. *See Boreali v. Axelrod*, 71 NY2d 1, 7 (1987); *New York Statewide Coalition of Hispanic Chamber of Commerce v. the New York City Department of Health and Mental Hygiene*, 23 NY3d 681 (2014).

27 *Trapped At Work Act*, S4070 (N.Y.2025-2026), https://www.nysenate.gov/legislation/bills/2025/S4070/amendment/A.

28 *General Provisions Governing Contracts for Consultants, Professionals, Technical, Human, and Client Services (Whistleblower Protection Expansion Act)*, Appendix A, Section 4.07, New York City (Jan. 2018), https://www.nyc.gov/assets/probation/pdf/procurement/Attachment_8_Appendix_A_General_Provisions_Governing_Contracts.pdf.