**SMLOUVA**

Číslo: 20160533

uzavřená podle § 1746, odst. 2 zákona č. 89/2012 Sb., občanský zákoník

(dále také „občanský zákoník“)

**mezi těmito smluvními stranami:**

**Česká republika - Správa státních hmotných rezerv**

se sídlem: Šeříková 616/1, 150 85 Praha 5 - Malá Strana

jednající: Ing. Miroslav Basel, ředitel Odboru zakázek

IČO: 48133990

DIČ: CZ48133990

bankovní spojení: Česká národní banka, pobočka Praha

číslo účtu: 85508881/0710

osoba pověřená k jednání

ve věcech technických: Mgr. Petr Kačenka

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datová schránka: 4iqaa3x

(dále též „**objednatel**“)

**a**

**Obchodní firma** **J3AG, s.r.o.**

se sídlem: Průběžná 2397/76, 100 00 Praha 10 - Strašnice

spisová značka: C 231643 vedená u Městského soudu v Praze

zastoupena: Ing. Lukáš Lojek, MBA, PMP, jednatel

IČO: 03438635

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bankovní spojení: Fio banka, a.s., V Celnici 10, Praha 1

číslo účtu: 2000680586/2010

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(dále též **„poskytovatel“**)

(dále také společně **„smluvní strany“**)

**Účel smlouvy**

1. Účelem smlouvy je prodloužení stávající technické podpory včetně aktualizace u bezpečnostní brány FortiGate 200D, který Správa státních hmotných rezerv (dále i „Správa“)využívá k ochraně přístupu do datové sítě Správy před neoprávněnými vstupy a zásahy, a k zajištění zákonné působnosti objednatele vyplývající ze zákona č. 97/1993 Sb., o působnosti Správy státních hmotných rezerv, ve znění pozdějších předpisů.
2. Touto smlouvou se realizuje veřejná zakázka, kterou objednatel zadal ve výběrovém řízení pod č. j. 06082/16-SSHR s názvem „16-170 Prodloužení technické podpory brány FortiGate 200D“.

**Předmět smlouvy a místo plnění**

1. Předmětem této smlouvy je prodloužení stávající technické podpory včetně aktualizace u bezpečnostní brány FortiGate 200D o 5 let v termínu, který je uveden v následující tabulce.

|  |  |  |  |
| --- | --- | --- | --- |
| **Product Serial Number** | **Model** | **Expiration date** | **Požadované prodloužení podpory do** |
| FG200D3914802569 | FortiGate 200D | 30. 11. 2016 | 30. 11. 2021 |

## Pro bezpečnostní brány uvedené v tabulce požaduje objednatel dodat prodloužení technické podpory funkčnosti HW zařízení a služby FortiCare.

Popis jednotlivých částí podpory:

1. Podpora HW = zajištění funkčnosti služeb FW při poruše HW (výměnou nebo opravou)
2. Podpora FortiCare obsahuje:

* Upgrades firmware = možnost využívat nově vydané verze Firmware,
* 8x5 web support = podpora 5 dní v týdnu v pracovní době.

1. Poskytovatel se zavazuje zajistit a dodat objednateli výše uvedené prodloužení stávající technické podpory včetně aktualizace u bezpečnostní brány FortiGate 200D.
2. V případě, že vinou poskytovatele (neobjedná včas prodloužení platnosti licence) dojde ke ztrátě či znehodnocení licence, jdou veškeré náklady na znovuobnovení či pořízení nové licence za poskytovatelem.
3. Objednatel se zavazuje dodané prodloužení stávající technické podpory včetně aktualizace u bezpečnostní brány FortiGate 200D převzít a zaplatit za něj cenu dle článku IV. této smlouvy.
4. Licenční podmínky podpory a práva prodloužení stávající technické podpory včetně aktualizace u bezpečnostní brány FortiGate 200D jsou uvedeny v [Příloze č. 2](#_Příloha_č._2) této smlouvy.
5. Místem plnění této smlouvy je pracoviště objednatele:

Olbrachtova 1677/3, 140 00 Praha 4 – Krč

**Doba plnění**

## Poskytovatel se zavazuje dodat předmět plnění této smlouvy nejpozději do termínu expirace uvedeného v tabulce v čl. II., odst. 1 (sloupec označený jako: „Datum expirace“).

