

ORDINANCE NO. 2026-09-1341

CITY OF TONTITOWN, WASHINGTON COUNTY, ARKANSAS

AN ORDINANCE AMENDING § 32.02(I) OF THE TONTITOWN MUNICIPAL CODE TO ESTABLISH A FIVE-PERCENT PREFERENCE FOR QUALIFIED FIRMS RESIDENT WITHIN THE CITY; TO PRESERVE THE ARKANSAS-RESIDENT BIDDER PREFERENCE WHEN REQUIRED BY STATE LAW; TO PROVIDE PROCEDURES AND LIMITATIONS; TO DECLARE SEVERABILITY; AND FOR OTHER PURPOSES .

WHEREAS, Arkansas Code Annotated § 14-58-105 authorizes a municipality, by ordinance, to grant a percentage preference of up to five percent (5%) to a qualified firm resident within the municipality when commodities or services are purchased through competitive bidding;

WHEREAS, Arkansas Code Annotated § 14-58-105 applies, when adopted by local ordinance, to qualifying public works projects, capital improvements, commodities, materials, equipment, and services procured by the municipality;

WHEREAS, Arkansas Code Annotated § 19-61-515, formerly codified and cited in the Tontitown Municipal Code as A.C.A. § 19-11-259, requires an Arkansas-resident bidder preference in qualifying competitively bid purchases of materials and equipment used in public-works projects designed to provide municipal utility needs, subject to the conditions and limitations stated in that statute;

WHEREAS, the existing text of Tontitown Municipal Code § 32.02(I) refers to the former statutory citation of the Arkansas Code Annotated and does not clearly distinguish the optional municipal-resident preference from the state-mandated Arkansas-resident preference;

WHEREAS, the Tontitown City Council finds that a clearly defined local preference will encourage qualified Tontitown businesses to participate in City procurement while maintaining competitive bidding, objective evaluation, and compliance with state and federal funding requirements;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TONTITOWN, ARKANSAS:

SECTION 1. AMENDMENT OF TONTITOWN CODE § 32.02(I).

Tontitown Code § 32.02(I) is repealed and replaced in its entirety to read as follows:

“(I) LOCAL AND ARKANSAS BIDDER PREFERENCES.

(1) Purpose. This subsection encourages participation by qualified firms located within the City, preserves the preference afforded qualified Arkansas firms over out-of-state firms when required by Arkansas law, and establishes a transparent procedure for applying each preference without altering the City’s specifications or responsibility requirements.

(2) Definitions. For purposes of this subsection:

- (a) ‘Commodities,’ for purposes of the municipal-resident preference, means all property, including without limitation equipment, printing, stationery, supplies, insurance, and capital improvements, but excludes leases of real property, real property or a permanent interest in real property, and commodities or services exempt from competitive bidding.
- (b) ‘Firm resident in the City’ means an individual, partnership, association, or corporation, whether domestic or foreign, that: (i) maintains at least one staffed place of business within the corporate limits of Tontitown; and (ii) for not less than two successive years immediately before

submitting a bid, has paid taxes to Washington County that benefit the City on real or personal property used or intended to be used in connection with the firm's business.

- (c) 'Firm resident in Arkansas' has the meaning prescribed by Arkansas Code Annotated § 19-61-515, as amended or recodified.
 - (d) 'Lowest qualified bid' means the lowest bid that conforms to the specifications and request for bids. A preference under this subsection does not excuse compliance with responsiveness, responsibility, licensing, bonding, insurance, or other lawful requirements.
 - (e) 'Nonresident firm,' when used in connection with the municipal-resident preference, means a firm that is not a firm resident in the City. When used in connection with the Arkansas-resident preference, it means a firm that is not a firm resident in Arkansas.
 - (f) 'Services' means labor, time, or effort furnished by a contractor, but does not include professional services that Arkansas law requires to be procured through qualifications-based selection rather than competitive price bidding, including services governed by Arkansas Code Annotated § 19-11-801 *et seq.* (3) Five-percent preference for a firm resident in the City.
 - (a) In a purchase of commodities or services by competitive bidding, the City grants a preference of five percent (5%) to the lowest qualified bid from a firm resident in the City, pursuant to Arkansas Code Annotated § 14-58-105.
 - (b) The preference applies only when at least one bid is submitted by a firm resident in the City and at least one competing bid is submitted by a firm that is not resident in the City. It does not apply when every competing bidder is a firm resident in the City.
 - (c) For evaluation purposes, the appropriate procurement official shall deduct five percent (5%) from the total amount of each bid submitted by a firm resident in the City that timely claimed the preference. If, after making the deduction, the adjusted bid of any firm resident in the City is lower than the lowest qualified bid of a firm not resident in the City, the award shall be made to the firm resident in the City that submitted the lowest qualified bid, whether or not that particular resident firm claimed the preference, subject to the City's authority to reject any or all bids as permitted by law. The amount payable under the contract shall remain the amount actually bid by the successful bidder. The preference is used solely for the evaluation and comparison of bids.
 - (d) This municipal-resident preference applies to qualifying public works projects, capital improvements, commodities, materials, equipment, and services procured through competitive bidding, subject to all limitations in state or federal law.
- (4) Five-percent preference for a firm resident in Arkansas over an out-of-state firm.
- (a) When Arkansas Code Annotated § 19-61-515 applies, the City shall accept the lowest qualified bid from a firm resident in Arkansas if that bid does not exceed the lowest qualified bid from a nonresident firm by more than five percent (5%) and one or more firms resident in Arkansas made a written claim for the preference when bids were submitted.
 - (b) For evaluation purposes, the appropriate procurement official shall deduct five percent (5%) from the total amount of each bid submitted by an Arkansas firm that claimed the preference and shall make the award in the manner prescribed by Arkansas Code Annotated § 19-61-515.
 - (c) This Arkansas-resident preference applies only within the scope established by § 19-61-515, including qualifying purchases of materials and equipment used in public-works projects designed to provide utility needs of the City, such as pipeline installation, sanitary projects, waterline projects, sewage projects, and waterworks projects. It does not apply merely because a vendor is located within Arkansas.
 - (d) The Arkansas-resident preference does not apply when all competing bidders are firms resident in Arkansas.

