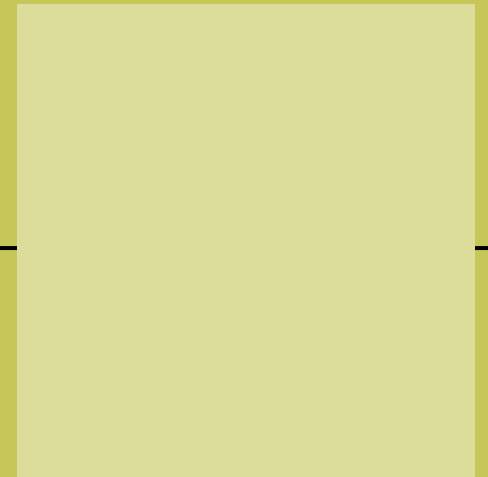


RED FLAGS CATEGORY

Government Relationships



Ford
Foundation

18

RED FLAG

Vendor is not transparent or does not set red lines in its data sharing practices with government agencies.

AT A GLANCE

- Data sharing between vendors and public agencies could be complicated and opaque.
- Vendors should conduct due diligence, establish clear boundaries, and be transparent about their process for handling public data.
- To identify this red flag ask about vendor's relationship with law enforcement, response to government requests for information, and safeguards in their data sharing agreements with public agencies.

Often times, data sharing practices between vendors and public agencies are opaque and entangled. Vendors might rely on data that is provided by government agencies either through a government's open data platforms or closed data. In some cases, the source of this data is not obvious. For instance, it may not be clear if a public agency itself buys the data from data brokers or uses surveillance methods to collect it (e.g., social media scraping, realtime transportation data collected by law enforcement and then shared with trusted caseworkers who serve unhoused communities). The reverse scenario may be true as well; sometimes, the government requires vendors to give them access to data they collect.

Vendors should conduct their own due diligence to understand where government data comes from. In addition, they should be transparent about the process they have in place to handle government demands, subpoena, or court orders for handing out users' data. They should set red lines with governments to avoid contributing to surveilling traditionally excluded communities.

EXAMPLE

An entity comes forward with a proposal for a policing data collective – owned by former police officers. It is meant to keep local communities safe, but data sharing with local government/police departments remains unclear.



QUESTIONS TO IDENTIFY THIS RED FLAG

What is your relationship with law enforcement, if any?

How have you responded, or how would you respond, to government requests for information that you hold?

What safeguards exist in your data sharing agreements with public agencies to keep users' data secure?

19

RED FLAG

Due to trade secrecy, intellectual property rights, or proprietary software, the vendor has excessive confidentiality clauses to their contracts with public agencies, or has many non-disclosure agreements they require the agency to sign.

AT A GLANCE

- Lack of scrutiny by government agencies can lead to loss of public oversight over the system, and FOIA requests may be withheld.
- To identify this red flag ask about the type of licensing for the tool, reviewing confidentiality clauses, and inquiring about the vendor's willingness to waive their right if data is requested through FOIA.

This is a very common red flag, especially when a vendor provides the same commercial services to non-government agencies as well. Often, there is not enough scrutiny by government agencies to understand the consequences of these confidentiality clauses. As a result, there may be a loss of public oversight over the system and/or FOIA requests may be withheld. In addition, the government may lose its right to repair the tool.

EXAMPLE

A company wins a contract to develop a pre-trial risk assessment tool. The tool is deployed statewide. Racial justice advocates raise concerns about discriminatory outputs of the tool based on defendants' race. The company publishes a public statement claiming their tool does not take defendants' race into consideration at all.

However, advocates still think other factors that indirectly reveal defendants' race such as zip code, undergraduate or college club membership, or other "proxies" may contribute to discriminatory practices. They require state government agencies to scrutinize the data and algorithms behind the tool. However, the company cites its IP rights and trade secrecy and will not reveal such information to the public.

QUESTIONS TO IDENTIFY THIS RED FLAG

What types of licensing do you have for your tool? Are they open or closed?

If you already have a contract with a government agency, can you walk us through your confidentiality clauses? Why do you have those?

Are you going to waive your right if data you collect is requested through FOIA?

RESOURCES

- [Best Practices for Government Procurement of Data-Driven Technologies](#)
- [AI and Procurement - A Primer](#)
- [School Procurement Guide: Buying Edtech Products with Racial Equity in Mind](#)
- Gizmodo, [The FBI Will Neither Confirm Nor Deny the Existence of These Documents I Just Printed](#)