1. Služba je splněna jejím řádným prováděním.

**Cena předmětu plnění a platební podmínky**

* 1. Cena za předmět smlouvy je cenou smluvní a je dána nabídkou poskytovatele ze dne 22. 8. 2016 a to (Krycí list – [Příloha č. 1](#_Příloha_č._1)). Cena za předmět smlouvy byla stanovena jako cena pevná ve výši následovně:

1. cena za předmět plnění ve výši **65.000 Kč bez DPH**

(slovy: šedesát pět tisíc korun českých),

1. DPH ve výši **13.650 Kč** (slovy: třináct tisíc šest set padesát korun českých),
2. celková cena za předmět plnění tedy činí **78.650 Kč včetně DPH**

(slovy: sedmdesát osm tisíc šest set padesát korun českých).

* 1. Celková cena za předmět plnění je ujednána pevnou částkou. Poskytovatel nemůže žádat změnu ceny proto, že si předmět plnění vyžádal jiné úsilí nebo jiné náklady, než bylo předpokládáno.
  2. Celková cena za předmět plnění již zahrnuje veškeré daně, cla, poplatky a veškeré další výdaje spojené s jejich provedením, včetně všech nákladů poskytovatele služeb na dopravu do míst plnění a zaškolení ostrah v místě plnění.
  3. Platba záloh za předmět plnění se nepřipouští. Právo na zaplacení ceny za předmět plnění vzniká poskytovateli jejich provedením, tj. tehdy, je-li předmět plnění prováděn, o čemž sepíší smluvní strany protokol, který bude přiložen k faktuře a ve kterém budou uvedena případná porušení řádného provádění služeb.
  4. Dojde-li během plnění této smlouvy ke změně zákonem stanovené sazby DPH, je poskytovatel oprávněn v souladu s takovou změnou upravit výši DPH a cenu za předmět plnění včetně DPH, a to tak, že částku odpovídající DPH a částku odpovídající ceně včetně DPH dle odst. 1 upraví tak, aby DPH odpovídalo zákonem stanovené sazbě. Změna zákonem stanovené sazby DPH dle předchozí věty není důvodem k jakémukoliv navýšení částky odpovídající ceně za předmět plnění bez DPH uvedené v odst. 1 tohoto článku.
  5. Smluvní strany se dohodly na bezhotovostním způsobu úhrady faktury za předmět plnění na účet poskytovatele uvedený v záhlaví smlouvy na základě daňového dokladu (faktury).
  6. Lhůta splatnosti faktury je 21 kalendářních dnů od doručení faktury objednateli, přičemž za den zaplacení se považuje den, kdy je fakturovaná částka připsána na účet poskytovatele.
  7. Poskytovatel prohlašuje, že účet uvedený v záhlaví této smlouvy je a po celou dobu trvání smluvního vztahu bude povinným registračním údajem dle zákona č. 235/2004 Sb., o dani z přidané hodnoty, ve znění pozdějších předpisů.
  8. Faktura musí obsahovat veškeré náležitosti stanovené zákonem č. 235/2004 Sb., o dani z přidané hodnoty, ve znění pozdějších předpisů. Dále je poskytovatel povinen v daňovém dokladu (faktuře) uvést jako variabilní symbol číslo smlouvy, které vždy určuje objednatel a toto číslo je uvedeno v záhlaví této smlouvy. V případě, že faktura nebude úplná nebo nebude obsahovat zákonem předepsané náležitosti, je objednatel oprávněn ji vrátit poskytovateli s tím, že poskytovatel je následně povinen vystavit novou bezvadnou a úplnou fakturu s novým termínem splatnosti. V takovém případě počne běžet doručením nové faktury objednateli nová lhůta splatnosti.
  9. Poskytovatel bere na vědomí, že objednatel je organizační složkou státu a v případě prokazatelného nedostatku finančních prostředků může dojít k zaplacení faktur až v návaznosti na přidělení potřebných finančních prostředků ze státního rozpočtu. Tato případná časová prodleva nemůže být pro účely plnění práv a povinností z této smlouvy vyplývajících považována za prodlení na straně objednatele v rámci platebních podmínek a nelze proto z tohoto důvodu uplatňovat vůči objednateli žádné sankce, zejména požadovat úhradu úroků z prodlení. Objednatel v případě, že schválené finanční prostředky vyplývající ze schváleného státního rozpočtu na příslušný rok mu neumožní uhradit vzniklé pohledávky v příslušném roce, je oprávněn podle čl. VIII. odst. 4 od této smlouvy odstoupit, aniž by poskytovateli služeb vznikly jakékoliv nároky z tohoto titulu na smluvní pokuty, veškeré jiné sankce, úhradu škod atd.