(5) Claim and documentation.

- (a) To invoke the evaluation calculation associated with either preference, a bidder shall submit a written claim with its bid and must do so no later than the applicable bid-submission deadline. The claim shall be submitted in the manner required by the invitation for bids and shall include a sworn certification and any reasonably requested documentation establishing the bidder's eligibility. A claim first submitted after the bid-submission deadline shall not be considered.
 - (b) A resident firm's failure to claim a preference means that the City will not deduct a preference percentage from that firm's bid. However, when another qualifying resident firm has timely claimed the applicable preference, the City shall make the award to an otherwise qualifying resident firm that did not claim the preference if and to the extent required by Arkansas Code Annotated § 14-58-105 or § 19-61-515.
 - (c) The invitation for bids shall identify each potentially applicable preference, cite the governing statute and this subsection, and describe the required certification and supporting documentation.
 - (d) A material false statement concerning residency, staffing, tax payment, or eligibility may result in rejection of the bid, cancellation of an award, recovery of damages, suspension from City bidding, or any other remedy allowed by law.
- (6) Application of both preferences. When circumstances arise in which both Arkansas Code Annotated §§ 14-58-105 and 19-61-515 apply, the City shall apply both preferences as required by § 14-58-105(d). Before an award involving both preferences, the bid tabulation and proposed application shall be submitted to the City Attorney for review. Nothing in this subsection authorizes a preference beyond that permitted or required by state law.
- (7) State and federal funding limitations. A preference shall not be applied to the extent it conflicts with controlling state or federal law, a rule or regulation governing a grant or aid program, or a binding condition attached to project funding. Nonconflicting portions of this subsection remain applicable. The procurement file shall identify any preference not applied and the legal or funding basis for that determination.
- (8) Administration and records. The appropriate procurement official shall compile and maintain during the procurement process all residency claims, certifications, supporting documentation, calculations, bid tabulations, legal reviews, and the written basis for the award or rejection. Upon completion of the procurement, those materials shall be maintained as part of the City's official procurement records by the City Clerk-Treasurer or other duly designated records custodian for the period required by Arkansas law and the City's applicable records-retention schedule.
- (9) No impairment of lowest-responsible-bidder requirements. A preference under this subsection changes only the statutory comparison of qualified bids. It does not prevent the City from rejecting any or all bids as permitted by law, nor does it authorize an award to a bidder that is nonresponsive, unqualified, or not responsible under Arkansas Code Annotated § 14-58-303, § 22-9-203, other applicable law."

SECTION 2. CODIFICATION.

The City Clerk-Treasurer and the City's codifier are authorized to codify Section 1 of this Ordinance as Tontitown Code § 32.02(I), to correct subsection lettering and numbering without changing substantive meaning, and to update statutory cross-references if a cited provision is renumbered without substantive change.

SECTION 3. REPEALER.

All ordinances and parts of ordinances in conflict with this Ordinance are repealed to the extent of the conflict. All provisions of Tontitown Code § 32.02 not expressly amended remain in full force and effect.

SECTION 4. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or application of this Ordinance is held invalid or unenforceable, the invalidity shall not affect any other provision or application that can be given effect without the invalid provision or application, and the provisions of this Ordinance are declared severable.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect and be in force from and after its passage, approval, and publication as required by law. It applies to invitations for bids first advertised or issued on or after its effective date.

PASSED AND APPROVED this 15 day of Sept, 2026.

CITY OF TONTITOWN, ARKANSAS

Angela Russell
ANGELA RUSSELL, MAYOR

ATTEST:

Rhonda Anderson
CITY CLERK-TREASURER

APPROVED AS TO FORM:

CITY ATTORNEY