

POSITION PAPER

Tontitown's Local-Vendor and Arkansas-Resident Bid Preferences

To: City Attorney, City of Tontitown

From: Mick Wagner, Alderman

Date: August 29, 2026

Subject: Legal effect and recommended correction of Tontitown Code § 32.02(I)

Executive conclusion. Arkansas law permits Tontitown to grant a bid preference of up to 5% to a qualified firm located within the city. The present wording of § 32.02(I), however, does not clearly adopt that municipal-resident preference. It instead gives an in-city dealer a preference only when the competing terms are equal and separately describes an Arkansas-versus-out-of-state preference under a different, narrower statute. The safer course is a clarifying ordinance that expressly invokes Arkansas Code § 14-58-105 and states the qualification, claim, calculation, and funding limitations.

Question presented

Does Tontitown Code § 32.02(I) validly authorize the city to award a competitively bid purchase or contract to a qualified Tontitown firm whose bid is up to 5% higher than a bid submitted by an Arkansas firm located outside Tontitown?

Short answer

Probably not under the present wording. The subsection was enacted by ordinance, but the only express 5% preference addresses an Arkansas vendor competing against an out-of-state vendor. The sentence concerning dealers with stores or warehouses inside Tontitown applies only when price, quality, delivery, and service are equal. It does not establish a 5% in-city preference.

Relevant local provision

Tontitown Code § 32.02(I) contains two distinct rules:

- An in-city dealer receives preference when price, quality, delivery, and service are equal.
- An Arkansas vendor's quote must be accepted when it is no more than 5% above the lowest qualified out-of-state quote, citing former Arkansas Code § 19-11-259.

Codification history. Section 32.02 lists Ordinance 2019-07-851, passed July 2, 2019, among its amending ordinances. Adoption by ordinance is the correct legislative form. The issue is therefore not whether the council used an ordinance; it is whether the substantive words of that ordinance actually exercised the separate municipal-resident authority.

Two different statutory preferences

Issue	Municipal-resident preference	Arkansas-resident preference
Authority	A.C.A. § 14-58-105	Current A.C.A. § 19-61-515; formerly § 19-11-259
Comparison	Tontitown firm vs. firm outside Tontitown	Arkansas firm vs. out-of-state firm
Maximum	Up to 5%, only if adopted by local ordinance	5%, when the statute's conditions apply

Issue	Municipal-resident preference	Arkansas-resident preference
Scope	Competitively bid commodities and services, including listed public works and capital improvements	Materials and equipment used in public-works construction; statute is limited to qualifying utility projects
Local effect now	Not clearly adopted in § 32.02(I)	Expressly referenced, but the citation is outdated and the local wording is broader than the statute

Requirements of Arkansas Code § 14-58-105

The General Assembly enacted § 14-58-105 through Act 1059 of 2015. It permits—but does not automatically require—a municipality to grant by ordinance a percentage preference of up to 5% to the lowest qualified bid from a firm resident in the municipality.

A qualifying firm must:

- Maintain at least one staffed place of business within Tontitown’s corporate limits;
- For at least two successive years immediately before bidding, have paid qualifying county taxes benefiting Tontitown on business real or personal property; and
- Submit a qualified bid conforming to the specifications and request for bids and make the statutory claim for the preference.

Calculation. The procurement official deducts the ordinance’s percentage from the local bidder’s total for comparison purposes. If the adjusted local bid is lower, the award is made to the qualifying in-city firm. This is an evaluation preference; it does not reduce the amount actually paid under the firm’s submitted bid.

Why § 32.02(I) is insufficient for a 5% Tontitown preference

- No percentage is assigned to an in-city bidder. The local-dealer sentence applies only when price, quality, delivery, and service are equal.
- The express 5% sentence compares a vendor within Arkansas to an out-of-state vendor—not a Tontitown firm to another Arkansas firm.
- The subsection cites the former state-resident statute rather than § 14-58-105, the statute authorizing a municipal-resident preference.
- It does not incorporate the statutory definition of a firm resident in the municipality, including the staffed-location and two-year tax requirements.
- It uses the term ‘quote,’ although § 14-58-105 addresses purchases made through competitive bidding and requires a claim by the resident firm.
- It does not prescribe the statutory comparison calculation or explain that the successful bidder is paid its actual bid amount.

Additional correction concerning the Arkansas preference

The citation to § 19-11-259 became outdated when the Arkansas Procurement Law was recodified in 2025. The corresponding provision is now § 19-61-515. More importantly, that provision is not a general preference for every city purchase. It defines commodities as materials and equipment used in public-works construction and limits its municipal application to projects designed to provide utility needs, including pipeline, sanitary, waterline, sewage, and waterworks projects. Chapter 32’s broad reference to any ‘quote’ from an Arkansas vendor could therefore be read more broadly than the statute allows.

Recommended legal determination and council action

I respectfully request that the City Attorney confirm:

- Whether § 32.02(I), as currently written, authorizes any price preference for a Tontitown firm when the competing bidder is also an Arkansas firm;
- Whether the present reference to former § 19-11-259 should be replaced with § 19-61-515 and narrowed to its statutory scope;
- Whether bid notices must disclose the applicable preference and require a bidder's written claim and supporting documentation; and
- Whether state or federal funding rules prohibit or modify either preference for a particular procurement.

Recommended action. If the council intends to allow a genuine Tontitown-business preference of up to 5%, it should enact a clarifying ordinance expressly under § 14-58-105. The ordinance should state the selected percentage, any dollar cap, eligibility documentation, written-claim deadline, evaluation calculation, covered procurements, record-retention requirements, and exceptions for conflicting grant or funding conditions. The Arkansas-resident preference should be addressed separately.

Conclusion

Tontitown has adopted a local-preference policy in ordinance form, but the existing text does not clearly adopt the 5% municipal-resident preference authorized by Arkansas law. Unless and until § 32.02(I) is amended, the city should not treat a Tontitown bidder as entitled to an award merely because its price is within 5% of a lower bid submitted by another Arkansas firm. A carefully drafted amendment would protect local participation while preserving competitive-bidding compliance.

Authorities reviewed

Tontitown Code § 32.02(I): https://codelibrary.amlegal.com/codes/tontitown/latest/tontitown_ar/0-0-0-299

Arkansas Code § 14-58-105: <https://law.justia.com/codes/arkansas/title-14/subtitle-3/chapter-58/subchapter-1/section-14-58-105/>

Arkansas Code § 19-61-515: <https://law.justia.com/codes/arkansas/title-19/subtitle-4/chapter-61/subchapter-5/section-19-61-515/>

Note: This paper presents a legal-policy analysis for review by the City Attorney and is not a substitute for the City Attorney's formal opinion.