**Práva a povinnosti smluvních stran**

1. Poskytovatel se zavazuje zajistit předmět plnění smlouvy v čl. II. této smlouvy za podmínek stanovených touto smlouvou a způsobem odpovídajícím technickým a technologickým postupům vztahujících se k předmětu plnění smlouvy v době stanovené článkem III. této smlouvy a na svůj náklad a nebezpečí.
2. Poskytovatel předá povinné dokumenty k předmětu plnění ve 2 (dvou) vyhotoveních objednateli.
3. Budou-li při předání předmětu plnění zjištěny jakékoliv vady, má objednatel právo předmět plnění nepřevzít a smluvní strany jsou povinny vyhotovit jejich soupis a popis včetně předpokládaného data jejich odstranění poskytovatelem.
4. Poskytovatel se zavazuje, že prodlouží stávající technickou podporu včetně aktualizace u bezpečnostní brány FortiGate 200D o 5 let.

**Náhrada škody**

1. Každá ze stran nese odpovědnost za způsobenou škodu v rámci platných právních předpisů a této smlouvy. Obě smluvní strany se zavazují k vyvinutí maximálního úsilí k předcházení škodám a k minimalizaci vzniklých škod.
2. Žádná ze smluvních stran není v prodlení a ani nemá povinnost nahradit škodu způsobenou porušením svých povinností vyplývajících z právních předpisů a z této smlouvy, bránila-li jí v jejich splnění některá z překážek vylučujících povinnost k náhradě škody ve smyslu § 2913 odst. 2 občanského zákoníku. Smluvní strany se zavazují upozornit druhou smluvní stranu bez zbytečného odkladu na vzniklé okolnosti vylučující odpovědnost bránící řádnému plnění této smlouvy.

**Smluvní pokuta a úrok z prodlení**

1. V případě, že poskytovatel nebude v příslušném měsíci řádně provádět předmět plnění dle této smlouvy a tato skutečnost bude objednatelem uvedena v protokolu, dopouští se tím porušení smlouvy, za které je povinen zaplatit objednateli smluvní pokutu ve výši 0,5 % z celkové ceny za předmět plnění bez DPH za každý započatý den prodlení.
2. Objednatel je oprávněn při nedodržení sjednaného termínu doby plnění či úplného předání předmětu plnění bez jakýchkoliv vad a nedodělků požadovat po poskytovateli smluvní pokutu ve výši 0,5% z celkové ceny předmětu plnění bez DPH za každý i započatý den prodlení.
3. V případě, že poskytovatel neodstraní vady bránící předání a převzetí předmětu smlouvy v dohodnutém termínu, je poskytovatel povinen zaplatit objednateli smluvní pokutu ve výši 0,05% z ceny za předmět smlouvy bez DPH za každou jednotlivou vadu a započatý den prodlení.
4. Smluvní pokuta je splatná 14. den ode dne doručení písemné výzvy objednatele k její úhradě, není-li ve výzvě uvedena lhůta delší.
5. Smluvní strany se dohodly, že v případě prodlení s úhradou oprávněně vystavené faktury je strana, které je faktura určena, povinna oprávněné straně zaplatit rovněž úrok z prodlení z dlužné částky v zákonné výši stanovené příslušným nařízením vlády.
6. Poskytovatel prohlašuje, že smluvní pokuty dle této smlouvy včetně jejich výše považuje vzhledem k významu povinností (závazků), k jejichž zajištění byly dohodnuty, za přiměřené.
7. Úhradou smluvní pokuty není dotčeno právo objednatele na náhradu škody vzniklé z porušení povinnosti, ke kterému se smluvní pokuta vztahuje, a to ani co do výše, v níž případně náhrada škody smluvní pokutu přesáhne.

**Odstoupení od smlouvy**

1. Smluvní strany jsou oprávněny odstoupit od této smlouvy z důvodů podstatných porušení uvedených v občanském zákoníku, objednatel také z důvodů uvedených v této smlouvě, pokud podstatné porušení této smlouvy dle občanského zákoníku, které je důvodem pro odstoupení od smlouvy, nebylo způsobeno okolnostmi vylučujícími odpovědnost dle ustanovení § 2913 občanského zákoníku.
2. Nebude-li předmět plnění dle této smlouvy řádně poskytován, což bude konstatováno objednatelem v protokolu, je objednatel oprávněn od této smlouvy odstoupit.
3. Objednatel je dále oprávněn odstoupit od smlouvy v případě, že poskytovatel:
4. porušil povinnost stanovenou dle čl. IV. odst. 8.,
5. postupuje při provádění předmětu plnění v rozporu s ujednáními této smlouvy nebo s pokyny oprávněného zástupce objednatele,
6. neodstranil vady před předáním předmětu plnění ve stanovené lhůtě,
7. neodstranil vady uplatněné v požadovaném termínu uvedeném v písemné výzvě, ani v termínu dodatečném, sjednaném pro daný případ uplatnění vady mezi objednatelem a poskytovatelem.
8. Smluvní strany se dohodly, že při prodlení objednatele se zaplacením celkové ceny za dílo, má poskytovatel právo od této smlouvy odstoupit. Při odstoupení podle čl. IV odst. 10, má toto právo odstoupit i objednatel.
9. Odstoupení od smlouvy musí být učiněno písemně. Účinky odstoupení od smlouvy nastávají dnem doručení písemného oznámení o odstoupení druhé smluvní straně. V pochybnostech se má za to, že účinky odstoupení nastávají 3. dnem po jeho prokazatelném odeslání.
10. Smluvní strany se dohodly, že v případě odstoupení od smlouvy budou do 30. kalendářních dnů od jeho účinnosti vyrovnány vzájemné závazky a pohledávky, plynoucí z této smlouvy.

**Ostatní ujednání**

1. Poskytovatel prohlašuje, že k poskytování služeb, které jsou předmětem této smlouvy, má potřebná oprávnění.
2. Poskytovatel prohlašuje, že se seznámil s jejich rozsahem, je schopen služby ve smluveném rozsahu a lhůtě poskytovat a že veškeré náklady spojené s prováděním služeb jsou zahrnuty v ceně služeb.
3. Smluvní strany se zavazují v plném rozsahu zachovávat povinnost mlčenlivosti a povinnost chránit důvěrné informace, o nichž se dozvěděly v souvislosti s uzavřením této smlouvy. Smluvní strany se zavazují dodržovat povinnosti vyplývající z této smlouvy a též příslušných právních předpisů, zejména povinnosti vyplývající ze zákona č. 101/2000 Sb., o ochraně osobních údajů, ve znění pozdějších předpisů. Smluvní strany se v této souvislosti zavazují poučit veškeré osoby, které se na jejich straně budou podílet na plnění této smlouvy.
4. Nedohodnou-li se smluvní strany výslovně písemnou formou jinak, považují se za důvěrné implicitně všechny informace, které jsou nebo by mohly být součástí obchodního tajemství podle § 504 občanského zákoníku.
5. Zánikem této smlouvy z jakéhokoliv důvodu nemohou být dotčena vzájemná plnění, pokud byla řádně poskytnuta a byla již akceptována dle této smlouvy před účinností zániku této smlouvy, ani práva a nároky z takových plnění vyplývající.

**Závěrečná ustanovení**

1. Smluvní strany se dohodly, že další skutečnosti touto smlouvou neupravené se řídí příslušnými ustanoveními zákona č. 89/2012 Sb., občanský zákoník.
2. Poskytovatel souhlasí s tím, aby tato smlouva, včetně jejích případných dodatků, byla uveřejněna na internetových stránkách objednatele. Údaje ve smyslu § 147a odst. 2 zákona č. 137/2006 Sb., o veřejných zakázkách, ve znění pozdějších předpisů, budou znečitelněny (ochrana informací a údajů dle zvláštních právních předpisů).
3. Poskytovatel souhlasí, aby objednatel poskytl část nebo celou tuto smlouvu v případě žádosti o poskytnutí informace podle zákona č. 106/1999 Sb., o svobodném přístupu k informacím, ve znění pozdějších předpisů.
4. Veškeré změny nebo doplňky této smlouvy (včetně změny bankovního spojení, změny sídla, změny právně jednající osoby nebo zastoupení smluvní strany atd.) jsou vázány na souhlas smluvních stran a mohou být provedeny, včetně změn příloh, po vzájemné dohodě obou smluvních stran pouze formou písemného dodatku k této smlouvě. Smluvní dodatky musí být řádně označeny, pořadově vzestupně číslovány, datovány a podepsány oprávněnými zástupci obou smluvních stran. Nemůže jít k tíži smluvní strany, které nebyl v souladu s touto smlouvou zaslán dodatek ohledně změny údajů v záhlaví smlouvy, že i nadále užívá při komunikaci s druhou smluvní stranou údaje původně uvedené. Jiná ujednání jsou neplatná.

Smluvní strany sjednávají pravidla pro doručování vzájemných písemností tak, že písemnosti se zasílají v elektronické podobě prostřednictvím datových schránek. Nelze-li použít datovou schránku, zasílají se prostřednictvím provozovatele poštovních služeb na adresu uvedenou v záhlaví této smlouvy. V případě pochybností či nedoručitelnosti považuje se odeslaná zásilka za doručenou třetím pracovním dnem po jejím odeslání na adresu uvedenou v záhlaví této smlouvy, byla-li odeslána na adresu v jiném státu, považuje se za doručenou patnáctým pracovním dnem po odeslání.

1. Tato smlouva je vyhotovena ve 4 (slovy: čtyřech) stejnopisech, z nichž 3 obdrží objednatel a 1 poskytovatel služby.
2. Smlouva je platná dnem podpisu oběma smluvními stranami a účinnosti nabývá okamžikem zveřejnění v Registru smluv.
3. Smluvní strany prohlašují, že se s obsahem této smlouvy před jejím podpisem řádně seznámily, že smlouva nebyla uzavřena v tísni, ani za nápadně nevýhodných podmínek a byla uzavřena podle jejich pravé a svobodné vůle. Na důkaz toho připojují oprávnění zástupci smluvních stran své podpisy.
4. Nedílnou součástí smlouvy jsou tyto přílohy:

Příloha č. 1: Formulář Krycí list nabídky

Příloha č. 2: Licenční podmínky prodloužení stávající technické podpory včetně aktualizace u bezpečnostní brány FortiGate 200D

V Praze dne: 4.10.2016 V Praze dne: ………………

Za objednatele: Za poskytovatele:

**Česká republika – Správa J3AG, s.r.o.**

**státních hmotných rezerv**

…………………………………………… ……………………………………………

**Ing. Miroslav Basel Ing. Lukáš Lojek, MBA, PMP**

ředitel Odboru zakázek jednatel

# Příloha č. 1 Smlouvy

**„16-170 Prodloužení technické podpory brány FortiGate 200D“**

**KRYCÍ LIST NABÍDKY**

pro veřejnou zakázku

**„16-170 Prodloužení platnosti technické podpory brány FortiGate 200D“**

Zadavatel: Česká republika – Správa státních hmotných rezerv

Šeříková 616/1,150 85 Praha 5 - Malá Strana, IČO: 48133990¨

|  |  |
| --- | --- |
| **Uchazeč**  (obchodní firma nebo název): | J3AG, s.r.o. |
| **Sídlo -** celá adresa včetně PSČ  (v případě fyzické osoby místo  podnikání) | Průběžná 2397/76, 100 00 Praha 10 |
| **Právní forma:** | Společnost s ručením omezeným |
| **Identifikační číslo:** | 03438635 |
| **Daňové identifikační číslo:** | CZ03438635 |
| **Rodné číslo**  (vyplňuje se jen v případě, že uchazeč je fyzická osoba) | --- |

1. Identifikace uchazeče
2. Nabídková cena

|  |  |  |
| --- | --- | --- |
| **Celková cena zakázky v Kč bez DPH** | **Celková hodnota DPH v Kč** | **Celková cena zakázky v Kč včetně DPH** |
| 65.000,- | 13.650,- | 78.650,- |

V Praze dne 22. 8. 2016

………………………………………

Mgr. Jana Grulichová

jednatel

# Příloha č. 2 Smlouvy

**„16-170 Prodloužení technické podpory brány FortiGate 200D“**

**Licenční podmínky prodloužení stávající**

**technické podpory včetně aktualizace u bezpečnostní brány FortiGate 200D“**



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